

**REPORT FOR:****STANDARDS COMMITTEE**

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Date of Meeting: 14 June 2012

Subject: The Standards Regime

Responsible Officer: Hugh Peart Director of Legal and Governance Services

Exempt: No

Enclosures:

- Flowchart showing proposed arrangements for dealing with complaints – Appendix 1
- Draft procedure for dealing with complaints – Appendix 2
- Amended Code of Conduct for Members – Appendix 3
- Previous reports 29 Feb and 12 May – Appendices 4 & 5

**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:

- Agree the model code of conduct for councillors and the procedure for dealing with complaints to be recommended to Council;
- Agree the arrangements for the appointment of Independent Persons and dealing with dispensations to be recommended to Council;
- Recommend to Council that the current Independent Members be appointed as Independent Persons; and
- Recommend to Council that Independent Persons be remunerated on the same basis as Independent Members;
- Establish a Standards Committee comprising 5 elected members of the Council, appointed proportionally and the Independent Persons as

informal advisers to the Committee;

- Recommend to Council that the Leader of the Council be requested to nominate to the Standards Committee only one member who is a member of the Executive;
- Recommend to Council that it establishes a Hearing Sub-Committee and an Assessment Sub-Committee to be sub-committees of the Standards Committee;
- Recommend to Council that the Assessment Working Group be set up as an informal working group;
- Recommend to Council that Council delegate to Hearing Sub-Committee 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 Code of Conduct as listed in this report;
- Recommend to Council that the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;
- Recommend to Council that the Monitoring Officer prepare and maintain a new register of members' interests (Once regulations are received) 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;
- Recommend to Council that the Monitoring Officer ensure that all members are informed of their duty to register interests; (Once regulations are received);
- Recommend to Council that the Code of Conduct includes a provision that members update their Register of Interests within 28 days of a change occurring.
- Recommend to Council that the Monitoring Officer be instructed upon receipt of the regulations on members' interests 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 DIP, except where he/she is permitted to remain as a result of the grant of a dispensation;
- Recommends that Council delegates to the Standards Committee the power to authorise dispensations.

## **Section 2 - Report**

### **1. Background**

- 1.1 The need to adopt a new regime for the regulation of standards of conduct for elected and co-opted Councillors was set out in the report for the meeting of the Committee held on 29<sup>th</sup> February 2012. How this regime might operate was last considered at the meeting on 9<sup>th</sup> May 2012.
- 1.2 Ethical standards is a non executive function and so lies with Council who can delegate powers to either an Officer (in this case the Monitoring Officer) or to a formal Committee of the Council which complies with the requirements of the Local Government Act 1972; ie it is politically proportionate and subject to the rules regarding voting and access to Information.
- 1.3 There are two elements of the regime – the code of conduct for councillors and the arrangements for dealing with breaches of it, including sanctions.
- 1.4 It was agreed at the last meeting that the new code should essentially be the existing code, amended as necessary to comply with the relevant provisions of the Localism Act 2011 dealing with interests. Draft regulations about ‘disclosable personal interests’ have now been produced and if these are finalised by the date of the meeting, members will be advised. If they are not finalised by this time then the Monitoring Officer will include the new definitions of interests in the code which is to be adopted by Council if they are available at this time.
- 1.5 It was also agreed that the Head of Legal Services should draw up a new model procedure based on the comments made by members and the views of the political groups. This is set out in the paragraphs below.
- 1.6 Articles 8, 9 and Part 3A of the Constitution will also need to be amended by Council in due course.

### **2. 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 –

- 2.1 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;
- 2.2 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. The new IPs may be invited to attend meetings of the Standards Committee but if this is a formal committee they will have no voting rights,
- 2.3 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.

2.4 It is proposed there will be two formal sub-committees of the Standards Committee as follows:

2.3.1 An Assessment Sub-Committee; and

2.3.2 A Hearing Sub-Committee

Each will be made up of 3 elected members and an Independent Person will sit on the sub-committees in an advisory capacity.

### 3. Model Procedure

3.1 It was agreed at the last meeting that there should be discretion on the part of the Monitoring Officer ('MO') to filter out any complaints that are outside the Code or are vexatious, such discretion to be exercised in consultation with the Independent Person ('IP'). Information will be sought from both the Complainant and the Respondent member before exercising this discretion. Members will be made aware that there is a complaint against them as soon as possible after it is received by the MO.

3.2 It is proposed that guidance issued by the Information Commissioner is taken into account in deciding whether a complaint is vexatious.

3.2.1 The Complainant makes clear his or her vexatious intention;

3.2.2 The authority has independent knowledge of the vexatious intention of the Complainant;

3.2.3 The complaint clearly does not have any serious purpose or value;

3.2.4 The complaint can fairly be characterised as obsessive or manifestly unreasonable;

The Information Commissioner's guidance can be found at [http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/awareness\\_guidance\\_22\\_vexatious\\_repeated\\_requests.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_repeated_requests.pdf)

3.3 If the MO, following consultation with the IP, and taking account of their views, considers that the complaint is outside the Code or vexatious, or that the complaint can be resolved informally, the matter goes no further. The intention of the Procedure is that the MO will be instructed to seek resolution of complaints without formal investigation wherever this is practicable.

3.4 If the MO, following consultation with the IP, feels that the complaint falls within the Code, the matter proceeds to consideration by an Assessment Working Group (AWG). The AWG is an informal group chaired by an IP with a member of each group on it, but which cannot make decisions.

3.5 The AWG considers whether an investigation should take place and gives its view to the MO. If the MO, having received and considered the views of the AWG, decides that the matter should not be investigated the matter goes no further.

- 3.6 The MO may decide at this stage not to exercise their delegated powers but to refer the matter to an Assessment Sub-Committee (ASC) which considers whether or the complaint should proceed no further or should be investigated. The ASC is a formal decision-making committee, subject to the rules of political proportionality and access to information. If the ASC decides that the matter is to be investigated the MO will arrange for this to happen and a report prepared. If the ASC decides the matter should go no further, that is the end of the matter.
- 3.7 Following receipt of the investigation report the matter proceeds to the Hearing Sub Committee ('HSC') which decides whether or not there has been a breach of the code. The HSC is a formal decision-making committee, subject to the rules of political proportionality and access to information.
- 3.8 If the HSC finds there has been a breach of the code, it can impose one of the following sanctions:
- Report its findings to Council for information and place them on the Council's website;
  - Inform the Group Leader (or in the case of an independent member, Council) of its recommendation that a member be removed from any or all Committees or Sub-Committees, or outside body appointments;
  - Inform the Group Leader of any recommendations that the member be removed from the Cabinet, or removed from particular portfolio responsibilities;
  - Remove the member from outside body appointments;
  - Instruct the MO to arrange training for the member;
  - Where the breach involves inappropriate use of facilities, withdraw such facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or
  - Exclude the member from the Council's offices or other premises, with the exception of meeting rooms necessary for attending Council, Committee and Sub-Committee meetings; or
  - Censure the member for the breach, in which case the MO will be asked to write to the Member and a press report will be issued.
- 3.9 Where the HSC decides there has been a breach of the code, it can decide to impose no sanction. Where no breach is found, no sanctions may be imposed.
- 3.10 The MO will provide reports to Council every 6 months detailing the numbers of complaints received and how they have progressed. Such reports will not identify members against whom complaints have been made.
- 3.11 Appropriate delegations and/or terms of reference in respect of the Standards Committee, the ASC, the HSC, the AWG and the MO will also need to be approved by Council. Drafts will be made available for members at the meeting.

## **4. Dispensations**

4.1 The provisions on dispensations are significantly changed by the Localism Act. In future, a dispensation can only be granted in the following circumstances –

- 4.1.1 Where 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;
- 4.1.2 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;
- 4.1.3 The authority considers that the dispensation is in the interests of persons living in its area;
- 4.1.4 Without a dispensation, no member of the Cabinet would be able to participate on this matter; or
- 4.1.5 The authority considers that it is otherwise appropriate to grant a dispensation.

4.2 Any dispensation must specify how long it lasts for, up to a maximum of 4 years. The power to grant dispensations may be delegated to the Standards Committee or a Sub-Committee, or to the MO. It is recommended that this power be delegated to the Standards Committee, in consultation with the Independent Person.

## **5. Independent Persons**

- 5.1 The Government has now produced draft Regulations which, if approved, will disapply the provisions of s28(8)(b) of the Localism Act and will allow Councils to appoint their existing independent members of the Standards Committee as their Independent Person, providing that they are not in post on 1<sup>st</sup> July 2012.
- 5.2 In order to facilitate this, the authority’s current independent members would have to resign on 30<sup>th</sup> June, and they have indicated a willingness to do this.
- 5.3 The draft Regulations however do not disapply s28(8)(c) which require the advertisement of the Independent person vacancy, an application and the approval by Council. Accordingly an advert will be placed on the Council’s website following this meeting. If the Council receives more interest than from the current 3 independent members, all the applications will be put before Council for determination.

## **6. Financial Implications**

- 6.1 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 MTFs includes a budget for support to the Standards Regime, including undertaking investigations.

**7. Risk Management Implications**

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

**8. Equalities implications**

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

**9. Corporate Priorities**

9.1 This report incorporates the corporate priority of:

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

**Section 3 - Statutory Officer Clearance**

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| Name: Steve Tingle     | <input checked="" type="checkbox"/> | on behalf of the<br>Chief Financial Officer<br>/ |
| Date: .....7/6/12..... |                                     |  |
| Name: Jessica Farmer   | <input checked="" type="checkbox"/> | on behalf of the<br>Monitoring Officer<br>/      |
| Date: .....7/6/12..... |                                     |  |

**Section 4 - Contact Details and Background Papers**

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

**Background Papers:** Localism Act 2011