

THE LOCALISM ACT 2011 – A NEW ETHICAL FRAMEWORK

Reporting Officers: Borough Solicitor and Head of Democratic Services

SUMMARY

1. Council is asked to give consideration to the recommendations of the Standards Committee regarding the adoption of a new ethical framework for the Council in light of the provisions of the Localism Act 2011 ["the Act"]. The Act makes a number of significant changes to the current ethical framework for Members and co-opted members of local authorities and these provisions of the Act come into force on 1 July 2012.
2. On 13 June 2012 the Standards Committee considered a report which set out a proposed new ethical framework, including a new Code of Conduct for Hillingdon Members and co-opted members, which the Committee resolved to recommend to full Council for adoption along with a number of existing documents which have been amended to take into account the changes made by the Act.

RECOMMENDATIONS: That Council:

- a) **note the recommendations of the Standards Committee detailed in the report and approve, w.e.f 1 July 2012, the adoption of a new Code of Conduct for Hillingdon Members and co-opted members in the form set out at Appendix 1, including the Whips' Protocol at Appendix 2;**
- b) **agree to the abolition of the existing Standards Committee and sub-committees and the appointment of a new Standards Committee with Terms of Reference and Procedure Rules as set out in Appendices 4 and 5.**
- c) **appoint the following as Members of the Committee for the remainder of the Municipal Year:**

Conservative: Councillors Riley (proposed Chairman), Corthorne, Hensley and Lewis
Substitutes: Councillors Barrett and Dann

Labour: Councillor Harmsworth (Labour)
Substitute: Councillor East.
- d) **approve a SRA of £3,000p.a to be paid to the Chairman of the Standards Committee to be incorporated into the Scheme of Members' Allowances 2012/13.**
- e) **agree the amendments to the associated documents set out at Appendices 3, 7 & 8;**
- f) **note the expressions of interest received for the role of Independent Person (Appendix 6) and agree to appoint Mr Allan Edwards to that role until 30 June 2013 in recognition of the experience he has gained as former Chairman of the Standards Committee and that he be paid a SRA of £1,500**

in recognition of the significance of the role – the payment to be incorporated into the Scheme of Members' Allowances 2012/13.

- g) agree to review the effectiveness of the new ethical framework in 12 months time.**

BACKGROUND INFORMATION

Duty to Promote and Maintain High Standards of Conduct

3. Section 27 of the Act requires the Council to promote and maintain high standards of conduct by its Members and co-opted members and in discharging this duty, it must adopt a code of conduct. The Council can either revise its existing code or adopt a replacement code.
4. The Act is much less prescriptive than the Local Government Act 2000 in terms of what a code of conduct must contain and this is exemplified by the fact that that it has dispensed with the requirement that the Council must adopt a national model code.
5. However, Section 28 of the Act requires that any code which is adopted by the Council has to be consistent with the following seven principles [commonly know as the Nolan principles of standards in public life]:
 - selflessness;
 - integrity;
 - objectivity;
 - accountability;
 - openness;
 - honesty;
 - leadership.
6. Furthermore, a code has to provide for what the Council considers appropriate in respect of the registration in its register and disclosure of both pecuniary and non-pecuniary interests.

A Proposed New Code of Conduct

7. The Standards Committee agreed that any new Code should be 'minimalist' in nature and based on the Nolan principles. Both the DCLG and the LGA have issued suggested codes for use by local authorities. The DCLG version is the more minimalist of the two, being less prescriptive and cumbersome than the LGA model. A code based on the DCLG code is attached as Appendix 1 and is being recommended for adoption by the Standards Committee.
8. The Government has very recently issued the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 which set out the definition of pecuniary Interests to be included in Part 2 of the proposed new Code of Conduct. The requirements for notification and disclosure of such interests are also set out in Part 2. It is now a criminal offence under the Act for a Member or co-opted member, without reasonable excuse, to fail to give notification of a pecuniary interest or fail to disclose it.

9. Subject to the approval of the Code by Council, all Members will be required to indicate in writing within 28 days, that they will agree to abide by its contents. In addition all Members will be required within the same timescale to complete a Register of Disclosable and other interests form for the publicly available Register. The Head of Democratic Services will write to all Members immediately after Council setting out these requirements.

A New Complaints Procedure

10. The Standards Committee noted the extremely limited range of sanctions available under the new regime which can be imposed against Members or co-opted members who have been found to have breached the new code of conduct.
11. Furthermore, under the new regime Hillingdon will wish to avoid as far as possible in having to deal formally with a proliferation of complaints which are time-consuming, potentially expensive and distressing for the Members concerned. Therefore, a Whips Protocol has been developed, which is attached as Appendix 2, which is designed to deal with the majority of complaints made by both Hillingdon Members and members of the public. The Protocol has been drafted with input from Members of both political groups and it is intended to be the precursor to the formal complaints process and will be the first port of call when complaints are made against Members and co-opted members.
12. The Act requires the Council to have in place arrangements under which firstly, complaints can be investigated and secondly, decisions on complaints can be made. In spite of the existence of the Protocol, there will still be a number of complaints which will be subject to the formal process. Therefore, the current Members' Code of Conduct complaint form, which is attached as Appendix 3, has been amended to bring it up to date.
13. The Act no longer makes it a requirement to have a Standards Committee in place. Members of the Standards Committee are, however, unanimously in favour of retaining this Committee. They are also of the view that that the Standards Committee should largely retain its current terms of reference and should continue to have a process in place to deal with complaints against Members and co-opted members.
14. It is recommended that the three Sub-Committees which have been set up by the Standards Committee [the Assessment, Review and Hearings Sub-Committees] should be abolished and that under the new system, the Standards Committee itself will both assess and hear complaints against Members and co-opted members. It is also proposed that its membership will reduce from 9 to 5 to facilitate this new role for the Committee. A copy of the revised terms of reference and procedure rules for the Standards Committee are attached as Appendices 4 & 5.

Independent Person

15. The Act envisages a new role for an Independent Person, set out in section 28[7], which states that there must be provision for the appointment by an authority of at least one Independent Person whose views are to be sought and taken into account in relation to the conduct of a Member or co-opted member of the authority.

16. The Act originally barred existing Standards Committee members who within the last five years have been a Member, co-opted member or officer of the authority in question from being appointed as the Independent Person.
17. However, the Government has recently made transitional provisions allowing an authority to appoint a person as an Independent Person who, although not a member or chairman of a Standards Committee at the time of appointment [or thereafter] has held such a post within the last five years. This transitional provision would apply for the first year of the new arrangements [i.e. until 30 June 2013] and any person appointed under the transitional provisions would be able to continue to hold office after the transitional period, for whatever term the Council saw fit.
18. The retained Independent Person would not be a member of the Standards Committee but provision would be made for Standards Committee Members to consult with him in the event that a formal complaint is made against a Hillingdon Member or co-opted member.
19. The Act requires that any such appointment be made after the position has been advertised to the general public. Accordingly, the Monitoring Officer has invited, through advert, expressions of Interest for the role of Independent Person. Two such expressions have been received and are attached at Appendix 6 for Members' consideration.

The Planning Code of Conduct for Members

20. Two main changes have been made to this document which is attached as Appendix 7. Firstly, the reference to personal and prejudicial interests which exist in the current Code have been deleted and have been replaced by disclosable pecuniary interests. Secondly, under the heading 'Fettering discretion in the planning process', the new provisions on predetermination introduced by the Act have been inserted.

The ICT Usage Policy for Members

21. A copy of the amended Policy is attached as Appendix 8. There are two main changes to this Policy. Firstly, a number of existing provisions within the current Members' Code of Conduct have been deleted. Secondly, there is a new paragraph, which has been lifted from paragraph 4[7] of the proposed new Code which deals with the prohibition of the use of Council resources for party political purposes, particularly in an election period, unless a Member or co-opted member pays for the use of the resources at a rate agreed by the Council.

Financial Implications

22. There are no specific financial implications arising from this report. However, the adoption of a Whips Protocol will hopefully assist in resolving complaints without having to resort to expensive, independent investigations.

Legal Implications

23. The legal implications are contained in the body of the report.

Background Papers: Localism Act 2011; Code of Conduct for Members.