

## London Borough of Bromley

Report  
No.CSD17106

### PART I – PUBLIC

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**Decision Maker:** Standards Committee

**Date:** 6<sup>th</sup> July 2017

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

**TITLE:** CODE OF CONDUCT

**Contact Officer:** Graham Walton, Democratic Services Manager  
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**Chief Officer:** Mark Bowen, Director of Corporate Services

**Ward:** ALL

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1. Reason for report

- 1.1 To advise Members of the Standards Committee on the operation of the standards system at Bromley and to seek Members' views on whether changes are required for the new Council from May 2018.
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## 2. RECOMMENDATIONS

### 2.1 Members' views are sought on whether:

1. they would support a review to the dispensation system to allow a Member with a disclosable pecuniary interest to remain in a meeting provided they did not speak or address the Committee where that right would be available to a member of the public;
2. they wish to retain the need to register gifts and hospitality and, if so, whether they wish to retain the current threshold of £25;
3. they want to revise the details of interests which are registerable under the Code of Conduct;
4. they wish to treat significant interests in the same way as disclosable pecuniary interests;
5. they wish to undertake a recruitment process for the appointment of Independent Persons to support the standards system.

- 2.2. Members are asked to note the position on sanctions available for breaches of the Code of Conduct.

## Impact on Vulnerable Adults and Children

1. Summary of Impact: Not applicable
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## 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: 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 depends 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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## Procurement

1. Summary of Procurement Implications: 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 Localism Act 2011 made significant changes to the standards system for councillors and co-opted members in England. Following consideration by various Member bodies, the Council adopted the new standards system and Code of Conduct on 25<sup>th</sup> June 2012. A copy of the Code is at [Appendix 1](#).

3.2 In summary, some key points which arose from this:

- The Localism Act made the retention of a Standards Committee optional. The Council resolved to retain the Standards Committee, comprising 5 Members with at least one Member coming from each political group on the council;
- The Code of Conduct adopted was based on a model produced by the Department of Communities and Local Government (DCLG). As was permitted, the Council modified the Code to require Members to declare all interests they were required to under the previous system. Members were also required to register details of gifts and hospitality over £25 in value.
- The Council resolved that Members with a disclosable pecuniary interest were required to leave a meeting room unless they had received a dispensation.
- The legislation required the appointment of at least one Independent Persons to support the standards. The Council appointed two Independent Persons – Dr. Simon Davey and Mr. Nick Marcar.

3.3 The following sections of the report cover areas which members may want to consider in deciding whether or not to retain the Code of Conduct and standards system in Bromley in its present form.

### **4. The Code of Conduct**

4.1 As is outlined above, if a Member has a Disclosable Pecuniary Interest (DPI), they can only participate in a meeting if they have obtained a dispensation to do so. To secure a dispensation, a Member must make an application in writing setting out their reasons for seeking a dispensation. [Appendix 2](#) sets out details of all applications for dispensations considered to date.

4.2 Originally Members resolved that dispensation applications could be considered by the Urgency Committee. However, this was subsequently changed so that the Director of Corporate Services in his capacity as Monitoring Officer, could grant a dispensation if, having consulted all Members of the Urgency Committee, there were no objections to the proposed dispensation. If objections were received, then the Monitoring Officer would need to call a formal meeting of the Committee.

4.3 Overall, the present system appears to be working well. The majority of dispensations sought have been by Members who are interested in planning applications, either because they are the applicant or because they live in close proximity to the development site. In these circumstances it will be usual to grant dispensation as it does no more than place the Member in the same position as a member of the public who has an interest in a planning matter.

- 4.4 Where a Member wishes to use public speaking rights to address the Committee on a planning matter, they can only do so having obtained a dispensation. Bromley can relax the requirements of its Code of Conduct so that if a Member with a DPI who merely wishes to observe a planning application, then, as long as they did not speak or address the Committee, they could remain in the room whilst the application they were interested in was under consideration.
- 4.5 The National Code of Conduct introduced by the Local Government Act 2000 required Members to register gifts and hospitality in excess of £25. The Localism Act 2011 did not require local authorities to retain this provision. However, as is set out in paragraph 3.2 above, Bromley chose to do so. As this is a discretionary provision, Members' views are sought on whether they wish to retain the need to register gifts and hospitality and, if so, whether, as the £25 threshold was introduced nearly 17 years ago, they wish to increase the level for registration.
- 4.6 It is a national requirement that certain pecuniary interests are registered in respect of both the Member and their husband/wife/partner. Members are also required to register the non-pecuniary interests set out in the Code at Appendix 1. However, there is no requirement for Members to register other significant interests relating to members of their family - for example, if a sibling or child has a significant interest in a matter. The Monitoring Officer's view is that Members in Bromley are diligent in advising meetings of such interests. However, although not amounting to DPIs which mean the Member would need to leave the meeting room, Members' views are sought on whether significant interests involving other family members should be treated in the same way as DPIs.

## **5. Investigation of Complaints and Sanctions**

- 5.1 Members agreed to a light touch approach being taken to complaints with the following principles applying:
- 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. If a matter is not within the scope of the Code the Monitoring Officer will advise the member, their Group Leader and the complainant providing reasons;
  - If a matter is potentially within the Code 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 reveals no further action is needed the Monitoring officer after consultation with the Independent Person will advise the parties accordingly.
  - Where a hearing is required, this will be within the remit of the new Standards Committee.

5.2 This does not apply to breaches of disclosable pecuniary interests which can only be investigated by the Police with the Director of Public Prosecutions being responsible for deciding whether proceedings would be brought for the criminal offences of either not registering a DPI or inappropriately taking part in a meeting where a Member has a disclosable DPI.

5.3 Prosecutions are usually held in the Magistrate's Court and, to date, only one prosecution has received any publicity. That involved Cllr. Spencer Flower, a former Leader of Dorset County Council and a Councillor at East Dorset District Council. In summary, Cllr. Flower was a non-Executive Director of a housing charity (Synergy Housing) that existed to provide homes for those in need. Between 2010 and 2013, although not receiving a salary, he received remuneration payment of c£29,000. Cllr. Flower quite properly listed his interest as a pecuniary interest at both local authorities.

5.4 However, when Cllr. Flower was present at a meeting at East Dorset, which was considering the East Dorset Core Strategy (a key document in the local plan) he was charged with participating in a vote taken at the meeting because he was considered as a non-Executive Director of Synergy Housing, which has sites affected by the strategy to have a DPI in the matter. Cllr. Flower was convicted, given a 6 month conditional discharge and ordered to pay £390 costs.

5.5 For breaches of the Code of Conduct which are not DPIs then, as was reported to Members when the Code of Conduct was adopted, sanctions are limited. At the time it was considered that, whilst agreement of a Councillor's Group leader and full Council could remove a Councillor from membership of a Committee following it being found that they had breached the Code of Conduct, otherwise the only sanctions felt to be available were censure and adverse publicity. This ties in with the intention of the system introduced by the Localism Act 2011 that the main sanction for general Councillor conduct should be through the ballot box rather than through the standards system. The above position was endorsed by His Honour, Justice Hickinbottom in *Heesom v Public Services Ombudsman for Wales [2014]* where he said :

“there being no common law right for an authority to impose sanctions that interfere with local democracy, on the abolition of these sanctions... a councillor in England can no longer be disqualified or suspended, sanctions being limited to (for example) a formal finding that he has breached the code, formal censure, press or other appropriate publicity, and removal by the authority from executive and committee roles (and then subject to statutory and constitutional requirements)”

5.6 However, the more recent case of *Taylor v Honiton Town Council* (where Cllr Taylor was accused of making unjustified criticism of the Town Clerk) in 2016 suggested that there may be scope for additional sanctions; for example requiring a Member to undertake further training. His Honour Mr. Justice Edis said:

“There is no point in having a code of conduct if members of the authority are not aware of its meaning and effect and where a member has demonstrated

by his conduct that this is the case, a reasonable amount of training appears to be a sensible measure. A local authority should be able to require its members to undertake training which is designed to enable them to fulfil their public functions safely and effectively.”

He added “There is no finding as to the claimant’s notices and it may be that he acted in good faith, believing that his statement about the town clerk was justified. However, it was not. He accused her of criminal conduct when there was not the slightest justification for doing so. This was a very serious error of judgement. Therefore, a requirement for training was proportionate.”

- 5.7 However, the Learned Judge accepted that, if a Member refused to take up training, the only sanction was again publicity relating to this failing.
- 5.8 It is also significant that sanctions, for example, restrictions preventing Cllr. Taylor speaking meetings, preventing him attending a meeting and speaking as a member of the public or preventing him from attending the Council offices unless accompanied by the Mayor of the Council were not upheld.
- 5.9 There have been relatively few complaints against Bromley Councillors under the Code of Conduct since 2012. Details of these are summarised in the Exempt Appendix 3 to this report. None of the complaints have passed the threshold for investigation, therefore there has not been engagement with the Independent Persons.

## **6. Independent Persons**

- 6.1 The Localism Act 2011 required the Local Authority to have appointed at least one independent person to support the standards system. The provisions prevent individuals who have recently been Members or officers of the authority from being appointed.
- 6.2 Both Dr. Davey and Mr. Marcar were Independent Members of the previous Standards Committee who were retained as independent persons under a dispensation granted in 2012.
- 6.3 As both individuals have served as Independent Persons since 2012, Members may wish to consider whether they want to advertise for the appointment of Independent Persons to take effect from the Annual meeting of the new Council in May 2018. If this were to be the case, then both Dr. Davey and Mr. Marcar could, of course, reapply.
- 6.4 The problem with going through a recruitment process is that there has not been a lot of standards activity in Bromley over recent years. This is the first meeting of the Standards Committee for some time. In addition, the Council has not received a significant number of complaints relating to Members and, as outlined in Section 5.9 above, these have not required the Monitoring Officer to engage with the Independent Persons. Therefore, if both individuals remain willing to serve, an alternative may be to reappoint.

<b>Non-Applicable Sections:</b>	Impact on Vulnerable Adults and Children/Policy/ Financial/Legal/Personnel/Procurement
Background Documents: (Access via Contact Officer)	None