

# London Borough of Bromley

Report No.RES12110

PART I – PUBLIC

Agenda Item No.:

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**Decision Maker:** Standards Committee/Council

**Date:** 19<sup>th</sup> June 2012/25<sup>th</sup> June 2012

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

**TITLE:** THE NEW STANDARDS SYSTEM UNDER THE LOCALISM ACT 2011

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**Chief Officer:** Mark Bowen, Director of Resources

**Ward:** All

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## 1. REASON FOR REPORT

- 1.1 To seek the views of members of the Standards Committee on forthcoming changes to the standards system for elected and co-opted members, for consideration by Council on 25<sup>th</sup> June, and to obtain decisions from the Standards Committee on matters within its remit to allow the implementation of the new system by 1<sup>st</sup> July 2012

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## 2. RECOMMENDATION(S)

- 2.1 The Committee is commended to endorse the adoption of the model Code of Conduct produced by the Department for Communities and Local Government by Council on 25 June 2012.
- 2.2 The Committee supports the recommendations of the Constitution Improvement Working Group in retaining the need to register all interests presently registered and retaining the Register of Gifts and Hospitality and the existing £25 threshold and agreeing that the Code of Conduct should include these provisions.
- 2.3 That the Council Procedure Rules if be amended to:
- (a) require a Councillor with a disclosable pecuniary interest to leave any Council meeting where that interest is being considered unless they have a dispensation, but that if possible a general dispensation should be granted:

- 1) where a member of the public would be entitled to speak or address the Committee, provided that the Member should not be able to vote or participate in the Committee debate in those circumstances; and
- 2) that a Member who is appointed by the Council as a Director of any body may speak on an item relating to that body but may not vote on it,

subject in both cases to the right of Council to exclude the Member where it considered it appropriate to do so.

- 2.4 That the Council should appoint to the role of independent persons, all independent members of the Standards Committee who satisfy the statutory requirements and who wish to fulfil the role as are identified to Council on 25<sup>th</sup> June 2012.
- 2.5 That the serving independent members of the Committee who wish to serve, notify the Monitoring Office of this at the earliest opportunity.
- 2.6 That the Council retains a Standards Committee to comprise seven members and that, in accordance with the provisions of Section 17 of the local Government & Housing Act 1989, the political balance rules be waived for the Committee and that the amendments to the Constitution set out in Appendix 3 to this report be agreed.
- 2.7 That the Committee agree the process for investigating complaints against Councillors set out in paragraph 5.3 of this report and that the Monitoring Officer, in consultation with the Chairman, be authorised to modify the complaints form and publically available literature to reflect the changes.

### Corporate Policy

1. Policy Status: New Policy
  2. BBB Priority: Excellent Council
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### Financial

1. Cost of proposal: N/A
  2. On-going costs: Non-recurring cost
  3. Budget Head/Performance Centre:
  4. Total current budget for this Head: There is no budget for the Standards Committee
  5. Source of Funding: N/A
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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 depend on the number of complaints generated by the new system
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### Legal

- 1) Legal Requirement: Statutory 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: N/A

### **3. COMMENTARY**

- 3.1 The Standards Committee at its meeting on 7<sup>th</sup> February considered the impact of the Localism Act 2011 on the standards system in England. It was recognised at the time that the Act provided a framework for the new system and that much of the detail would be dependent upon national guidance and regulation which had yet to be produced. This information became available shortly before the time of writing.
- 3.2 Key issues identified by the Committee are set out in the minutes which accompany this agenda.
- 3.3 Since the meeting of the Standards Committee, the new standards system has been considered by the Constitution Improvement Working Group on 8<sup>th</sup> February and 29<sup>th</sup> May (the Vice-Chairman was present at the May meeting).
- 3.4 Government has fixed the date for implementation of the new system for 1<sup>st</sup> July 2012. In addition to consideration of issues by this Committee, relevant matters will also be considered by the Executive on 20<sup>th</sup> June before decisions are taken by Council on 25<sup>th</sup> June.
- 3.5 Members' attention is drawn to the report to the Constitution Improvement Working Group and the report being considered by the Executive on 20<sup>th</sup> June.
- 3.6 Key areas for consideration by this Committee are as follows.
- 3.7 Code of Conduct
- 3.7.1 As was outlined at the previous meeting of the Committee, the requirement for Councils to adopt a Code of Conduct was retained. In April 2011 both the Local Government Association and the Department for Communities and Local Government circulated indicative model Codes of Conduct. Copies of both are appended to this report.
- 3.7.2 The Constitution Improvement working Group preferred the DCLG Model and this approach is recommended to the Committee.
- 3.8 Declaration of Interests, Gifts and Hospitality by Councillors and Co-opted Members
- 3.8.1 The Localism Act has also made changes to the position on the registration of Members' interests, gifts and hospitality.
- 3.8.2 Section 29 of the Act requires the Monitoring Officer to establish and maintain a Register of Members' interests. Regulations recently published set out details of mandatory pecuniary interests that must be registered by all Councillors. The drafting is similar to the current declaration requirements for such interests and includes:
- Employment details;
  - Sponsorship;
  - Interests in contracts with the Council;

- Property interest in the borough; and
- Substantial interests in businesses that have a presence in the borough.

3.8.3 A copy of the Regulations are attached at Appendix 2.

3.8.4 The following is a summary of the statutory obligations of Councillors and “voting” co-opted members.

- (a) To notify the Monitoring Officer of any Disclosable Pecuniary Interest (DPI) that the councillor may have within 28 days of their election, **together with** the DPIs of:
- (i) a spouse or civil partner
  - (ii) a person with whom they are living as husband and wife
  - (iii) a person with whom they are living as if they were civil partners

The Monitoring Officer will then enter the notified interests onto the register of interests. As is set out in paragraph 3.3, failure by the councillor to comply with this obligation is a criminal offence. It is also an offence to knowingly provide false or misleading information when making the disclosure or to be reckless as to whether the information is true and not misleading. This obligation is therefore far more stringent and intrusive than the existing obligation which is to declare in a meeting any personal or prejudicial interests arising from family and friend relationships where the councillor *ought reasonably to be aware of the existence of the personal interest*”. Family and friend relationships and interests arising from those relationships do not currently have to be declared in the register of interests.

- (b) If a DPI arises at a meeting and that interest has not previously been notified to the Monitoring Officer and, therefore, not entered on the register of interests, the councillor **must** not only disclose the interest to the meeting but also notify the Monitoring Officer within 28 days of the date of disclosure. It is a criminal offence not to do so.
- (c) Where a DPI arises at a meeting and the councillor is aware that they have a DPI, they **must not** participate either in the discussion of the matter or in any vote taken at the meeting unless they have a dispensation, non-compliance being a criminal offence. The Council’s procedure rules may make provision for the councillor to leave the room when such a situation arises. The current provision whereby a councillor with a prejudicial interest can speak in a meeting if there is a public right to speak does not appear to be carried over. Where a councillor has a DPI at a meeting, it may be considered appropriate in most circumstances for the councillor concerned to leave the room for their own protection unless a dispensation is in place.

3.8.5 Another major difference from the present system is that failure to register or disclose a DPI will become a criminal offence with a maximum penalty of £5,000 on conviction before the Magistrate’s Court. Where a Councillor is convicted, the Magistrate’s Court will also have the power to suspend or disqualify the Member.

- 3.8.6 The Regulations do not require registration of gifts and hospitality received by members in the course of their duties. However, the Constitution Improvement Working Group was of the opinion that this requirement should be retained and that, in general, Bromley should require Councillors to disclose non-pecuniary interests which are registered under the current system and to ensure that the register of all interests is pro-actively kept up to date. The views of the Committee are sought on this.
- 3.8.7 For the avoidance of confusion, criminal sanctions will not apply to the areas of registration of interests etc where the Council retains a discretion.
- 3.8.8 At the previous meeting the Committee was advised that the new standards system under the localism Act left it to local choice as to whether a Councillor with a pecuniary interest was required to withdraw from a meeting where a matter relating to that interest was being considered. The Committee deferred making a recommendation on this until more information on pecuniary interests was available.
- 3.8.9 For the protection of Councillors, it is suggested that the present system should be retained, however, if possible general dispensations should be granted for the following two areas which are broadly in line with the present system.
- 3.8.10 A criticism of the previous standards system was that it placed a Councillor who was making a planning application or applying for a services at a disadvantage to members of the public. Therefore, an early revision of the system allowed a Councillor with a prejudicial interest to make representations or ask questions to the Committee where a member of the public had a similar right to do so. It is suggested that it would be appropriate to retain this provision for councillors who have a DPI in similar circumstances.
- 3.8.11 Secondly, there are flexibilities under the present system for Councillors who were nominated to external bodies to still participate in some meetings. The definition of a Director in the Relevant Authorities (Disclosable pecuniary Interests) Regulations 2012 does not differentiate between circumstances where a Councillor is a Director in a personal capacity or where they are appointed as a Director a body by the Council. In the latter circumstances it is again suggested that the Councillor should be allowed, subject to right of the relevant Committee or member body to exclude them to the present and speak (but not vote) at a relevant Committee.

#### 4. The Independent Person

- 4.1 When the Standards Committee considered independent involvement in local standards at its meeting on 7<sup>th</sup> February, it was clear that the formal role of independent members of the Standards Committee had been abolished and replaced by the concept of the Independent Person. The statutory role of the Independent Person is as follows:
- They **must** be consulted by the authority before it makes a decision on an allegation of misconduct by a Councillor that it has decided to investigate or before it decides on action to be taken in respect of that Councillor.,

- They **may** be consulted by the authority in respect of a standards complaint at any other stage.
- They **may** be consulted by a Councillor or co-opted member against whom a complaint has been made.

4.2 Given the potential conflict between the roles, the Standards Committee and the Constitution Improvement Working Group are of the opinion that it is appropriate for at least two Independent Persons to be appointed.

4.3 When the matter was originally considered, it was clear that the drafting of the Act prevented the Council from appointing any serving independent members of the Standards Committee to fill the role of Independent Person.

4.4 It would appear that the Government have responded to concerns expressed by a range of organisations that this would deprive local authorities of the benefit of a body of suitably qualified and experienced people who could fulfil the role of Independent Person. The Government has relented and introduced transitional arrangements which now allow serving independent members to be appointed as Independent Persons.

4.5 As there is not a limit on the maximum number of Independent Persons who can be appointed, it would seem prudent that all current serving independent members of the Standards Committee who wish to fulfil the role, be appointed to do so by the Council.

## 5. Standards Committee and Investigation of Complaints

5.1 The Localism Act abolished the need for local authorities to have Standards Committees. However, the view of the Constitution Improvement Working Group was that this Council should retain a Standards Committee. It was also felt that some form of independent representation would be beneficial rather than having a Committee comprised entirely of Elected Councillors.

5.2 As members of any Standards Committee who are not Elected Councillors will have limited rights of participation, rather than continue with the appointment of independent members, it may be considered more appropriate to grant unlimited rights to the newly appointed Independent Persons to attend and participate (but not vote) in meetings of the Standards Committee.

5.3 More serious standards breaches will be dealt with through the criminal procedure. However the Act also requires local authorities to have a process for investigating complaints under the Code of Conduct, although the aim of the Act is to discourage vexatious and minor complaints and to establish a less bureaucratic process for dealing with complaints.

5.3 The present complaints form and general guidance with minor updating is operable under both the current system and that proposed by the Act. However, given the legislative changes, the system of considering and investigating complaints could be dealt with as follows

- Complaints under the Code are addressed to the Monitoring Officer who will take a view on whether a complaint should be dealt with under the Code of Conduct or another process.
- An initial filtering is undertaken by the Monitoring Officer, in consultation with the Independent Person with complaints which are frivolous, vexatious or which do not merit further action being filtered out at that stage with the Group Leader and subject Member being advised accordingly.
- Complaints not filtered out are sent to the Group Leader/Subject Member for comment. The Monitoring Officer will, after consultation with the Independent Person, either respond to the complainant in writing or instigate an investigation. However the aim of the process should be to ensure a proportionate local response rather than a formal investigation wherever possible.
- If an investigation points to no breach of the Code, or indicates no further action is required, the Monitoring officer, after consultation with the Independent Person will advise all parties accordingly.
- Where a hearing is required then as now this will be within the remit of the new Standards Committee.

5.4 Where matters are investigated and dealt with locally, even if a Member has breached the local Code of Conduct, the only sanction directly within the control of the Standards Committee is to request that full Council pass a Motion censuring the Councillor. The agreement of the Councillor's Group Leader and full Council will be required to remove them from the Committee and other such sanctions, such as the withdrawal of facilities provided to the Member, are fraught with legal difficulties.

5.5 Appendix 3 to the report sets out Terms of Reference for the new Model of Standards Committees. The Committee is not politically balanced and Council will need to agree to the political balance rules being waived in these circumstances.

## 6. FINANCIAL IMPLICATIONS

6.1 This cannot be assessed fully at this stage. However, under the present system, work was contained within existing budgets.

## 7. LEGAL IMPLICATIONS

7.1 Set out in the body of this report.

<b>Non-Applicable Sections:</b>	<b>Policy Implications Personnel Implications</b>
Background Documents: (Access via Contact Officer)	

## LGA TEMPLATE

As a member or co-opted member of *[X authority]* I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

**SELFLESSNESS:** Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

**INTEGRITY:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

**OBJECTIVITY:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

**ACCOUNTABILITY:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**OPENNESS:** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

**HONESTY:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

**LEADERSHIP:** Holders of public office should promote and support these principles by leadership and example.

The Act further provides for registration and disclosure of interests and in *[X authority]* this will be done as follows: *[to be completed by individual authorities]*

As a Member of [*X authority*], my conduct will in particular address the statutory principles of the code of conduct by:

- Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first.
- Dealing with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially.
- Not allowing other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework, the interests of the [*county*][*borough*][*Authority's area*] or the good governance of the authority in a proper manner.
- Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a member/co-opted member of this authority.
- Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
- Being accountable for my decisions and co-operating when scrutinised internally and externally, including by local residents.
- Contributing to making this authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other members to account but restricting access to information when the wider public interest or the law requires it
- Behaving in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.
- Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
- Always treating people with respect, including the organisations and public I engage with and those I work alongside.

- Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.

## **DCLG TEMPLATE**

### **Illustrative text for code dealing with the conduct expected of members and co-opted members of the authority when acting in that capacity**

You are a member or co-opted member of the [name] council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a member or co-opted member -

You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.

You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.

You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.

You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.

You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in the box below.

You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

**Registering and declaring pecuniary and non-pecuniary interests**

You must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.

If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.<sup>1</sup>

Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non-pecuniary interest as defined by your authority.

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<sup>1</sup> A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

## ARTICLE 9

9.1 **Standards Committee**

The Council will establish a Standards Committee

9.2 **Composition**

- (a) The Standards Committee will have a membership of seven Councillors, up to five from the largest political group and a minimum of one from each of the next two political groups.
- (b) A Councillor who is a member of the Executive is not eligible to sit on the Standards Committee.
- (c) Ex-Bromley councillors and former Bromley Council employees are not eligible to sit on the Standards Committee unless five years have elapsed since they were a Member or officer.
- (d) The Chairman will be appointed from, and by, members of the Standards Committee and will hold office for one year.
- (e) Independent persons appointed under the Localism Act 2011 shall be entitled to attend and speak at all meetings of the Standards Committee..

9.2 **Role and Function**

The Standards Committee will have the following roles and functions:

- (a) Promoting and maintaining high standards of conduct by Councillors, co-opted members and Church and Parent Governor representatives.
- (b) Assisting the Councillors, co-opted members and Church and Parent Governor representatives to observe the requirements on declaring pecuniary interests within the Members Code of Conduct and associated local protocols.
- (c) Advising the Council on the adoption or revision of the Members' Code of Conduct and associated local protocols.
- (d) Monitoring and reviewing the operation of the Members Code of Conduct and associated local protocols.
- (e) Developing for recommendation to the Council, local protocols to supplement the members Code of Conduct.
- (f) Enforcing local protocols and applying sanctions in respect of breaches of the members` Code of Conduct as appropriate.

- (g) Advising, training or arranging to train Councillors, co-opted members and Church and Parent Governor representatives on matters relating to the declaration of pecuniary interests, Members' Code of Conduct and associated local protocols.
- (h) Hearing cases against Councillors in consultation with the Independent Person.
- (i) To keep under review, amend and make additional provisions to the Protocol on Member/Officer relations.
- (j) To monitor the Officers' Code of Conduct to ensure consistent application and enforcement Council-wide.
- (k) General overview of probity matters arising from Ombudsman reports, Monitoring Officer reports, Audit Committee reports and ethical indicators.