

FUTURE OF THE STANDARDS BOARD REGIME

*Reporting Officers: Raj Alagh, Borough Solicitor and Monitoring Officer;
Lloyd White, Head of Democratic Services and Deputy Monitoring Officer.*

PURPOSE OF THE REPORT

To provide Members with a range of options to consider for the future of a locally based Standards regime for adoption once the current regime is abolished as a part of the Localism Act 2011.

SUMMARY

The Government set out its intention to abolish the Standards for England regime in the coalition agreement published in May 2010. It is intended to effect the abolition through the Localism Bill which was introduced to Parliament on 13 December 2010, once it is enacted. Details of the Bill are available on the Department for Communities and Local Government website. It is likely that Standards For England will cease to investigate complaints in late 2011 and will be formally abolished in early 2012.

RECOMMENDATIONS: That:

- a) **consideration be given to the options outlined in the report for recommendation to Council and specifically a voluntary Code of Conduct for elected Members of the London Borough of Hillingdon**
- b) **in the event that the adoption of a voluntary Code of Conduct for Members is recommended, to approve a strategy for devising such a Code for adoption by Council.**

INFORMATION

In summary the Government's proposals are:

- to abolish Standards for England
- to remove the First-tier Tribunal's (Local Government Standards in England) jurisdiction over Member conduct
- to remove the national Code of Conduct for Councillors and the requirement to have a Standards Committee
- to allow councils to choose whether or not they wish to have a local code or / and a Standards Committee
- to create a criminal offence relating to failure to register or declare interests

At the last meeting, Members discussed in detail the implications of these proposals and the potential risks they presented to the future ethical standards of the authority. Members felt strongly that there should be a voluntary, local Code of Conduct so that the electorate can have confidence in the way Members conduct themselves and make decisions.

Although the proposals are not expected to be implemented until 2012, it was suggested by Members that detailed options should be presented to this meeting for the adoption of a local Code of Conduct and Standards regime in order that proposals could be put forward to full Council for adoption.

This report therefore seeks to set out the options available to Members when considering the future of Standards within Hillingdon. Proposals arising from these options will form the basis of a recommendation to Council for a new system to be in place when the current Standards regime ceases to exist.

Options for the future of the Standards Regime in Hillingdon

Issue	Recommended Option	Alternative Options
<p>When the national Code of Conduct for Councillors is abolished, does LBH wish to adopt a local Code which Members must agree, in writing, to be bound by?</p>	<p>Yes. The adoption of a Code will provide reassurance to the public that the Council takes it's ethical standards seriously and will provide a framework for behaviour and decision making which must be adhered to by all elected officials and to which they can be held accountable.</p>	<p>No – the Act will retain the requirement for Members to register and declare all personal interests. Failure to comply will result in criminal investigations as would failure to comply with any of the other contents of the former Code which relate to primary legislation such as Equalities legislation or bullying in the workplace etc. Other matters which would have amounted to breaches of the former Code would, however, go unpunished.</p>
<p>If a Local, voluntary Code is to be adopted, what form should it take?</p>	<p>A small working party to be established to consider the content of a voluntary Code based on the existing Code, local requirements, views of Members, experiences of other authorities etc. the Working Party to report back to the main Standards Committee.</p>	<p>The existing Code could be adopted. This is not recommended as it is recognised that there are certain elements of the Code which are too prescriptive and unworkable. This is why it is being abolished.</p>
<p>If a 'local' Code is adopted should it be accompanied by a complaints procedure and an investigatory regime?</p>	<p>Yes. The Bill states that if a written allegation is made to a relevant authority that a member or co-opted member of the authority has failed, or may have failed, to comply with its Code of Conduct, it must consider whether it is appropriate to investigate the allegation, and if it decides that an investigation is appropriate, investigate the allegation in such manner as it thinks fit.</p> <p>If a Code is adopted and Members agree in writing to abide by it then it logically follows that there should be a mechanism whereby alleged breaches of the Code can be assessed, investigated and, if necessary, punished. This would also provide reassurance that the Council takes these matters seriously.</p>	<p>No – other than those offences outlined above which would result in criminal investigations, other alleged breaches of the locally adopted Code would not be the subject of an investigation which would call into question the viability of having a Code at all.</p>

Issue	Recommended Option	Alternative Options
<p>By whom should a local complaints procedure be administered and managed?</p>	<p>a) The adoption of a 'Whips Protocol', whereby initial referral of complaints by Members to the appropriate Whips' Office becomes the normal procedure. This would formalise the process which used to be the accepted practice in Hillingdon until the introduction of the current complaints procedure in 2008. Should complaints remain unresolved then a formal procedure would be instigated in which the Whips' Office should <u>not</u> participate to assure complainants of the impartiality of the process.</p> <p>b) an independent peer review process - similar to the current set up whereby a sub-committee(s) of the main Standards Committee would assess and determine complaints to a format as approved by Council. This has worked effectively to date although the process does require review.</p>	<p>A totally independent process? – refer all complaints to an independent body, such as the police or another authority. This would be in line with the spirit of the Act but would remove all influence over the process from the Council.</p> <p>The Monitoring Officer alone? – this could place undue pressure on the Monitoring Officer and runs the risk of politicising him.</p>
<p>Assuming the adoption of a formal complaints process, which features of the current process should be retained or amended?</p>	<p>Assessment - this Stage should be retained but both complainant and Subject Member should be offered the opportunity to attend the meeting of the Sub-Committee to submit representations in support of / to refute the complaint.</p> <p>Review – In order to streamline and the process, consideration should be given to this stage being discontinued and that the determination of the Assessment stage be final.</p> <p>Independent Investigation – It is recommended that this practice should continue. The importance of maintaining the independence of any investigation should not be underestimated in maintaining the integrity of the process and the public confidence in it.</p> <p>Hearing – Once an investigation has been concluded the report into the allegation is considered by a Hearings Sub-Committee who also decide upon any relevant punitive action. It is recommended that this Stage should be retained.</p>	
<p>What powers of censure will the revised local process actually have?</p>	<p>Recommended that the Monitoring Officer draw up a list of sanctions in relation to proven breaches of the Code of Conduct for approval by Council once the exact and final contents of the Localism Act are known.</p> <p>The Bill states that, if a relevant authority finds that a Member or co-opted Member of the authority has failed to comply with its Code of Conduct it may have regard to the failure in deciding whether to take action in relation to the</p>	<p>The Council could decide that all investigations and punishments be carried out by the Police.</p>

Issue	Recommended Option	Alternative Options
	<p>Member or co-opted Member and what action to take.</p> <p>It does not specify what that action may or may not be although any sanction would need to be reasonable and proportionate.</p> <p>In relation to a failure to register or disclose a financial or other interest, the Bill states that the sanctions that an authority may impose on a Member do not include provision for the suspension or partial suspension of a person from being a Member of the authority, or for the disqualification of a person for being or becoming (by election or otherwise) a Member or co-opted member of that or any other relevant authority. These sanctions are reserved for any criminal prosecution that may arise.</p>	
<p>Should the Council maintain a Standards Committee to monitor and report on the ethical health of the authority and should that Committee be independently chaired?</p>	<p>Yes. If the Council chooses to adopt a local Code of Conduct then a Standards Committee is essential in ensuring compliance with this and a range of other indicators designed to assure the public of the ethical health of the authority.</p> <p>The role of independent members is defined in current legislation but there will be no requirement for this in the Localism Bill. Recommended that the inclusion of 3 independent members (including Chairman & Vice-Chairman) on the Standards Committee be maintained but on a fixed term of four years, to run concurrently with the municipal cycle (i.e. new appointments to be made in 2014).</p> <p>Once the term of office expires the positions would be advertised to the general public. The current occupants of the role would also be entitled to re-apply. This would, it is suggested, help to assure the public and Members of the impartiality of the Standards Committee and allow interested parties the opportunity to apply to become involved in that process should they so wish. The actual appointments would be made by Council based on the recommendation of the Standards Committee.</p>	<p>No – this role of the Standards Committee could be reserved to full Council through a series of regular reports. It is difficult to see how this arrangement would work effectively in practice.</p>

CONSULTATION CARRIED OUT OR REQUIRED

These proposals have not been the subject of any formal consultation. The Localism Act does not require any formal consultation before the adoption of a local Code. Members are invited to consider whether the proposals should be subject to consultation before approval by Council.

Financial Implications

Corporate Finance has reviewed this report and is satisfied that there are no additional financial implications arising from the recommendations in this report. Nationally the existing Standards regime was deemed to be costing Councils excessive financial penalties in investigations etc. A strong and effective ethical regime supported by an effective complaints procedure should protect the Council from unnecessary financial risk.

In relation to complaints from Members against other Members, the use of a 'Whips protocol' may result in less formal complaints being made which, in turn, may potentially reduce the requirement for independent investigations to be carried out.

Legal Implications

The proposals contained in this report are in accordance with and based upon the provisions contained in the Localism Bill 2010.

Background Papers: Localism Bill; Code of Conduct for Members.