

## **REPORT FOR:           Standards Committee**

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**Date of Meeting:**           29 February 2012

**Subject:**                    The Future of a Standards Regime at  
the London Borough of Harrow

**Responsible Officer:**    Hugh Peart Director of Legal and  
Governance Services.

**Exempt:**                     No

**Enclosures:**              Current Code of Conduct, Local  
Government Association Draft Code.

### **Section 1 – Summary and Recommendations**

This report sets out options for the future of the Standards Regime at Harrow.

#### **Recommendations:**

The Committee is requested to:

1. Consider the options put before them.
2. Adopt those options as appropriate for referral on to Council.
3. Ask officers to work on further options as necessary.
4. Appoint an interview panel and chair to interview candidates for the Independent Person (IP). (If this is required?)
5. Instruct officers to advertise the IP positions.

## **Section 2 – Report**

### **1. The Localism Act 2011**

The Localism Act 2011 (The Act) makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. The date for implementation of these changes is proposed to be July 2012. This report describes the changes and recommends the actions required for the Council to implement the new regime.

### **2. Duty to promote and maintain high standards of conduct**

The Council will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members.

### **3. Standards Committee**

The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. So, there will be no requirement for a Standards Committee. However, there will still be a need to deal with standards issues and case-work, so that it is likely to remain convenient to have a Standards Committee, it will be a normal Committee of Council, without the unique features which were conferred by the previous legislation. As a result –

- 3.1 The composition of the Committee will be governed by proportionality. The present restriction to only one member of the Executive on the Standards Committee will cease to apply;
- 3.2 The current co-opted independent members will cease to hold office. The Act establishes for a new category of IPs who must be consulted at various stages, but provides that the existing co-opted independent members cannot serve as IPs for 5 years. The new IPs may be invited to attend meeting so the Standards Committee, but are unlikely to be co-opted onto the Committee; (This part of the Act is subject to lobbying and transitional provisions may mean that the current independent members can become IPs).
- 3.3 The current independent members can be co-opted members of the Standards Committee but they can only be voting members of the Standards Committee if the Standards Committee is not a decision making body, otherwise they can act in an advisory capacity only but they can not be IPs.

### **Recommendation 1 –**

- a. That the Council establish a Standards Committee comprising 8 elected members of the Council, appointed proportionally;
- b. That the Leader of the Council be requested to nominate to the Committee only one member who is a member of the Executive;

### **4. The Code of Conduct**

The current ten General Principles and Model Code of Conduct will be repealed, and members will no longer have to give an undertaking to comply with the Code of Conduct. However, the Council will be required to adopt a new Code of Conduct governing elected and co-opted member's conduct when acting in that capacity. The

Council's new Code of Conduct must, viewed as a whole, be consistent with the following seven principles –

- 4.1
  - Selflessness
  - Integrity
  - Objectivity
  - Accountability
  - Openness
  - Honesty
  - Leadership
- 4.2 The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles. The Council may still retain the ten principles from the old code. Regulations to be made under the Act will require the registration and disclosure of “Disclosable Pecuniary Interests” (DPIs). The provisions of the Act also require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests. The result is that it is not possible yet to draft Code provisions which reflect the definition of DPIs which will appear in regulations,
- 4.3 The Act prohibits members with a DPI from participating in authority business, and the Council can adopt a Standing Order requiring members to withdraw from the meeting room. So the Council's new Code of Conduct will have to deal with the following matters –
  - a General conduct rules, to give effect to the seven principles. This corresponds broadly with Paragraphs 3 to 7 of the current Code of Conduct. In practise, the easiest course of action would be simply to re-adopt Paragraphs 3 to 7 of the existing Code of Conduct. The Council can amend its Code of Conduct subsequently if the need arises; and
  - b Registration and disclosure of interests other than DPIs – effectively, replacing the current personal interests provisions. The Act requires that the Code contains “appropriate” provisions for this purpose, but, until the regulations are published, defining DPIs, it is difficult to suggest what additional disclosure would be appropriate.

**Recommendation 2 –**

- a. That the Monitoring Officer be instructed to prepare and present to Council for adoption a draft Code of Conduct. That draft Code should –
  - i. equate to Paragraphs 3 to 7 of the current Code of Conduct applied to member conduct in the capacity of an elected or co-opted member of the Council or its Committees and Sub-Committees, to retain the ten principles in the old code or should follow the model code as drafted by the Local Government Association; and
  - ii. require registration and disclosure of interests which would today constitute personal and/or prejudicial interests, but only require withdrawal as required by the Act in relation to Disclosable Pecuniary Interests.
- b. That, when the Disclosable Pecuniary Interests Regulations are published a report will be put before the Standards Committee.

## **5. Dealing with Misconduct Complaints**

### **5.1 “Arrangements”**

The Act requires that the Council adopt “arrangements” for dealing with complaints of breach of Code of Conduct by Council members and by, and such complaints can only be dealt with in accordance with such “arrangements”. So the “arrangements” must set out in some detail the process for dealing with complaints of misconduct and the actions which may be taken against a member who is found to have failed to comply with the relevant Code of Conduct. The advantage is that the Act repeals the requirements for separate Assessment, Review and Hearings Sub-Committees, and enables the Council to establish its own process, which can include delegation of decisions on complaints. Indeed, as the statutory provisions no longer give the Standards Committee or Monitoring Officer special powers to deal with complaints, it is necessary for Council to delegate appropriate powers to any Standards Committee and to the Monitoring Officer.

### **5.2 Decision whether to investigate a complaint**

In cases where the complaint does not fall within the code of conduct the Monitoring Officer could take the decision that the matter is dismissed. In other cases the councillor complained about could be asked to respond in writing to the complaint and the response and the initial complaint could be put to an Assessment Sub Committee to decide if the matter should be investigated or not.

### **5.3 “No Breach of Code” finding on investigation**

Where a formal investigation finds no evidence of failure to comply with the Code of Conduct, the current requirement is that this is reported to Pre Hearing Sub-Committee and the Sub-Committee take the decision to take no further action. This decision could be delegated to the Monitoring Officer, but with the power to refer a matter to Standards Committee if he feels appropriate. It would be sensible if copies of all investigation reports were provided to the IP to enable him to get an overview of current issues and pressures, and that the Monitoring Officer provide a summary report of each such investigation to Standards Committee for information

### **5.4 “Breach of Code” finding on investigation.**

In all other cases, where the formal investigation finds evidence of a failure to comply with the Code of Conduct, it would be necessary for the Standards Committee (in practice a Hearings Panel constituted as a Sub-Committee of Standards Committee) to hold a hearing at which the member against whom the complaint has been made can respond to the investigation report, and the Hearing Panel can determine whether the member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result

## **5.5 Action in response to a Hearing finding of failure to comply with Code.**

The Act does not give the Council or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology on members. Where a failure to comply with the Code of Conduct is found, the range of actions which the authority can take in respect of the member is as follows:

- 5.5.1 Reporting its findings to Council for information;
  - 5.5.2 Recommending to the member's Group Leader (or in the case of ungrouped members, recommend to Council ) that he/she be removed from any or all Committees or Sub-Committees of the Council;
  - 5.5.3 Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular portfolio responsibilities;
  - 5.5.4 Instructing the Monitoring Officer to arrange training for the member;
  - 5.5.5 Removing from all outside appointments to which he/she has been appointed or nominated by the authority ;
  - 5.5.6 Where the breach involves inappropriate use of facilities withdrawing such facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
  - 5.5.7 Excluding the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- 5.6 There is no requirement to put in place any appeals mechanism against such decisions. The decision would be open to judicial review by the High Court if it was patently unreasonable, or if it were taken improperly, or if it sought to impose a sanction which the authority had no power to impose.

### **Recommendation 3 –**

That the Monitoring Officer be instructed to prepare and submit to Council for approval "arrangements" as follows –

- a. That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;
- b. That the Monitoring Officer be given delegated power, after consultation with the IP, to dismiss allegations that do not fall under the code of conduct. and to report quarterly to Standards Committee on the discharge of this function;
- c. Where the investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer be instructed to close the matter, providing a copy of the report and findings of the investigation to the complainant and to the member concerned, and to the IP, and reporting the findings to the Standards Committee for information;

- d. Where the investigation finds evidence of a failure to comply with the Code of Conduct, the investigation findings will be reported to a Hearings Panel of the Standards Committee for local hearing;
- e. That Council delegate to Hearings Panels such of its powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include –
  - i. Reporting its findings to Council for information;
  - ii. Recommending to the member's Group Leader (or in the case of ungrouped members, recommend to Council ) that
    - a) He/she be removed from any or all Committees or Sub-Committees of the Council;
    - b) Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
  - iii Instructing the Monitoring Officer to arrange training for the member;
  - iv Removing from all outside appointments to which he/she has been appointed or nominated by the authority ;
  - vi Where the breach involves inappropriate use of facilities, withdrawing facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
  - vi Excluding the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

#### **Recommendation 4 –**

That a meeting be arranged between the Chair of Standards Committee and the Group Leaders for the Council discuss how the new system can best operate.

#### **6. Independent Person(s) (IP)**

The “arrangements” adopted by Council must include provision for the appointment by Council of at least one IP.

- 6.1 The IP must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of all members of the Council (not just of those present and voting).

A person is considered not to be “independent” if –

- 6.1.1 he or she is, or has been within the last 5 years, an elected or co-opted member or an officer of the Council
- 6.1.2 he/she is, or has been within the last 5 years, an elected or co-opted member of any Committee or Sub-Committee of the Council (which would preclude any of the current co-opted independent members of Standards Committee from being appointed as an IP); or

- 6.1.3 he/ she is a relative or close friend of a current elected or co-opted member or officer of the Council, or of any elected or co-opted member of any Committee or Sub-Committee of such Council.

For this purpose, “relative” comprises –

- (a) the candidate’s spouse or civil partner;
- (b) any person with whom the candidate is living as if they are spouses or civil partners;
- (c) the candidate’s grandparent;
- (d) any person who is a lineal descendent of the candidate’s grandparent;
- (e) a parent, brother, sister or child of anyone in Paragraphs (a) or (b);
- (f) the spouse or civil partner of anyone within Paragraphs (c), (d) or (e); or
- (g) any person living with a person within Paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

6.2 The functions of the IP(s) are –

- 6.2.1 They must be consulted by the authority before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that member (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);
- 6.2.2 They may be consulted by the authority in respect of a standards complaint at any other stage; and
- 6.2.3 They may be consulted by a member or co-opted member of the Council against whom a complaint has been made This causes some problems, as it would be inappropriate for an IP who has been consulted by the member against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint.

6.2 How many IPs?

The Act gives discretion to appoint one or more IPs, but provides that each IP must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing more than one IP, provided that a couple of reserve candidates are retained and can be activated at short notice, without the need for re-advertisement, in the event that the IP is no longer able to discharge the function.

6.4 Remuneration

As the IP is not a member of the authority or of its Committees or Sub-Committees, the remuneration of the IP no longer comes within the scheme of members’ allowances. It is proposed that the IP is remunerated in the same way as the current independent members.

## **Recommendation 5 –**

- a. That the IP is remunerated in the same way as the current independent members.
- b. That the Monitoring Officer advertise a vacancy of the appointment of 1 IP and 2 reserve IPs. (Unless transitional provisions mean that this is not necessary.)
- c. That a Committee comprising 2 labour members and 1 conservative member of the Standards Committee be set up to short-list an interview candidates, and to make a recommendation to Council for appointment.

## **7. The Register of Members' Interests**

The Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define “Disclosable Pecuniary Interests” (DPIs). The Monitoring Officer is required to maintain a register of interests, which must be available for inspection and available on the Council’s website.

- 7.1 At present we do not know what Disclosable Pecuniary Interests will comprise, but they are likely to be broadly equivalent to the current prejudicial interests regulations are awaited to describe the nature of these interest. The Act extends the requirement for registration to cover not just the member’s own interests, but also those of the member’s spouse or civil partner, or someone living with the member in a similar capacity. The provisions of the Act in respect of the Code of Conduct require an authority’s code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.

### **7.2 Registration on election or co-option**

Each elected or co-opted member must register all DPIs within 28 days of becoming a member. Failure to register is made a criminal offence, but would not prevent the member from acting as a member. In so far as the Code of Conduct which the Council adopts requires registration of other interests, failure to do so would not be a criminal offence, but merely a failure to comply with the Code of Conduct. There is no continuing requirement for a member to keep the register up to date, except on re-election or re-appointment, but it is likely that members will register new interests from time to time, as this avoids the need for disclosure in meetings. When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the register.

## **Recommendation 5 –**

- a. That the Monitoring Officer prepare and maintain a new register of members interests to comply with the requirements of the Act and of the Council’s Code of Conduct, once adopted, and ensure that it is available for inspection as required by the Act;
- b. That the Monitoring Officer ensure that all members are informed of their duty to register interests;
- d. that the code of conduct includes a provision that members update their register of interests within 28 days of a change occurs.



- e. That once regulations are published a report is put before the next meeting of the Standards Committee.

## **8. Disclosure of Interests and Withdrawal from Meetings**

As set out above, DPIs are likely to be broadly equivalent to prejudicial interests, but with important differences. So –

- 8.1 The duty to disclose and withdraw arises whenever a member attends any meeting of Council, a committee or sub-committee, or of Cabinet or a panel, and is aware that he/she has a DPI in any matter being considered at the meeting. So it applies even if the member would be absent from that part of the meeting where the matter in question is under consideration.
- 8.2 Where these conditions are met, the member must disclose the interest to the meeting (i.e. declare the existence and nature of the interest). However, the member does not have to make such a disclosure if he/she has already registered the DPI, or at least sent off a request to the Monitoring Officer to register it (a “pending notification”). So, members of the public attending the meeting will in future need to read the register of members’ interests, as registered interests will no longer be disclosed at the meeting.
- 8.3 Where the member does make a disclosure of a DPI, he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the register of interests.
- 8.4 If a member has a DPI in any matter, he/she must not –
  - 8.4.1 Participate in any discussion of the matter at the meeting. The Act does not define “discussion”, but this would appear to preclude making representations as currently permitted under paragraph 12(2) of the model Code of Conduct; or
  - 8.4.2 Participate in any vote on the matter, unless he/she has obtained a dispensation allowing him/her to speak and/or vote.
- 8.5 Failure to comply with the requirements (paragraphs 8.2, 8.3 or 8.4) becomes a criminal offence, rather than leading to sanctions;

## **Recommendation 6 –**

The Monitoring Officer be instructed to recommend to Council a Standing Order which equates to the current Code of Conduct requirement that a member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a DPI, except where he is permitted to remain as a result of the grant of a dispensation.

### **9. Disclosure and Withdrawal in respect of matters to be determined by a Single Member**

- 9.1 Matters can be decided by a single member acting alone where the member is a Cabinet Member acting under portfolio powers.
- 9.2 The Act provides that, when a member becomes aware that he/she will have to deal with a matter and that he/she has a DPI in that matter –
  - 9.2.1 Unless the DPI is already entered in the register of members' interests or is subject to a "pending notification", he/she has 28 days to notify the Monitoring Officer that he/she has such a DPI; and
  - 9.2.2 Standing Orders can then provide for the exclusion of the member from any meeting while any discussion or vote takes place on the matter.
- 9.4 The Act here effectively removes the rights of a member with a prejudicial interest to make representations as a member of the public under Paragraph 12(2) of the current Code of Conduct

## **Recommendation 7 –**

The Monitoring Officer be instructed to recommend to Council a Standing Order which equates to the current Code of conduct requirement that a member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a DPI, except where he is permitted to remain as a result of the grant of a dispensation.

### **10 Sensitive Interests**

The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests. So, where a member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which he/she would be required to disclose) at a meeting or on the register of members' interests would lead to the member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest". If the Monitoring Officer agrees, the member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the register of members' interests.

### **11 Dispensations**

- 11.1 The provisions on dispensations are significantly changed by the Localism Act.
- 11.2 At present, a member who has a prejudicial interest may apply to Standards Committee for a dispensation on two grounds –

- 11.2.1 That at least half of the members of a decision-making body have prejudicial interests (this ground is of little use as it is normally only at the meeting that it is realised how many members have prejudicial interests in the matter, by which time it is too late to convene a meeting of Standards Committee); and
- 11.2.2 That so many members of one political party have prejudicial interests in the matter that it will upset the result of the vote on the matter.
- 11.3 In future, a dispensation will be able to be granted in the following circumstances –
  - 11.3.1 That so many members of the decision-making body have DPs in a matter that it would “impede the transaction of the business”. In practice this means that the decision-making body would be inquorate as a result;
  - 11.3.2 That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter.
  - 11.3.3 That the authority considers that the dispensation is in the interests of persons living in the authority’s area;
  - 11.3.4 That, without a dispensation, no member of the Cabinet would be able to participate on this matter or
  - 11.3.5 That the authority considers that it is otherwise appropriate to grant a dispensation.
- 11.4 Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.
- 11.5 The next significant change is that, where the Local Government Act 2000 required that dispensations be granted by Standards Committee, the Localism Act gives discretion for this power to be delegated to Standards Committee or a Sub-Committee, or to the Monitoring Officer.
  - 11.5.1 Once regulations are published they will be reported back to the Standards Committee with recommendations on dispensations.

## **12. Transitional Arrangements**

Regulations under the Act will provide for –

- a. Transfer of Standards for England cases to local authorities following the abolition of Standards for England;(Harrow do not have any such cases)
- b. A transitional period for the determination of any outstanding complaints under the current Code of Conduct. The Government has stated that it will allow 2 months for such determination, but it is to be hoped that the final Regulations allow a little longer; (The council currently have one investigation which has not been completed)
- c. Removal of the power of suspension from the start of the transitional period; and

- d. Removal of the right of appeal to the First Tier Tribunal from the start of the transitional period.

### 13. Financial Implications

Having a Standards Committee and members does have financial implications for the Council. The remuneration of the IP is yet to be set but it is recommended that it is at the same level as the current independent members. The delegation of more matters to the Monitoring Officer and the ability of the Assessment sub Committee to receive written representations from the parties is likely to expediate matters and to save costs. Also the removal of the Review Sub Committee and rights of appeal will save on the cost of convening additional meetings and the time of officers. Given this it is likely that the new regime can be contained within existing budgets.

### 14. Risk Management Implications

The Council must have a Code of Conduct and a procedure for dealing with complaints. This report addresses these points.

### 15. Equalities implications

It is important that all members of the public are able to have access to a system to enable them to easily voice their concerns about the conduct of Councillors.

### 16. Corporate Priorities

This report incorporates the corporate priority of :

- United and involved communities: A Council that listens and leads.

## Section 3 - Statutory Officer Clearance

Name: SteveTingle.	<input checked="" type="checkbox"/>	on behalf of the* Chief Financial Officer
Date: 21.2.12		
Name: Jessica Farmer	<input checked="" type="checkbox"/>	on behalf of the* Monitoring Officer
Date: 21.2.12		

## Section 4 - Contact Details and Background Papers

**Contact:** Jessica Farmer Head of Legal Practice 0208 4241889

**Background Papers:** Localism Act 2012

