

Report of : Corporate Director of Resources

Meeting of	Date	Agenda Item	Ward(s)
Standards	3 February		All

Delete appropriate	as	Exempt	Non-exempt
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Subject: Localism Bill – Proposed Changes to the Standards Regime

1. Synopsis

This report details the provisions of the Localism Bill concerning standards in Local Authorities and invites the Committee to consider the likely changes and their implications for Islington. The arrangements which the Bill proposes will generally allow local authorities to make their own decisions as to how to regulate the conduct of their members. However, new criminal offences will be introduced, relating to failure of members to register or disclose interests and their participation in local authority business contrary to restrictions.

2. Recommendations

2.1 To consider and comment upon the information in this report.

3. Background Details

3.1 The Localism Bill was published in December 2010. It is a significant document for the local authority with implications for many different areas of the Council's work and its legal responsibilities. This report however focuses on the implications the Bill will have, subject to enactment and change through

the legislative process, for supporting and enforcing high standards of conduct amongst Islington councillors as they carry out their work.

- 3.2 Much of the content of the Bill has been raised previously in speeches and press releases and there are very few surprises in the drafting. However like much modern legislation while some of the more fundamental issues are addressed in the primary instrument much has been reserved for secondary legislation, which has yet to be published even in draft. The reforms proposed to the existing standards regime are radical in nature and it is unclear how some will work in practice.
- 3.3 The implementation of the proposed changes appears likely to be with effect from early 2012. Any cases which have begun will proceed to their conclusion but all will have to be dealt with by the local Standards Committee as Standards for England will no longer be available. The Standards Committee in its current statutory form will remain in place until all outstanding cases have been dealt with. No appeal will be available for cases concluded during the transitional period.

4 Proposed new conduct provisions

- 4.1 Standards for England will be abolished, once the Secretary of State makes the necessary order, as will the existing Members' Code of Conduct and the enforcement regime which accompanies it.
- 4.2 It is proposed in the Bill that the council will have a duty to promote and maintain high standards of conduct by members and co-opted members although there are no specific requirements about how that is to be achieved. As this will be a duty it will ultimately be enforceable by the courts. It is conceivable that in the context of a judicial review, a finding that the council had failed in this duty might contribute to a finding of unreasonableness in the decision making process.
- 4.3 There is no definition of what a "high" standard might be and although the council may adopt a code dealing with the conduct that is expected of members and co-opted members when they are acting in that capacity there is no requirement that it should, which would leave the definition of "high standard" in this context unclear. This will allow for significant variation between Councils. It is too early to know what decisions authorities in London will take in respect of this question, although it is anticipated that London Councils will suggest a new, simplified, code that could be adopted.
- 4.4 If a Council has adopted a Code of Conduct and receives a written allegation that a Member has or may fail to comply with it, then the Council must consider whether to investigate it and if so, how. A decision to have a code does therefore potentially have resource implications as the current drafting of this provision means that in the absence of a code there is no legal obligation to consider a complaint. However, in such circumstances, depending upon the nature and seriousness of the complaint, the council might need to deal with the matter via its general complaints system or in some other way in order

to avoid being in breach of the obligation to promote and maintain high standards. If a code is adopted and a specific complaints procedure adopted, the investigation and hearing process is not proscribed and can therefore be much lighter touch than the current arrangements.

- 4.5 It will be possible, but not a requirement, to continue to have a council committee charged with promoting and maintaining high standards of conduct by members, but the specific constitutional requirements for the current committee would no longer apply. The committee would not have any power to disqualify a member found to be in breach of a new code, although censure and a recommendation for training or a decision to restrict a councillor's access to the local authority's officers, premises and facilities would still be available. In a court case which preceded the introduction of the current regime it was accepted that that a local authority would be able to use sections 111 and 101 of the Local Government Act 1972 to take such actions if it took a reasonable decision that this was calculated to facilitate, or was conducive or incidental to its arrangement for the discharge of any of its functions, for example, efficiently maintaining its administration, or furthering the welfare of its employees.
- 4.6 In practice it may be very difficult for any local authority to enforce any requirements or restrictions it decides to impose on a member if the member chooses to ignore them. It is likely in those circumstances that the party groups would need to have a role in taking appropriate steps where the conduct a member of their group was found to have breached the code.
- 4.7 The legislation allows the Secretary of State to make regulations requiring the Monitoring Officer to establish and maintain a register of interests. The regulations may include details of what sort of matter needs to be registered, provisions requiring the disclosure and possible withdrawal of Members with those interests and powers to grant dispensations to those members so they can, despite the interest, participate. The regulations may also include some details of sanctions the Council can impose on Members who fail to comply (but not suspension or disqualification) and the requirement to make the register available to the public. This could in principle result in a similar regime to the current one in respect of registers of interests and disclosures.
- 4.8 The proposals in the Bill are more draconian in the remedies that are made available where these new rules are broken. A failure to comply with the provisions relating to interests (should such provisions be introduced) "without reasonable excuse" will be a criminal offence. This will attract a fine of up to level 5 being currently £5000.00. The court (and now it will only be the court) can then disqualify the member for up to five years. Only the Director of Public Prosecutions can authorise and bring a prosecution for an offence under these provisions so they will only be used for serious cases. Therefore the Council itself could not prosecute one of its own members unless it was authorised to do so upon behalf of the DPP.

5 Changes to the common law pre-determination rules

5.1 Although this is not a conduct matter as such, it is also worth considering in this context the changes proposed in the Bill to the rules about “predetermination” which have been developed in case law. Currently, if a member participates in decision making, particularly quasi judicial decision making, with a closed mind, this may be a ground upon which the decision can be judicially reviewed. Case law has established that it is acceptable for a member to have a predisposition towards making a particular decision about a matter before hearing the arguments, but must not have decided in advance. Recent court decisions have recognised more clearly than in the past the role that local politics and campaigning play in the decision making processes in local authorities and have recognised that elected members would be entitled, and indeed expected, to have, and to have expressed, their views on local issues, including, for example, planning issues.

5.2 Under the provisions in the Bill a decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, relevant to the decision. This doesn't entirely do away with the predetermination issue. In a recent letter to all Council Leaders the Minister for Housing and Local Government mentioned this provision but said in addition:

“of course councillors will still need to be open minded at the point of decision in the sense of listening to all the arguments and weighing them against their preferred outcome, before actually voting”

6 Decisions to be made by the Council

6.1 The council will need to make a number of decisions in respect of its future approach to members' conduct in due course including the following:

- i Whether to have a code of conduct at all
- ii If it has a code, what form that will take and whether it will seek to adopt provisions that are either the same or similar to those being adopted elsewhere
- iii What procedure to have in place for the investigation of complaints about the conduct of members
- iv What future role it sees for a Standards Committee in promoting and maintaining high standards of conduct

7. Implications

7.1 Legal Implications
These are contained in the body of the report.

- 7.2 Financial Implications
There are no financial implications arising directly from this report.
- 7.3 Equality Impact Assessment
There are no equalities implications arising directly from this report.
- 7.4 Environmental Implications
There are no environmental implications arising directly from this report.

8. Conclusion and recommendations

- 8.1 The proposals in the Localism Bill for changes to the local authority members conduct regime will make sweeping changes to current arrangements. A number of decisions will need to be made by the council in due course to implement the changes and the committee is asked to consider and comment upon the information in this report as an early contribution to the debate that must be had.

Background papers:

None.

Final Report Clearance

Signed by _____ Date _____
 Corporate Director of Resources

Received by _____ Date _____
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