



City of Westminster

Standards Committee

Date: 12 March 2014

Classification: For General Release

Title: Review of the Members Code of Conduct

Report of: Head of Legal and Democratic Services

Wards Involved: Not Applicable

Policy Context: High Ethical Standards

Financial Summary: There are no financial implications

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1. Executive Summary

- 1.1 The Localism Act 2011 made substantial changes to the standards regime for local authorities in England. 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 March 2013 the Committee reviewed the new standards arrangements after an initial 6 month period of operation had elapsed, and noted that a further review of the regime would take place when all aspects of the regime had been tested in practice. This report provides an update of developments nationally, in other local authorities, and locally in the last 12 months, and discusses the issues which arise.

2. Recommendations

- 2.1 That the contents of the report be noted
- 2.2 That the Committee recommend that the Members Code of Conduct be amended to include the provision relating to confidential information set out in paragraph 5.6.
- 2.3 That the Committee consider whether any further recommended revisions to the content of the Code, in the light of government guidance or otherwise, are necessary or desirable.

3. Background

- 3.1 As the Committee is aware, the Localism Act 2011 made fundamental changes to the ethical standards regime for elected and co-opted voting members of local authorities. The City Council adopted a new Members Code of Conduct and new procedures for dealing with complaints under the Code from 1st July 2012. On its first review of the new Code and the operation of the new arrangements 12 months ago, the Committee concluded that the Council had put sufficient and robust measures in place, but recognised that a further review of the arrangements would be necessary.

4. The New Code and Procedures in practice

- 4.1 Since the new Code and Procedures were adopted, there have been only four formal complaints made, and none of them so far has led to a full investigation or a report to the Committee (although two are still being assessed). There have traditionally been a low number of complaints requiring investigation in Westminster, and therefore this low number of complaints is consistent with that trend and not a cause for a concern. However, it may be that the perception that the new arrangements lack “teeth” (see below) has contributed to this position.
- 4.2 The number of complaints, and the fact that those received have not led to a formal investigation or report, is also consistent with the experience of most other authorities, including our Tri-borough partners. It is one of the advantages of the new regime that complaints about minor issues can be dealt with without the need for undue formality and complex processes.
- 4.3 This low volume of complaints means that it remains difficult to assess the extent to which the new arrangements can work effectively in practice, so far as complaints in relation to serious alleged breaches of the Code are concerned.

5. The Contents of the Code

- 5.1 As set out in Section 6 below, the time allowed for transition to the new regime in 2012 was very short. Now that a further 12 months have passed since the initial review of the operation of the new Code of Conduct in practice, it is

appropriate to review the contents of the Code itself and consider whether any amendments or improvements are necessary.

- 5.2 The new Code adopted by the City Council (attached for ease of reference as Appendix 1) is different in style from the Model Code of Conduct prescribed by the Secretary of State which was its predecessor. The previous Code contained provisions in relation to the disclosure of interests, and a number of other specific provisions. Those other provisions included (for example), provisions relating to bringing the authority into disrepute, provisions relating to treating others with respect, provisions requiring compliance with equalities legislation, provisions requiring that confidentiality is maintained, and provisions relating to the use of Council resources.
- 5.3 The new Code has retained specific provision relating to the disclosure of interests. However it does not contain the other specific provisions. Instead, the new Code has general provisions, committing members to behaving in a manner consistent with the Nolan Principles, and general provisions relating to the conduct required to address those statutory principles.
- 5.4 One consequence of this approach is that it may no longer be clear exactly what conduct is prohibited by the new Code and what is not, and there may be scope for argument over whether there has been a breach in any particular case.
- 5.5 It is considered that, of the specific provisions listed above which were contained in the previous Code, it is particularly important, both in the interests of the Council and in fairness to individual members, that there should be clarity in relation to the importance of maintaining the confidentiality of information which is included in confidential reports to members (ie reports on yellow paper containing exempt information) or otherwise provided to members in confidence.
- 5.6 For that reason it is recommended that the Committee should agree to recommend that the Code be amended, by including in it a specific provision relating to confidentiality, similar to the provision contained in the previous Code. The new provision recommended is as follows:

“9. You must not disclose information given to you in confidence by anyone, or information you acquire which you believe, or ought reasonably to be aware, is of a confidential nature, except where:-

- (a) you have the consent of the person authorised to give it;
- (b) you are required by law to do so;
- (c) the disclosure is made to a third party for the purposes of obtaining professional advice provided that the third party agrees not to disclose the information to any other party; or
- (d) the disclosure is
 - (i) reasonable and in the public interest; and
 - (ii) made in good faith and in compliance with the reasonable requirements of the Council”.

- 5.7 The Party Whips have been consulted upon whether there are issues they would wish the Committee to consider as part of this review. The Majority Party Whip has supported the inclusion of provisions making it clear that a breach of confidentiality is a breach of the Code.
- 5.8. It would be possible to include other specific requirements taken from the old Code, but that is not being recommended, subject to the Committee's views.

6. The Annual Report of the Committee on Standards in Public Life

- 6.1 The Committee for Standards in Public Life has expressed concern about the workings of the local government standards regime, although the Committee has accepted that the new system needs time to properly bed in.
- 6.2 The concerns expressed by the Committee in its Annual report last year were
- The operation of the regime in local authorities where leadership is inadequate;
 - The lack of meaningful sanctions;
 - The weakness of the 'independent person' arrangements; and
 - The lack of time that was available for transition to the new system.
- 6.3 In relation to leadership, the Committee suggested that due to the emphasis on local ownership of standards it would expect the new regime, like the previous one, to function well in those areas where party leaders were prepared to provide the necessary leadership and example. "History suggests that problems are most likely in areas with monolithic political cultures and correspondingly little political challenge, where partisan rivalry is most bitter and tit-for-tat accusations most common, or in those predominantly rural areas with significant numbers of independent members without the benefit of party discipline."
- 6.4 In relation to sanctions, the Committee pointed out that under the previous arrangements local authorities and an independent tribunal had the power to suspend members for varying periods of time as a sanction against poor behaviour. "The only sanctions now available, apart from through the use of a political party's internal discipline procedures are censure or criminal prosecution for deliberately withholding or misrepresenting a financial interest. We do not think these are sufficient. The last few years have seen a number of examples of inappropriate behaviour which would not pass the strict tests required to warrant a criminal prosecution, but which deserves a sanction stronger than simple censure. While censure may carry opprobrium in the political arena it is often considered unacceptably lenient by the public relative to other areas of their experience. Coercion of other members or officers is one category of offence with which it will be difficult to deal adequately under the new arrangements."

- 6.5 The Committee also criticised the new “independent person” regime, by comparison to the previous regime in which the Standards Committee included independent members. “We doubt that this will be sufficient to provide assurance that justice is being done and, equally important, that it is seen to be done.”
- 6.6 Finally, the Committee’s view was that in the transition to the new system local authorities might have lacked proper time to prepare.
- 6.7 Considering these concerns in our local context, there is no evidence of a lack of leadership in Westminster, and no evidence of the kind of culture which causes the Committee concern. The lack of time allowed by central government for transition to the new regime emphasises the importance of keeping the new arrangements under review, and making changes where necessary, as recommended in this report.

7. Government Guidance

- 7.1 Since the last meeting of the Committee the Government has issued revised guidance on “Openness and transparency on personal interests”. A copy of the Guidance is attached at Appendix 2. The changes to the guidance particularly concern the issue of registering and disclosing membership of trades unions.
- 7.2 There is no statutory requirement to register interests other than those specifically required to be registered in the relevant regulation. There are specific obligations in the Code to register sponsorship, including by a trade union, but this is a separate issue from that of membership of a trade union.
- 7.3 However, the new guidance concludes that in order to comply with the general principles required to be reflected in the Code of Conduct, in particular the principle of integrity:
- “All sitting councillors need to register their declarable interests – both declarable pecuniary interests, and other interests that must be declared and registered as required by your authority’s code, or your duty to act in conformity with the Seven Principles of Public Life, such as your membership of any Trade Union.”
- 7.4 At the moment the general obligation of “Integrity” is covered in respect of trades union membership by the requirement in the Code that trades union membership be declared at specific meetings where that interest arises. This would also cover membership of other lobbying groups, like political parties and charities etc.
- 7.5 In those circumstances, and subject to the Committee’s views, it is not considered that it is necessary to recommend changes to the Code in the light of the updated guidance.

8. Financial implications

8.1 There are no direct financial implications

9. Legal Implications

9.1 The legal implications are included in the body of the report

10. Conclusions

10.1 The new arrangements brought in from July 2012 have now been in operation for 18 months and are operating satisfactorily so far, but there has yet to be a detailed investigation and therefore that aspect of the new system has yet to be tested.

10.2 There is an opportunity to review the contents of the Code, in the light of revised government guidance and generally, and the Committee is asked to consider the recommendations made in the report.

**If you have any queries about this report
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