



City of Westminster Standards Committee

Date:	11th March 2013
Classification:	General Release
Title:	Review of the New Standards Regime
Report of:	Head of Legal and Democratic Services
Wards Involved:	All
Policy Context:	High Ethical Standards
Financial Summary:	There are no financial implications arising
Report Author:	Naomi Stauber
Contact Details:	Tel: 020 7641 2341 Email: nstauber@westminster.gov.uk

1. Executive Summary

- 1.1 The Localism Act 2011 (the “Act”), which received Royal Assent on 15th November 2011, made substantial changes to the standards regime for local authorities in England. Last year a number of changes to the City Council’s standards regime were required as a result of the implementation of this legislation. These changes, which commenced on 1st July 2012, related to the following areas:
 - a) The future and form of any Standards Committee;
 - b) A new Members’ Code of Conduct;
 - c) New Members’ Register of Interests requirements;
 - d) A new process for dealing with allegations of breach of the Members’ Code of Conduct; and
 - e) The recruitment of the statutory post of ‘Independent Person’.
- 1.2 At its meeting in June 2012 the Committee agreed to review the new standards arrangements after a 6 month period of operation had elapsed, to allow lessons learnt and best practice from other authorities to be assessed and incorporated if appropriate. Accordingly, this report summarises the changes made to the areas of the Council’s standards arrangements listed above, provides an update on these areas and discusses associated issues.

2. Recommendations

- 2.1 That the Head of Legal and Democratic Services be asked to provide additional advice/guidance to all Members of the Council regarding their responsibilities in respect of the completion of their Register of Interests forms, in accordance with the requirements of the Localism Act 2011;
- 2.2 That the Committee determine appropriate arrangements for internally publicising Members' obligations in respect of interests going forward, as detailed in paragraph 4.4;
- 2.3 That the Committee take appropriate steps to encourage all Members who have not attended a training session on the new Code of Conduct to do so at the earliest opportunity;
- 2.4 That the Committee determine whether a second recruitment process should be undertaken in order to secure a second suitable individual to the post of Independent Person, and make any recommendation to the General Purposes Committee accordingly;
- 2.5 That the Committee endorse the procedure for the consideration of applications for dispensations from the Code under the new regime, as detailed in section 7 of this report;
- 2.6 That the Committee note the work undertaken to date, as detailed in the report, to ensure the Council has sufficient and robust arrangements in place to promote and maintain high standards of conduct amongst its Members and Co-opted Members, and to comply with the requirements of the Localism Act 2011; and
- 2.7 That the Committee note that a further full review of the Council standards regime will take place when all aspects of the arrangements have been tested in practice.

3. The Standards Committee

- 3.1 The Act abolished the requirement for authorities to have a separate Standards Committee, but did require authorities to adopt their own 'arrangements' to deal with misconduct complaints against Members. Any such arrangements do not have to involve a Committee (or Sub-Committee) of Councillors and may be dealt with at Officer-level in its entirety. However, like many local authorities, Members considered that the previous arrangements for dealing with complaints had worked well in respect of Member-level determination and, having regard to the fact that the City Council has historically received very few allegations of misconduct, resolved that a full and separate Standards Committee (as was operated under the previous arrangements) should continue, but focus its remit specifically on Member conduct issues. Consequently, the Committee's previous functions relating to maintaining and monitoring the ethical governance of the Council were transferred to the Audit

and Performance Committee, whilst its functions relating to Member conduct were retained.

- 3.2 In accordance with its new terms of reference the Audit and Performance Committee considered its first annual report on the arrangements in place for maintaining high ethical standards throughout the Council in November 2012. The report was positively received and subsequently circulated to all Members of the Council for information.
- 3.3 The Standards Committee's views were also sought on the membership of the new Committee going forward. It was recognised that a Standards Committee should have sufficient Members to allow for an appeal case for the consideration of an alleged breach of the Code of Conduct to be heard by a completely new set of Members. Accordingly, the Committee is comprised of 8 Members – 6 Majority Party Members and 2 Minority Party Members (in accordance with the political balance of the Council). A panel of 3 Members will be drawn from the full Standards Committee to consider a suspected breach of the Code, leaving a sufficient number of different Members to be convened should the case reach the appeal stage and require re-consideration.
- 3.4 Since the operation of the new arrangements only one complaint (against a Co-Opted Member of the City Council) has been received. No issue with the structure of the Standards Committee for the purposes of determining complaints has therefore been identified and no changes are proposed to the form, terms of reference or membership of the Standards Committee.

4. New Members' Code of Conduct and Register of Disclosable Pecuniary Interests

- 4.1 As provided for by section 27 of the Act, local authorities are obliged to adopt a Code of Conduct for their Members and Co-opted Members, as part of their duty to promote and maintain high standards of conduct. This Code must include provisions relating to the registration and disclosure of interests but, unlike the arrangements under previous legislation, authorities are no longer required to adopt codes based on any national model. However, many local authorities have chosen to adopt codes which reflect models suggested by organisations such as the Local Government Association (LGA) or the indicative text published by the Department for Communities and Local Government (DCLG). The Committee previously considered two model codes produced by the LGA and the DCLG and agreed with Officers' recommendation that the LGA Code was more suitable, subject to certain additions in respect of Prejudicial Interests and the Register of Members Interests.
- 4.2 The new Members' Code of Conduct was adopted by the full Council at its meeting on 25 June 2012 and came into force on 1 July, in accordance with the provisions of the Act. Notably, the new Code includes provision for the registration and disclosure of "Disclosable Pecuniary Interests" as defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and clearly detailed in our Code itself. Members with Disclosable Pecuniary Interests in the business of the authority are prohibited in participating in such

business unless they have a dispensation. The Localism Act also introduced criminal offences relating to failure to register such interests and participation by Members in business in which they have such interests. Members convicted of such offences are liable to a fine of up to £5,000 and disqualification from office for up to five years.

- 4.3 As part of the new Code of Conduct and the new Register of Interests requirements, Members and Co-opted Members were required to complete new Register of Interests forms which include details of the aforementioned Disclosable Pecuniary Interests – relating to themselves and their spouse or partner. All forms have now been received - the returns of which have been placed on the Council's website in accordance with the publicity requirements of the Act. However, it is suspected that many returns are lacking in respect of information relating to a Member's spouse/partner. The terms of section 29 of the Act place an obligation upon local authorities to publish and make available for inspection the specified 'personal data' concerning Councillors' and their spouse/partners' interests. This personal data falls within the scope of section 34 of the Data Protection Act and is exempt from 'the non-disclosure provisions'. The Council is therefore obligated by law to request (and receive) this information, although the interests in question do not have to be specifically identified on the form as being that of the Member or his/her partner/spouse. The interests merely have to be listed. Having regard to the serious sanctions relating to the failure of compliance, it is recommended that the Committee formally request that all Members are given further guidance by the Head of Legal and Democratic Services, intended to highlight this requirement. It is also significant to note that all original forms are retained centrally by Committee and Governance Services and Members' signatures are not placed in the public domain.
- 4.4 Committee and Governance Services will place a reminder in the internal Weekly Information Bulletin on a quarterly basis to remind Members of the requirement to ensure that their Register of Interests forms are up-to-date. Members must, within 28 days of becoming aware of any new interest or change to any interest registered (both pecuniary and personal) notify the Monitoring Officer of the details of that new interest or change. The Committee is asked to consider whether these arrangements are sufficient to capture the attention of all Members of the Council; or whether a more robust arrangement should be enforced. For example, the Council could ask Members to complete new Register of Interest forms on an annual basis and audit the requirement more strongly in this respect.
- 4.5 The Head of Legal and Democratic Services held 3 voluntary training sessions for Members on the new Code of Conduct and associated requirements in August, September and November last year, to ensure all Members were informed of (and fully understood) the implications of the new Code and their obligations as City of Westminster Councillors. The training sessions were attended by only 40% of Members and this is considered to be unsatisfactory. Given the seriousness of the sanctions for non-compliance and the authority's duty to ensure that all Council business is transacted legally, democratically and ethically, the Committee is recommended to formally request that all Members

who have not attended a training session on the new Code and associated matters do so at the earliest opportunity. One-on-one training sessions with the Head of Legal and Democratic Services is available upon request and Members are encouraged to contact the Head of Legal and Democratic Services at any time if they have any questions relating to any part of the Code – particularly their interests when partaking in Council business.

- 4.6 No significant issues relating to the disclosure of interests, either at Council/Committee meetings or in the discharge of decision-making at Executive level, have occurred since the implementation of the new requirements. In this respect Members have so far appropriately complied with the requirements of the new Code. Nevertheless, Members are encouraged to positively engage with the training offered in order to ensure they have a complete and accurate understanding of their duties and responsibilities under the new arrangements.
- 4.7 Recently controversy has arisen when some Monitoring Officers in other local authorities have advised that it is necessary for any Member who is a Council taxpayer to declare a disclosable pecuniary interest, or to obtain a dispensation, when at the Council meeting setting the Council Tax. The Local Government Minister has written to the Leaders of all local authorities making it clear that such was not the Government's intention. Whilst it is for the Courts rather than the government to interpret the legislation, this is a sign that the requirement to refrain from participation where a member "has a disclosable pecuniary interest in any matter to be considered" (a phrase which could be interpreted in a number of ways) is likely to be given a very restrictive interpretation, given the criminal sanction that exists for failure to comply.

5. Complaints against Members Procedure

- 5.1 The Localism Act abolished the previous prescribed arrangements for dealing with complaints against Members (enforced under the Standards for England regime). Local authorities are now free to consider and determine complaints in the way in which they deem fit, providing they have formally appointed at least one 'Independent Person' of the authority and consulted that person upon receipt of a complaint against a Member, as required by the standards provisions in the Act. Authorities have discretion as to the exact arrangements they put in place, but they need to strike a balance between ensuring that their arrangements are fair to Members and complainants (and any other interested parties) and avoiding arrangements which are over-bureaucratic, complicated and lengthy.
- 5.2 Following consultation with the Standards Committee, the agreed procedure for dealing with complaints against Members was formalised and published on the Council's website. In order to minimise the length and bureaucracy associated with the previous regime, the new local procedure allows for the discretion of the Monitoring Officer (upon consultation with the Independent Person) to decide whether an allegation has no case to answer, requires formal investigation or can be adequately resolved informally. In effect, this allows the authority to filter allegations so that only allegations of serious breaches or

allegations which could not be resolved otherwise need to go forward to formal investigation. Regard has also been given to the importance of the principles of natural justice and provision has therefore been included for formal investigations, hearings and the right to an appeal. The Council has received only one complaint since the commencement of the new requirements and the revised complaints procedure has not therefore been properly 'tested'. Accordingly, no changes to the procedure are proposed at this stage, but a further review will be undertaken when the procedure has been utilised more frequently.

6. Recruitment of an Independent Person

- 6.1 The aforementioned 'Independent Person' must be consulted by authorities on allegations submitted to the authority and may also be consulted by Members who are the subject of an allegation of breach of the authority's Code of Conduct. There are strict restrictions on the persons who may be appointed as Independent Persons. Members and Officers of the Council may not be appointed to the post for that authority, and nor may the relatives or close friends of such persons. Notably, a person is also prevented from being appointed as the Independent Person if he/she has been a Member or Co-opted voting Member of that authority in the previous five years. This provision made the former Independent Members of the Standards Committee ineligible and the recruitment of a new Independent Person was required.
- 6.2 The process of appointing an Independent Person is, to some extent, regulated by the Act. The Council undertook the recruitment process in accordance with section 28(8)(c) of the Act and, following interviews conducted by the General Purposes Urgency Sub-Committee, the full Council formally appointed His Honour Geoffrey Rivlin QC to this statutory post at its meeting on 12 May 2012. Regard was given by the Sub-Committee to appointing more than one Independent Person for the purposes of practicality and as a safeguard (should one Independent Person be unavailable). However, only one of the applicants interviewed was considered to have the suitable attributes and experience to fulfil the role to the standard required. The Committee's view is therefore sought on whether a second recruitment process should be undertaken in order to secure a second suitable individual to the post.
- 6.3 One issue which has been raised by legal and democratic professionals at the London Borough of Hackney is whether an Independent Person(s) should be invited to attend Standards Committee meetings and participate in discussions, if such a Committee has been set up, rather than sit in the public gallery and observe proceedings. Most authorities who responded to the discussion took the view that the Independent Person(s) should be invited to attend, with the exception of the London Borough of Lewisham who took the view that this would not be appropriate as, in their opinion, it compromises their independence. However, the legislation does not prohibit the presence of Independent Persons at Standards Committee meetings and the City Council has taken the view that it is in fact useful for any Independent Person to be invited to such meetings (as a non-voting guest of the Committee) to ensure

they are up-to-date with developments and issues relating to Member conduct and offer their views in their consultative role.

- 6.4 Another issue which has been raised by colleagues nationally is the question of what sanctions are available to local authorities for those Members who are found to have breached the Code of Conduct.

Section 28(11) of the Act provides that:

*“If a relevant authority finds that a member or co-opted member of the authority has failed to comply with its code of conduct (whether or not the finding is made following an investigation under arrangements put in place under subsection (6)) it may have regard to the failure in deciding—
(a) whether to take action in relation to the member or co-opted member, and
(b) what action to take.”*

Section 28(11) of the Act does not prescribe the range of ‘actions’ that the local authority can take; but does imply that some action *can* be taken against a Member or Co-opted Member who fails to comply with that authority’s Code. As the new standards regime is silent as to the range of available sanctions, local authorities have looked in particular at the common law position that pre-dated the statutory standards regime. The general opinion amongst legal and democratic professionals suggests that the following sanctions would be available:

- Making a formal recommendation to the full Council to remove a Councillor from a committee or outside body;
- Censure of a Councillor - ‘name and shame’;
- Issuing a press release publicising the fact that a Member has breached the local authority’s Code of Conduct;
- Offering training or advice to the Councillor who has breached the Code of Conduct.
- Sending a formal letter to the Councillor who has been found to have breached the Code of Conduct; and
- Reporting serious matters directly to the police.

Clearly, any action taken as a result of a breach of the Code would be considered on a case-by-case basis in consultation with the Leader and Chief Whip of the respective party, in view of the specific circumstances.

7. Dispensations to the Members Code of Conduct

- 7.1 Members will recall that provision was made by the previous Standards Committee for Members to be able to apply for a dispensation from the Code of Conduct. The Standards Committee agreed a process for the consideration for applications for dispensations.
- 7.2 Section 33 of the Localism Act sets out the circumstances when a dispensation can be considered. These are set out below:

33. Dispensations from Section 31(4)

1. A relevant authority may, on a written request made to the proper officer of the authority by a member or co-opted member of the authority, grant a dispensation relieving the member or co-opted member from either or both of the restrictions in section 31(4) in cases described in the dispensation.
2. A relevant authority may grant a dispensation under this section only if, after having had regard to all relevant circumstances, the authority:
 - a) considers that without the dispensation the number of persons prohibited by Section 31(4) from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business.
 - b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business.
 - c) Considers that granting the dispensation is in the interests of persons living in the authority's area.
 - d) If it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements considers that without the dispensation each member of the authority's executive would be prohibited by Section 31(4) from participating in any particular business to be transacted by the authority's executive, or
 - e) Considers that it is otherwise appropriate to grant a dispensation.
3. A dispensation under this section must specify the period for which it has effect, and the period specified may not exceed four years.
4. Section 31 (4) does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this section.

7.3 The circumstances where a dispensation should be required are limited, particularly if the view adopted by the former Standards Committee in respect of planning applications made or objected to by a Member of the Council (or their spouse) does not constitute a Prejudicial Interest of Members considering the applications *provided* they could make the declaration outlined below, or a minor variation approved by the Head of Legal and Democratic Services.

“Councillor _____ has an interest in respect of Item ____ on the agenda. In line with guidance recently agreed by the City Council’s Standards Committee, members of the Majority party sitting on tonight’s committee are no longer required to apply for a dispensation from the Code of Conduct provided they can declare that they only know Councillor _____ through their membership of the Majority party and seen him at Council and related events. I am able to give that declaration in relation to Councillor _____”

- 7.4 The Committee does, however, need to have in place a procedure for the consideration of applications for dispensations from the Code under the new regime. It should be noted that these are expected to be rare given the limited circumstances for these to be granted. It is suggested that, in accordance with the Act, Members be required to submit a written request for a dispensation to the Head of Legal and Democratic Services and a Sub-Committee of the Standards Committee with following Constitution and Terms of Reference be established to consider these applications:

Constitution: 3 Members of the Standards Committee (2 Majority Party Members and 1 Minority Party Member)

Terms of Reference: To consider applications made in writing to the Head of Legal and Democratic Services for dispensations from the Members Code of Conduct and to grant dispensations where, in the opinion of the Sub-Committee, the circumstances in Section 31(2) of the Localism Act are met.

- 7.5 It is thought likely, given the provisions of Section 33(2) of the Act detailed above, that only very few applications will be made. Officers will keep the position under review and report further if any changes to the process are considered necessary. As before any dispensations granted should be for a specific period of time.

8. Conclusion

- 8.1 In order to ensure that the City Council has sufficient and robust arrangements in place to promote and maintain high standards of conduct amongst its Members and Co-opted Members, and to ‘check-list’ full compliance with the requirements of the Localism Act 2011, the following summary of practical considerations have been assessed:

- The City Council has adopted a Code of Conduct which complies with the requirements of the Localism Act 2011 and which is effective for the requirements of the authority. No issues have arisen in relation to the Code since its adoption in June 2012.
- The City Council has, in consultation with Members, resolved to retain a Standards Committee with responsibility for matters relating to Member

conduct. It has decided to issue a standing invitation to the authority's Independent Person(s) to attend its meetings.

- The City Council has adopted arrangements for dealing with allegations of breaches of its Code of Conduct which it considers to be manageable, effective, non-bureaucratic; and which accord with the principles of natural justice in respect of the provision for formal investigations, hearings and the right to an appeal.
- The Monitoring Officer has taken steps to ensure that Members of the authority are clear about the obligations imposed on them by the new Code of Conduct, by the requirements of the Localism Act 2011 and by the Regulations made thereunder. However, as detailed in the main body of this report, further steps to extend and consolidate this understanding are recommended.
- The Monitoring Officer is clear about his responsibilities relating to standards of conduct of Members and Co-opted Members of the authority and is satisfied that he has access to sufficient resources to enable him to meet these responsibilities.
- The City Council has appointed to the statutory post of Independent Person and, through the recruitment process, has taken steps to satisfy both the Monitoring Officer and relevant Members that the individual is able to meet his responsibilities effectively.

8.2 In light of the above, and with the additional recommendations made in this report, Officers are satisfied that the City Council has fully and effectively complied with the standards requirements of the Localism Act 2011. Having due regard to the fact that a complaint against a Member of the Council has not been received since the commencement of the relevant Localism Act requirements, certain aspects of the new arrangements (specifically the new procedure for dealing with complaints against Members) has not been utilised and cannot therefore be properly assessed at this time. However, Officers will ensure that a further full review takes place when all aspects of the arrangements have been tested in practice and will continue to monitor these arrangements on an ongoing basis.

**If you have any queries about this report
or wish to inspect any of the Background Papers please contact:**

Naomi Stauber, Legal & Democratic Services

Tel: 020 7641 2341; Email: nstauber@westminster.gov.uk

Background Papers:

- Standards Committee Report – Localism Act 2011: Implementation of the Standards Arrangements Follow-up Report (12 April 2012).
- Standards Committee Report – New Members’ Code of Conduct (18 June 2012)
- Clive Sheldon QC, Discussion Paper – “Errant councillors and the new standards regime” (November 2012)
- Eversheds, Local Government Briefing Note 34 (2012)
- Localism Act 2011