

# London Borough of Bromley

Report No.  
RES13212

PART I – PUBLIC

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**Decision Maker:** Standards Committee

**Date:** 5<sup>th</sup> December 2013

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

**TITLE:** REVIEW OF THE STANDARDS SYSTEM INTRODUCED BY THE LOCALISM ACT 2011

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**Chief Officer:** Director of Corporate Services

**Ward:** All

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## 1. REASON FOR REPORT

- 1.1 To seek the views of the Standards Committee on the operation of the current standards system since adoption by Council on 25<sup>th</sup> June 2012 and to consider options for modification.
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## 2. RECOMMENDATIONS

- 2.1 That the Committee endorse the current Code of Conduct and the requirements for declarations of interests.
- 2.2 That the Chairman of the Standards Committee writes to all Members who have not yet up-dated their Register of Interests since adoption of the new Code on 25<sup>th</sup> June 2012.
- 2.3 That the Committee supports the independent members being co-opted as members of the Standards Committee.
- 2.4 That the Committee endorses the proposed model for investigating complaints, set out in paragraphs 3.11-22 of this report.
- 2.5 That the 2014 Induction for Members includes a session on standards with a surgery session following that, providing support to members on completing their Register of Interest forms.

## Corporate Policy

1. Policy Status: New and Existing 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. BACKGROUND**

- 3.1 The Localism Act 2011 made significant changes to the standards system for Councillors and co-opted members in England. Full details are set out in the report to the Standards Committee on 19<sup>th</sup> June 2012 and the report to Council on 25<sup>th</sup> June 2012 which implemented the new system.
- 3.1 In summary, the key provisions we presently work to are:
  - 3.1.1 The Council has adopted a new Code of Conduct based on the model provided by the Department of Communities and Local Government.
  - 3.1.2 The Council still requires all interests which were declared under the previous system to be declared (including the need to register gifts and hospitality of over £25 in value), as well as the statutory need to register the Member's husband/wife/partner discloseable pecuniary interests (DPIs).
  - 3.1.3 Councillors with a DPI are still required to leave a meeting room, unless they have received a dispensation.
  - 3.1.4 The Council appointed two independent persons, Dr. Simon Davey and Mr. Nick Marcar, to fulfil the necessary functions under the Localism Act.
  - 3.1.5 The Council retained a Standards Committee comprising seven Members with at least one Member coming from each political group on the Council.
  - 3.1.6 The Council introduced a "light touch" system for considering investigating and responding to complaints relating to breaches of the Code of Conduct.

#### **The Code of Conduct**

- 3.2 Whereas it is arguable that there is no strict legal requirement under the Localism Act 2011 for Members to up-date their Register of Interest entries prior to the 2014 Elections unless a new DPI arises, principles of transparent governance, guidance from the Secretary of State and the Council's own adopted procedures do seek regular up-dating.
- 3.3 Unfortunately, despite several reminders being sent by the Monitoring Officer and the Democratic Services Manager, less than half of the Members of the Council have up-dated their details or submitted the new registration forms as required by Council in June 2012.
- 3.4 Save where a Member has potentially breached the strict legal requirements around DPIs, there is no effective sanction against them for non-return other than censure by full Council and with the majority of Members not having responded, this is not an option which has been sought.
- 3.5 Matters become far more important from a strict legal perspective after the May Elections, as the Localism Act places an obligation on Councillors to complete their registration of DPIs within 28 days of being elected. Failure to do so is potentially a

criminal offence with a maximum penalty of £5,000 on conviction before a Magistrate's Court. On conviction the Court also has the power to either suspend or disqualify for up to five years.

- 3.6 The matter was considered by the Constitution Improvement Working Group (CIWG) who endorsed the current approach to registration of interests and did not recommend any reduction in the requirement. They were also supportive of retaining a session on standards at the Member Induction in 2014, proposing that a surgery be held after the session to assist Members in completing their Register of Interests forms at an early opportunity to prevent criminal action or disqualification through non-compliance with the Act.

### **Standards Committee and Independent Persons**

- 3.7 Since the changes in the system, the Standards Committee has not met before tonight and neither have either of the independent persons been called upon to fulfil their statutory role in advising on action to be taken against a Councillor who may have breached the Code of Conduct.
- 3.8 The CIWG, in July 2013, supported the retention of the Standards Committee. They also recommended that the independent persons be re-appointed as members of the Committee with effect from the new Council year in 2014.
- 3.9 The CIWG also felt that the present independent persons be retained for as long as the Council was lawfully able to do so.
- 3.10 Both proposals are put to the Committee for consideration and are endorsed by the Council's Monitoring Officer in his statutory role.

### **Procedure for Investigating Complaints**

- 3.11 Since the adoption of the new standards system in June 2012, the Council has modified the publicity and information available around standards complaints. The directive from Government is that Councils should not be spending a significant amount of time dealing with minor matters or political point scoring. In reality this was never much of an issue in Bromley in any event.
- 3.12 Having said that, the Council's website still gives easy access to procedures on how to make complaints about a Councillor or co-opted member, including providing a link to the Code of Conduct and providing an on-line complaints form.
- 3.13 Relatively few complaints have been raised. Looking at matters, then there are four main headings under which likely complaints could fall:
1. failure by a Councillor or co-opted member to comply with their statutory requirements around DPIs;
  2. complaints that a Member has inappropriately participated in a meeting or failed to declare an interest other than a DPI;

3. that a member's conduct has fallen generally below what has been expected through, e.g., not responding to constituents or rudeness or through behaviour which could be perceived as bullying or being otherwise unacceptable;
  4. a member has failed to comply with the general criminal law.
- 3.14 Nothing has arisen with regard 1 since June 2012. Any matters which were brought forward would be dealt with by the Police/Director of Public Prosecution and not by the Council.
- 3.15 With regard to 2 and 3, the sanctions which may be imposed are limited. As was outlined in the report to this Committee on 19<sup>th</sup> June 2012, 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 a Councillor's Group Leader and full Council is required to remove them from a Committee. Members can only be requested and not required to offer apologies and other sanctions, such as withdrawal of facilities provided to Councillors, are fraught with legal difficulties.
- 3.16 With regard to 4 above, a Councillor who is convicted of a criminal offence and sentenced to three months or more imprisonment, is disqualified from being a Councillor. Even under the previous standards system, criminal offences which occurred other than in the course of a Councillor's activities as a Councillor were usually deemed to fall outside of that system and it was left to the electorate to impose any "sanction" through the ballot box.
- 3.17 The report to this Committee in June 2012 set out the following five principles on investigation of complaints. These are repeated below for ease of reference:
- 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.
- 3.18 As is outlined above, matters around DPIs will normally be dealt with otherwise than by the Council.
- 3.19 Given the often technical nature of allegations around failure to declare their interests and inappropriate participation in meetings, it is felt appropriate that

complaints under this heading still be dealt with by the Council’s Monitoring Officer, not least because of legal consequences which could arise and the potential impact on decisions made by the Council.

- 3.20 With regard to complaints made under paragraphs 3 and 4, a strong argument advanced in favour of providing the present system was assurances given that local politicians were able to self regulate.
- 3.21 In these circumstances it is suggested that, whereas complaints could still be received by the Monitoring Officer or his nominee, these should be forwarded to the appropriate Group leader for investigation and resolution. If a complaint related to a Group Leader, then the matter should be dealt with by that Group’s representative on the Standards Committee or their nominee.
- 3.22 Political groups should, under this process, feed back on the outcome of any complaint investigated to the Monitoring Officer and independent persons who would then up-date the Standards Committee to determine whether the matter is deemed settled or whether there was a need to consider a formal investigation.

**Recent Developments**

- 3.23 Recently the Government has, in its guidance, required trade union membership to be declared by Councillors. This is covered within the Register of Interests agreed by Bromley Members (albeit not specifically) and it is consider that no change is required to the local Code on that basis.
- 3.24 Recently reports have been produced by a group of bodies, including the Committee on Standards in Public Life and Transparency International UK, which expresses general concerns over some of the changes. A copy of the Transparency International UK report is attached for information as appendix 1.

**4. FINANCIAL IMPLICATIONS**

- 4.1 These cannot be assessed fully at this stage. However, as under the present system work will be contained within existing budgets where possible.

**5. LEGAL IMPLICATIONS**

- 5.1 Contained with the body of this report.

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