

London Borough of Bromley

Report No.RES12035

PART I – PUBLIC

Agenda Item No.:

Decision Maker: Standards Committee
Date: 7th February 2012

Decision Type: Non-Urgent Non-Executive Non-Key

TITLE: THE STANDARDS SYSTEM UNDER THE LOCALISM ACT 2011

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Chief Officer: Director of Resources

Ward: N/A

1. Reason for Report

- 1.1 To advise Members of changes to the standards system introduced by the Localism Act 2011 and to obtain views on the implementation of the new standards system.
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2. **RECOMMENDATION(S)**

2.1 **Members' views are sought on the Standards provisions in the Localism Act and in particular:**

- **whether Bromley should revise the present Code of Conduct or introduce its own Code; and, if the latter, the form that Code should take;**
- **the investigation/complaints process which should be introduced;**
- **the number of independent persons who should be appointed;**
- **whether Members with a pecuniary interest should be allowed to remain in a meeting of the authority;**
- **whether decisions on the grant of dispensations should be delegated to a Committee or an officer.**

Corporate Policy

1. Policy Status: The Council will be required to adopt a Code of Conduct to comply with the Provisions of the Localism Act 2011.
 2. BBB Priority: Children & Young People/Excellent Council/Quality Environment/Safer Bromley/Supporting Independence/Vibrant Thriving Town Centre/N/A
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Financial

1. Cost of proposal: N/A
 2. On-going costs: N/A
 3. Budget Head/Performance Centre:
 4. Total current budget for this Head: There is no budget for the Standards Committee
 5. Source of Funding:
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Staff

1. Number of staff (current and additional): N/A.
 2. If from existing staff resources, number of staff hours: Work will be dealt with within existing staffing resources. However, the amount of time involved will only be clear when Members adopt the new standards system.
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Legal

- 1) Legal Requirement: Chapter 7 of Part 1 of the Localism Act 2011 imposes a statutory duty to promote and maintain high standards of conduct, to have a Code of Conduct for Members, with a system to investigate breaches and to maintain a Register of Members' Interests.
 - 2) Call In: Call in is not applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): The standards system is established to increase public confidence in Elected Councillors
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Ward Councillor Views

- 1) Have Ward Councillors been asked for comments: N/A
- 2) Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 The coalition agreement gave a commitment to revise the standards system for local government. Proposals for change were introduced in the Localism Bill towards the end of 2010.
- 3.2 Chapter 7 of Part 1 of the Localism Act 2011 sets out the new standards system for local government. This Chapter was amongst the more controversial parts of the Bill and was one of the last parts to be finalised before the Act received Royal Assent on 15th November 2011.
- 3.3 The Act has undertaken a major overhaul of the standards system and details of key changes are set out below.

4. Standards For England

- 4.1 The Act ends national regulation by Standards for England. There is a phased approach. The first stage, which takes place on 31st January 2012, is the cessation of the regulatory case handling and guidance roles of Standards for England.
- 4.2 Standards for England will be formally abolished on 31st March 2012. The present standards system is expected to cease in its entirety on 1st July 2012. As the role of Standards for England diminishes/ceases, any outstanding work will transfer to local authorities. At present Bromley has no cases with Standards for England and the transitional arrangements, therefore, will have minimal affect on the Council.

5. The Duty to Promote and Maintain High Standards of Conduct

- 5.1 Section 27 of the Act places a duty on local authorities to promote and maintain high standards of conduct by Councillors and co-opted members of the Council.
- 5.2 It is mandatory that each local authority adopts a Code of Conduct dealing with the conduct that is expected of Councillors and co-opted members when acting in that capacity.
- 5.3 Section 28(1) provides that the adopted Code of Conduct must, when viewed as a whole, be consistent with the following principles, namely:
- Selflessness;
 - Integrity;
 - Objectivity;
 - Openness;
 - Honesty; and
 - Leadership
- 5.4 Section 28(2) of the Act provides that the adopted Code of Conduct must include the provisions the Council considers appropriate in respect of the registration and disclosure of pecuniary interests and interests other than pecuniary interests.
- 5.5 With the abolition of the need for a National Code of Conduct, subject to the above point, local authorities are free to decide the style and content of their Code of

Conduct and different authorities will inevitably have different Codes of Conduct. Bromley can either look to revise the present Code of Conduct or it can introduce a completely new document. It is likely that various local government/professional bodies will seek to promote model Codes of Conduct but there is no obligation to adopt these and none are as yet publically available..

- 5.7 There is no longer a requirement for Members to give an undertaking to comply with the Code although, as is set out in the following sections, there are still consequences for non-compliance.
- 5.8 Section 28(12) creates a mandatory requirement for the Council to publicise its adoption, revision or replacement of a Code of Conduct in a way it considers likely to bring it to the attention of persons who live in the area.
- 5.9 The function of adopting, revising or replacing the Code of Conduct is reserved to full Council and cannot be delegated.

6. Breach of the Code, Local Investigation

- 6.1 The Act repeals the provisions which currently apply to Standards Committees. The changes will take place with the adoption of a new Code of Conduct after 1st July. After this date there will no longer be a requirement to have a Standards Committee.
- 6.2 With the changes, the special position of independent members with voting rights on Standards Committees will end and if local authorities, in future, elect to have Standards Committees which are appointed under Sections 101 and 102 of the Local Government Act 1972, independent members will only have rights to vote on advisory rather than decision making Committees.
- 6.3 There is still a requirement to adopt a process for investigation of alleged breaches of the Code post July 2012 and arrangements under which decisions on allegations can be made. There is no longer a statutory requirement for a review stage or a hearing and, save for the position set out in part 8 of this report relating to certain pecuniary interests, no sanction set out in the Act for any breach.
- 6.4 A late introduction into the Act was the concept of the Independent Person. The functions of the Independent Person (IP) are:
- The IP must be consulted and views taken into account before the authority takes a decision on any allegation it has decided to investigate;
 - The IP may be consulted by the principal authority in circumstances where the authority is not taking a decision whether to investigate the allegation;
 - The IP may be consulted by a member of the authority against whom an allegation has been made;
 - The IP may be consulted by a parish councillor against whom an allegation has been made.
- 6.5 Unfortunately the provisions of the Act prevent any current Independent Members of the Standards Committee from fulfilling this role, as any person who has been an elected or co-opted member or an officer of a local authority in the last 5 years can

not be appointed. The Association of Council Secretaries and Solicitors has sought an opinion from Leading Counsel which has confirmed this interpretation.

- 6.6 The process for recruiting an independent person is similar to that followed for appointing independent members of the Standards Committee. Given the roles set out in paragraph 6.4 above and the possibility for conflict, it may be prudent to recruit more than one independent person.

7. Register of Interests

- 7.1 Section 29 of the Act requires the Monitoring Officer to establish and maintain a Register of Members' Interests.
- 7.2 It is, however, primarily for the authority to decide what is to be entered into the Register. The Monitoring Officer must ensure the Register is available for public inspection at the Council's offices and on the Council's website.
- 7.3 Members are obliged, within 28 days of being elected or co-opted, to notify the Monitoring Officer of any "disclosable pecuniary interests". We are presently awaiting Regulations which will define what a disclosable pecuniary interest is. However, it is clear the interest will include not just interests of the Member themselves but (if the member is aware) those of their spouse, civil partner or any other person living with them as their spouse or civil partner. Any interest disclosed must be put in the Register by the Monitoring Officer. Either by accident or design, there is no general duty to keep these matters up-to-date.
- 7.4 However, if Member has a disclosable pecuniary interest which is not registered and any such matter is being considered at a meeting of the Council at which the Member is present, then they must disclose that interest to the meeting.
- 7.5 If a member discloses an interest they must not participate in any discussion or vote on the matter at the meeting (subject to any dispensation which will be dealt with later). There is no statutory requirement for the Member to leave the room but a Council can, if it wishes, make Standing Orders to require this. This is arguably desirable as previously the Ombudsman and the Courts have been unhappy where Members with an interest have been deemed to influence the outcome of the meeting from the public gallery.
- 7.6 The Act prevents a single Executive Member exercising a delegated power where they have a pecuniary interest
- 7.7 Where a pecuniary interest is declared, then the relevant Member must notify the Monitoring Officer so that it can be added to the Register. This is the only requirement to keep the Register updated.

8. Offences and Sanctions

- 8.1 Section 34 of the Act creates a criminal offence if a Member, without reasonable excuse:

- Fails to notify the Monitoring Officer of a disclosable pecuniary interest within the time period;
- Participates in any discussion or vote in the meeting where the Member has a disclosable pecuniary interest; or
- Takes, or tries to take, an individual decision where the Member has a disclosable pecuniary interest.

8.2 An offence is also committed if the information provided to the Monitoring Officer is false or misleading and the Member knows it is false or misleading or is reckless as to whether the information is false or misleading.

8.3 Prosecutions are brought by the Director of Public Prosecution. They must be brought within one year of sufficient evidence coming to the Prosecutor's knowledge with an absolute time limit of three years. The maximum penalty is a fine not exceeding £5,000. A Court may disqualify a Member who is convicted of an offence under this provision for a maximum period of five years.

8.4 The criminal sanction effectively replaces provisions which were in existence before the standards system was introduced in the Local Government Act 2000.

8.5 Local authorities are constrained on sanctions which can be imposed for other breaches of the new standards system. The Association of Council Secretaries and Solicitors has sought the advice of Leading Counsel on available sanctions. Where there is a breach not covered by the criminal provisions, censure by full Council is an option. Removal of a Member from certain Committees, with the agreement of their political group, may be available in some circumstances. However, any withdrawal of allowances or removal of other rights, including access to confidential information, is likely to be found unlawful based on cases prior to the Local Government Act 2000 standards system.

9. Dispensations

9.1 Section 33 of the Act creates a new system for dispensations to be granted to members who may have a pecuniary interest.

9.2 Dispensations can be granted in the following circumstances:

- If the number of Members unable to participate would make the meeting inquorate;
- If the exclusion would disturb the political balance of the meeting and the outcome of any vote;
- If every Member of the authority's Executive would be precluded in taking part in a decision, the Executive without the dispensation;
- If it would be in the interests of persons living in the authority's area;
- If the authority considers it is otherwise appropriate to grant a dispensation.

9.3 The power to grant a dispensation can be delegated to a Committee or an officer but any application must be in writing.

10. Pre-determination

- 10.1 Section 25 of the Act modifies the present position on pre-determination so that, in the majority of cases a Member who is a decision maker will not be taken to have a closed mind when making a decision just because “the decision maker had previously done anything directly or indirectly indicated that view the decision maker took or would or might take in relation to the matter and ...the matter was relevant to the decision.”
- 10.2 This section applies to decisions made after it comes into force on 15th January 2012 but comments made prior to commencement on decisions made afterwards are given the same protection.

11. FINANCIAL IMPLICATIONS

- 11.1 These can not be assessed at this stage.

12. LEGAL IMPLICATIONS

- 12.1 These are set out in the body of the report.

Non-Applicable Sections:	
Background Documents: (Access via Contact Officer)	Localism Act 2011