

Decision Maker: Executive/Council

Date: 20th June 2012/25th June 2012

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

Title: THE NEW STANDARDS SYSTEM UNDER THE LOCALISM ACT 2011

Contact Officer: Mark Bowen, Director of Resources
Tel: 020 8313 4355 E-mail: mark.bowen@bromley.gov.uk

Chief Officer: Mark Bowen

Ward: All

1. Reason for report

To advise the Executive of forthcoming changes to the standards system for elected Members and to seek the views of the Executive on requirements of the new system including the new Code of Conduct for consideration by Council on 25th June.

2. **RECOMMENDATION(S)**

The Executive is recommended:

- 2.1 To endorse the adoption of the Model Code of Conduct produced by the Department of Communities and Local government.
- 2.2 To support the recommendations of the Constitution 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 adopted should include these provisions.
- 2.3 To support the retention of a Standards Committee.
- 2.4 To endorse requests for dispensations being dealt with by the Urgency Committee

Corporate Policy

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

1. Cost of proposal: N/A
 2. Ongoing 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 Chapter 7 of Part 1 of the Localism Act 2011 sets out the new standards system for local government. The Act ended national regulation by Standards for England. However it still requires local standards systems to be established. Government has indicated that these local systems should be in place by 1st July. However some parts of the necessary regulations have yet to be finalised at the time of writing. The report outlines key decisions which need to be made to comply with the act. Consideration has been given to these issues at the Constitution Improvement Working Group at its meeting on 29 May. There will also be consideration at the Standards Committee on 19 June before going to Council for decision on 25 June.

3.2 In summary, the main changes to the present standards system are as follows:

- Abolition of the existing Ethical Standards Framework which, as well as abolishing Standards for England, also abolishes the necessity for Councils to establish and maintain Standards Committees;
- Maintaining the requirement for a Code of Conduct but authorising Councils to draw up their own local Code of Conduct for Councillors and co-opted members;
- Retaining the requirement for Councils to include in their Codes, a provision for the registration and disclosure of pecuniary and non-pecuniary interests. The legislation now makes it an offence for a Member knowingly to fail to register or disclose a pecuniary interest.
- Retaining a requirement for Councils to make arrangements for investigating complaints that a Member may have breached the Code of Conduct;
- Requiring that Councils appoint at least one independent person, whose views should be sought and taken into account before it decides on an allegation. The independent person's role also includes advising Members who may have been complained about;
- Sets out arrangements, or requires arrangements to be made, for granting dispensations to Councillors who have disclosable pecuniary interests.

3.3 The New Code of Conduct

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. 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.

3.4 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

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.

3.5 The new Code needs to be in place by 1st July which is the date presently given for the current standards system ending and

- It must apply to Councillors and co-opted members when they are acting in that capacity;
- Once adopted, the Code must be publicised locally;
- The Code must include provisions that the Council considers appropriate in relation to the registration and disclosure of pecuniary and other interests.

There must also be a system in place for investigating and handling complaints made under the Code of Conduct. This, together with the registration of interests will be dealt with later in this report.

3.6 In April 2012, both the Local Government Association and the Department of Communities and Local Government (DCLG) produced indicative Codes within a short time of each other, with no obvious reference to each other. Copies of these Codes are attached as Appendices 1 and 2. The Constitution Improvement Working Group (CIWG) at its meeting on 29 May recommended the adoption of the DCLG Code. The views of the Standards Committee meeting on 19 June will be made available to this meeting.

3.7 Register of Interests Gifts and Hospitality.

Section 29 of the Act requires the Monitoring Officer to establish and maintain a Register of Members' Interests. Regulations yet to be published will specify a range of pecuniary interests that a member must register. From information available these will be similar to those presently registered and will include employment details, sponsorship, interests in contracts with the council, property interests in the borough, and substantial interests in businesses which have a presence in the borough.

3.8 The following summarises the statutory obligations on councillors and (voting) co-opted Members for Disclosable Pecuniary Interests (DPIs) specified in the forthcoming regulations:

- (a) To notify the Monitoring Officer of any DPI that the councillor may have within 28 days of their election or it is assumed the adoption of the Local Code of Conduct, **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 3.9, 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" relationships where the councillor *ought reasonably to be aware of the existence of the personal interest*". Family 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 such circumstances for the councillor concerned to leave the room for their own protection unless a dispensation is granted.

- 3.9 Following 1st July, the law will effectively revert to the position prior to the Local Government Act 2000 in that failure to register or disclose a DPI will become a criminal offence. The maximum penalty is £5,000 on conviction before the Magistrate's Court. The Magistrates will also have the power to disqualify or suspend a Councillor following conviction.
- 3.10 The CIWG on 29 May was concerned to ensure that all interests presently registered continued to be so and that members kept their interests up to date on a regular basis.
- 3.11 Current information indicates that DPIs will not include registering or disclosing details' of gifts and hospitality received. The view of the CIWG was that the Council should keep the Register of Gifts and Hospitality, and the existing £25 threshold.

3.12 Dealing with Complaints

The Act requires the Council to make arrangements for dealing with complaints of breaches of the adopted code by members and co-opted members. There is no longer a need to have a Standards Committee or to follow the current requirements to have assessment and review panels. The act removes the statutory basis for Independent members of the standards committee with voting rights and replaces them with a new role – The Independent Person.

3.13 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.

Given the potential conflict between roles the Standards Committee and CIWG have agreed that it is appropriate for at least two Independent Persons to be appointed. Indications are that transitional arrangements will allow current members of the Standards Committee to serve as an Independent Person for the next 12 months.

- 3.14 An aim of the Act is to discourage vexatious and minor complaints and to establish a less bureaucratic process for dealing with complaints. The present complaints form and general guidance with minor updating is operable under both the current system and that proposed by the Act. Sanctions are limited (save for the new criminal offences) therefore a system which encourages informal resolution with the engagement of, say, Group Leaders is preferential to one which is based on detailed investigation. This will receive further consideration by the Standards Committee.

3.15 Dispensations

Section 33 of the Act creates a new system for dispensations to be granted to Members who may have a pecuniary interest to allow them to speak or speak and vote at meetings they would otherwise not be able to participate in.

3.16 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.

3.17 Granting dispensations can be delegated to a Committee or an Officer. The view of both the Standards Committee and the CIWG was that the function should be delegated to the Urgency Committee.

4. FINANCIAL IMPLICATIONS

4.1 These can not be fully assessed at this stage. However under the present system work was contained within existing budgets.

5. LEGAL IMPLICATIONS

5.1 These are set out in the body of the report.

Non-Applicable Sections:	Policy and Personnel
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'.¹

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.

¹ 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.