

Report of : Corporate Director of Resources

Meeting of	Date	Agenda Item	Ward(s)
Standards Committee	19 January 2012	8	All

Delete as appropriate	Exempt	Non-exempt
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Subject: Localism Act 2011 – The Amended Standards Regime

1. Synopsis

The report summarises the changes to the member standards regime made in the Localism Act 2011 and seeks the committee’s observations on possible approaches to establishing revised arrangements for the council in respect of a code of conduct, dispensations from prohibitions on participation in council business where a councillor has an interest in business on the agenda and investigation of allegations of breach.

2. Recommendations

2.1 To consider the report and to advise the Council of the Committee’s views on the following questions:

2.1.1 Should the Council retain the Code of Conduct in as close a form to that currently in use as is possible given the statutory changes?

2.1.2 Should the Council retain the Standards Committee or delegate its functions to the Audit Committee?

2.1.3 If the Council retains the Standards Committee, should it co-opt one or more of its existing independent members as non voting co-optees

2.1.4 (Subject to legal advice), should the Council retain the services of one of the current independent members as the “Independent Person” under the Act

2.1.5 Should the Monitoring Officer be given the power to seek to resolve complaints informally?

2.1.6 Should the Monitoring Officer be given the power to decide whether a complaint should be investigated (and if so, should this be after consultation with the Independent Person [if considered necessary by her])

2.1.7 Should the Monitoring Officer be given the power to decide, following a complaint being investigated, that the allegations are unfounded, without reference back to the Standards Committee?

2.1.8 On which, if any, of the grounds for granting a dispensation from a prohibition on voting should the Monitoring Officer be given power to grant such dispensations. If there is to be such a power, should its exercise be restricted to cases of urgency.

2.1.8 Should the Council include provision in its standing orders requiring a member who has a disclosable pecuniary interest to withdraw from the room during consideration of the business in respect of which the interest arises?

3. Background Details

3.1 The Localism Act 2011

The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected councillors and co-opted members of committees. The definition of “co-opted member” only covers members of committees and sub-committees who are not councillors and who have a power to vote on any matter, so it does not apply to non-voting members and in Islington will only in future cover the co-opted education representatives on the Overview Committee. This report describes the changes and recommends the actions required for the Council to implement the new regime, including identifying areas where there are options as to the approach to be taken. The date for implementation of these changes is 1st July 2012 and it is anticipated that full Council will adopt new arrangements at its meeting later this year.

3.2 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. The existing code of member conduct will cease to have effect and the council is obliged to adopt a new code. This is discussed further below.

3.3 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. Although it would be possible to combine this role with an existing committee (such as the Audit Committee) it seems likely to be more convenient to have a separate Standards Committee. A new standards committee (or the Audit Committee if a separate standards committee is not maintained) would however be constituted as an ordinary council committee, without the special features of the existing Standards Committee. As a result –

(i) The composition of the Committee will be governed by political proportionality (i.e. the political membership will have to reflect the political make up of full Council), unless the full Council votes otherwise with no member voting against. The present restriction to only one member of the Executive on the Standards Committee will cease to apply;

(ii) The current co-opted independent members will cease to hold office. The Act establishes for a new category of Independent Persons (see below) who must be consulted at various stages, but provides that the existing co-opted independent members cannot serve as Independent Persons for Islington 5 years. The new Independent Persons may be invited to attend meetings of the committee. The Association of Council Secretaries and Solicitors (ACSeS) is taking advice from counsel on behalf of local authorities on whether Independent Persons may be co-opted onto a committee dealing with standards issues. It will be possible for other individuals to be co-opted onto the committee but they will not be able to vote. This means the chair of the committee will have to be a councillor;

(iii) The rules for access to meetings and to papers will be the same for a new standards committee as for other ordinary committees of the Council.

3.4 A new Standards Committee could be established as an ordinary committee with effect from the date that the relevant sections of the Act are brought into effect. The committee is asked to consider whether it would be preferable to retain a separate Standards Committee. If so it is suggested that the membership of any new committee consist of 5 councillors and 2 co-opted independent members who are not Independent Persons (subject to the outcome of the advice being sought concerning inclusion of the Independent Person in membership of the committee). The alternative would be to delegate these functions to the Audit Committee although this would raise questions about the nature of any independent co-optees as arguably the skill set required is different from that of the existing independent members of that committee. It would almost certainly be necessary to set up a sub committee to deal with allegations of misconduct.

3.5 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 members' 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 –

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

3.6 The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles. However, regulations to be made under the Act will require the registration and disclosure of “Disclosable Pecuniary Interests” (DPIs), broadly equating to the current prejudicial interests. The provisions of the Act also require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary (i.e. financial) 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.

3.7 The Council's new Code of Conduct will have to deal with the following matters –

- General conduct rules, to give effect to the seven principles. This corresponds broadly with Paragraphs 3 to 7 of the current Code of Conduct; and
- Reflecting the regulations concerning DPIs (once available)
- Registration and disclosure of interests other than DPIs – effectively, replacing the current personal interests provisions.

The council could choose to depart as little as possible from the existing code in the interests of continuity and maintaining existing good practice (while removing provisions thought to lack clarity or to be inconsistent with the new framework) or could decide to include only the absolute minimum of provisions in the code. The latter approach may be perceived as sending the wrong message to the public about the seriousness with which the council and councillors take the importance of high standards of conduct and so it may be that a position in between these two extremes would be the most appropriate.

3.8 Although there will no longer be a national model code, ACSes is preparing an optional model code to assist authorities and to bring some consistency in the arrangements in place in different authorities. This is not yet available. The committee is invited to consider whether to retain similar provisions to the current code as far as possible and to identify any elements of the current code which it considers are unclear or inappropriate and which it would prefer to see removed from any future code. The Monitoring Officer will then draft a proposed new code for consideration by council in the light of the committee's observations, the content of the regulations concerning DPIs and the draft code being prepared by ACSes.

- 3.9 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. It is considered by the Monitoring Officer that the council should adopt such a standing order.

3.10 Dealing with Misconduct Complaints

The Act requires that the Council adopt “arrangements” for dealing with complaints of breach of Code of Conduct by Council members 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 Code of Conduct.

Initial Consideration of Complaints

- 3.11 The advantage is that the Act repeals the specific requirements which currently govern decisions about which complaints should be investigated and heard and enables the council to establish its own process, which can include delegation of decisions on complaints in appropriate cases and allow for more scope for informal resolution by the Monitoring Officer. It seems sensible to take advantage of the new flexibility to delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation, subject to consultation with the Independent Person should she consider necessary, and the ability to refer particular complaints to the Standards Committee where she feels that it would be inappropriate for her to take a decision on it, for example where she has previously advised the member on the matter or the complaint is particularly sensitive. If this function is delegated to the Monitoring Officer, it is right that she should be accountable for its discharge and it is proposed that a quarterly report be made to the new Standards Committee concerning the number and nature of complaints received and to draw to the Committee’s attention areas where training or other action might avoid further complaints. The committee is asked to consider this proposal.

Investigation of Complaints

- 3.12 A draft hearing procedure flowchart has been drafted on the basis that the answers to the questions raised in paragraph 2 is “yes”. The flowchart is at Appendix 2.

3.13 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. So, 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 limited and must be directed to securing the continuing ability of the authority to continue to discharge its functions effectively, rather than “punishing” the member concerned. In practice, this might include the following –

- (i) Reporting its findings to Council for information and inviting Council to consider censuring the member;
- (ii) Recommending to the member's group leader that s/he be removed from any or all committees or sub-committees of the Council;
- (iii) Recommending to the Leader of the Council that the member be removed from the Executive, or removed from particular portfolio responsibilities;
- (iv) Instructing the Monitoring Officer to arrange training for the member (although attendance at the training could not be enforced);
- (v) Removing the member from any outside appointments to which s/he has been appointed or nominated by the council;
- (vi) Withdrawing facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- (vii) 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.

3.14 Appeals

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.

3.15 The proposed draft procedure flowchart makes no provision for appeals.

3.16 Independent Person(s)

The "arrangements" adopted by Council must include provision for the appointment by Council of at least one Independent Person. The Independent Person(s) 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 –

- (i) s/he is, or has been within the last 5 years, an elected or co-opted member or an officer of the Council which effectively disbars the current independent members from acting in this new role;
- (ii) s/he is, or has been within the last 5 years, an elected or co-opted member of any committee or sub-committee of the Council. This would seem to preclude any of the current co-opted independent members of Standards Committee from being appointed as an Independent Person but the drafting of the Act is open to contrary interpretation and this is another issue upon which ACSes are taking advice on behalf of local authorities.; or

- (iii) s/he 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.

3.17 Functions of the Independent Person

The Independent Person(s) –

- 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);
- May be consulted by the authority in respect of a standards complaint at any other stage;

This causes some problems, as it would be inappropriate for an Independent Person 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.

3.18 How many Independent Persons?

The Act gives discretion to appoint one or more Independent Persons, but provides that each Independent Person 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 Independent Person, provided that a couple of reserve candidates are selected at the time of appointment who can be appointed at short notice, without the need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.

3.19 Remuneration

As the Independent Person is not a member of the Council or of its committees or sub-committees, the remuneration, if any, of the Independent Person no longer comes within the scheme of members' allowances, and can therefore be determined without reference to the Independent Remuneration Panel.

In comparison to the current Chair of Standards Committee, the role of Independent Person is likely to be less onerous. S/he may be invited to attend all meetings of the Standards Committee and is likely to attend all Hearings Panels. S/he will need to be available to be consulted by members against whom a complaint has been made, although it is unclear what assistance s/he could offer. Where s/he has been so consulted, s/he would be unable to be involved in the determination of that complaint. However, it would be appropriate to undertake a proper review of the function before setting the remuneration.

3.20 The Register of Members' Interests

The Localism 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. 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. 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.

3.21 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. 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. Criminal proceedings in respect of a breach of the provisions concerning interests must be instituted by or on behalf of the Director of Public Prosecutions and may lead to a fine not exceeding level 5 on the standard scale and/or disqualification for a period not exceeding five years. 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.

3.22 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.

3.23 Disclosure of Interests and Withdrawal from Meetings

The duty to disclose and withdraw arises whenever a member attends any meeting of Council, a committee or sub-committee, or of the Executive or an Executive committee, and is aware that s/he has a DPI in any matter being considered at the meeting. So it applies even to a member who would be absent from that part of the meeting where the matter in question is under consideration.

3.24 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, in a change from the current requirements, the member does not have to make such a disclosure if s/he 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 required by law to be disclosed at the meeting.

3.25 Where the member does make a disclosure of a DPI, s/he must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the register of interests. If a member has a DPI in any matter, s/he must not –

- 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. Given the higher threshold for the type of interest that would preclude participation this appears reasonable; or
- Participate in any vote on the matter,

unless s/he has obtained a dispensation allowing him/her to speak and/or vote.

Failure to comply with the requirements will be a criminal offence. The Council’s Code of Conduct must make “appropriate” provisions for disclosure and withdrawal for interests other than DPIs, but failure to comply with these requirements would be a breach of the Code of Conduct but not a criminal offence.

3.25 The requirement to withdraw from the meeting room can be covered in the council’s procedure rules for council, committee and executive meetings. Failure to comply would be neither a criminal offence nor a breach of the Code of Conduct, although the meeting could vote to exclude the member. It is recommended that the council should adopt a procedural rule requiring a member to withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which s/he has a DPI, except where s/he is permitted to remain as a result of the grant of a dispensation.

3.26 Disclosure and Withdrawal in respect of matters to be determined by a Single Member

In the very limited cases in which the Constitution allows for a matter to be decided by a single Executive member acting alone the provisions in the Act covering such

circumstances would apply. When a member becomes aware that s/he will have to deal with a matter and that s/he has a DPI in that matter, unless the DPI is already entered in the register of members' interests or is subject to a "pending notification", s/he has 28 days to notify the Monitoring Officer that s/he has such a DPI and must take no action in respect of that matter other than to refer it another person or body to take the decision.

3.27 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 s/he 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, s/he 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.

3.28 Dispensations

The provisions on dispensations are significantly changed by the Localism Act. In future, a dispensation will be able to be granted in the following circumstances –

- (i) That so many members of the decision-making body have DPis 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;
- (ii) 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. This assumes that members are predetermined to vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate;
- (iii) That the authority considers that the dispensation is in the interests of persons living in the authority's area;
- (iv) That, without a dispensation, no member of the Executive would be able to participate on this matter; or
- (v) That the authority considers that it is otherwise appropriate to grant a dispensation.

Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.

3.29 The Localism Act gives discretion for this power to be delegated to a committee or a sub-committee, or to the Monitoring Officer. Appendix 3 contains proposed

amendments to the council's existing procedure for seeking a dispensation for the consideration of the committee which provide for the Monitoring Officer to be able to grant dispensations in cases 1 and 4 above which are a matter arithmetical calculation. The committee is asked to consider whether it would be appropriate to give broader (or narrower) powers to the Monitoring Officer.

3.30 Transitional Arrangements

Regulations under the Localism Act will provide for –

- a. transfer of Standards for England cases to local authorities following the abolition of Standards for England;
- 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;
- 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.

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 Localism Act introduces a new regime for governing standards of member conduct which is significantly different from the current regime.

8.2 This report proposes a new Code, new arrangements for seeking dispensations from disqualification from participation in business due to an interest and a new Investigation and Hearing Procedure.

8.3 The committee is recommended to consider and comment on the issues referred to in the recommendations and the new arrangements generally to assist the Monitoring Officer in preparing a new code and new procedures for recommendation to the Council.[]

Background papers:

None.

Final Report Clearance

Signed by Date
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Appendix 1

DRAFT PROCEDURE FOR DEALING WITH REQUESTS FOR DISPENSATIONS FROM COUNCILLORS

In limited circumstances the [] Committee (or the Monitoring Officer in specified cases) can grant a dispensation to a member to allow them to speak and/or vote in respect of an item of business at a meeting where they have a discloseable pecuniary interest in that business under the Islington Members' Code of Conduct. The procedure for the consideration of dispensation applications is as follows:

1. Any Member wishing to be granted a dispensation must submit a written request in the form attached.
2. A dispensation can only be granted where the statutory grounds apply. The statutory grounds are that the Committee (or Monitoring Officer as appropriate) considers that,
 - (a) without the dispensation the number of persons prohibited 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) 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) granting the dispensation is in the interests of persons living in the council's area,
 - (d) without the dispensation each member of the authority's executive would be prohibited from participating in any particular business to be transacted by the Executive or a committee of the Executive, or
 - (e) it is appropriate to grant a dispensation for some other reason
3. The request must be submitted to the Council's Monitoring Officer, who will herself consider whether a dispensation should be granted at her discretion where the application is under 1(a) or 1(d) and in other cases ensure it is included as an item on the agenda for next available scheduled meeting of the [] Committee.
4. In exceptional circumstances where it is not possible to include the request on the agenda with 5 clear days notice, a request may be considered as an urgent item by the Committee at the discretion of the Chair of the Committee.
5. Where the next available scheduled meeting of the [] Committee is due to take place after the date of the meeting for which the dispensation is required, the Monitoring Officer will seek to arrange a special meeting of the Standards Committee to consider the matter in advance of the meeting for which the dispensation is required.

6. The [] Committee or Monitoring Officer will consider each request for dispensation on its individual merits having considered the following matters:
 - a. The potential affect of the Member's participation on public confidence
 - b. Whether the interest is common to the member and a number of members of the general public
 - c. Whether participation is justified by the Member's particular role or expertise.

7. The [] Committee (or Monitoring Officer as appropriate) must specifically agree and record in writing the duration (which must not exceed 4 years) and nature of any dispensation granted. A record of dispensations granted will be kept with the Register of Interests maintained for all Members.

Appendix 2 - Draft Hearing Procedure Flowchart

