



**Standards Committee
22 March 2011**

**Report from Director of
Legal and Procurement**

Localism Bill – Proposed Changes to the Standards Regime

1. Summary

- 1.1 This report details the provisions of the Localism Bill concerning standards in Local Authorities, the likely changes and their implications for Brent. The arrangements which the Bill proposes will allow local authorities to make their own decisions as to how to regulate the conduct of their members and proposes the end of the Body Standards for England. However, new criminal offences will be introduced, relating to failure of members to register or disclose interests and their participation in local authority business contrary to restrictions as set out in legislation.

2. Recommendations

- 2.1 To consider and comment upon the options set out in paragraph 3.14 of this report.

3. Detail

- 3.1 The Localism Bill was published in December 2010. It is a significant document for the local authority with implications for many different areas of the Council's work and its legal responsibilities. This report focuses on the implications the Bill will have, subject to enactment and change through the legislative process in relating to promoting, monitoring and enforcing high standards of conduct amongst members.
- 3.2 The legislation sets out the framework but much has been reserved for secondary legislation, which has yet to be published, even in draft. The reforms proposed to the existing standards regime are radical in nature although it is unclear how some will work in practice.
- 3.3 The implementation of the proposed changes appears likely to be with effect from early 2012. There are transitional provisions which make it clear that any cases which are ongoing under the current scheme will proceed to their

conclusion but all will have to be dealt with by the local Standards Committee instead of Standards for England this will result in local hearings on all matters including those of significant alleged misconduct by Members. The Standards Committee in its current statutory form will remain in place until all outstanding cases have been dealt with. Currently there is one outstanding matter due to return to `Brent `local standards committee and one with standards for England currently being investigated.

Proposed new conduct provisions

- 3.4 Standards for England will be abolished, once the Secretary of State makes the necessary order, as will the existing Members' Code of Conduct and the processes and procedures relating to enforcement.
- 3.5 The Bill proposes that the council will have a duty to promote and maintain high standards of conduct by members and co-opted members although there are no specific requirements about how that is to be achieved.
- 3.6 The council may adopt a code dealing with the conduct that is expected of members and co-opted members when they are acting in that capacity but there is no requirement that it should. There has been considerable debate across the country and specifically in London as to whether local codes should be adopted by members. Currently the Association of Council Secretaries and Solicitors (ACSeS) is drafting a suggested amended code and procedure as a starting point for a London based code. It is likely to be heavily based on the current code (Appendix 1). There are some interesting considerations which will arise from such proposals. This include the use of independent members of standards committees, which officers believe have very much been seen as a valuable asset to an Authority, although there will no longer be a requirement. One beneficial aspect to any new regime would be the lessening of the requirement currently that all matters are referred following a complaint to the Standards Committee by the Monitoring Officer without discretion. This has led to some complaints being put through committees, when in reality an alternative solution was possible and more effective.
- 3.7 If a Council has adopted a Code of Conduct and receives a written allegation that a Member has or may fail to comply with it, then the Council must consider whether to investigate it and if so, how. A decision to have a code does therefore potentially have resource implications as the current drafting of this provision means that in the absence of a code there is no legal obligation to consider a complaint. However, in such circumstances, depending upon the nature and seriousness of the complaint, the council might need to deal with the matter in some other way in order to avoid being in breach of the obligation to promote and maintain high standards. If a code is adopted the investigation and hearing process is not prescribed and is therefore a matter for the Council to decide. As mentioned in paragraph 3.6 above ACSeS is drafting procedures for consideration.
- 3.8 It will be possible, but not a requirement, to continue to have a Standards Committee charged with promoting and maintaining high standards of conduct by members, but the specific legal requirements for the current committee would no longer apply. The committee would not have any power to suspend

or disqualify a member found to be in breach of a new code. Censure, or a recommendation for training, or a decision to restrict a councillor's access to the local authority's officers, premises and facilities would still be available but may be unenforceable. There has been consideration given in some areas whether a sanction that could be utilised for breaches of the code could include a suspension or with drawl of allowances pending an action. This is likely to be a controversial consideration but is actively being considered in some authorities as a way forward.

- 3.9 In practice it may be very difficult for any local authority to enforce any requirements or restrictions it decides to impose on a member if the member chooses to ignore them. It is likely in those circumstances that the party groups would need to have a role in taking appropriate steps where the conduct a member of their group was found to have breached the code.
- 3.10 The legislation allows the Secretary of State to make regulations requiring the Monitoring Officer to establish and maintain a register of interests. The regulations may include details of what sort of matter needs to be registered, provisions requiring the disclosure and possible withdrawal of Members with those interests and powers to grant dispensations to those members so they can, despite the interest, participate. The regulations may also include some details of sanctions the Council can impose on Members who fail to comply with these registration requirements (but not suspension or disqualification) and the requirement to make the register available to the public. This could in principle result in a similar regime to the current one in respect of registers of interests and disclosures. Although it is not clear how it will work in practice.
- 3.11 A failure to comply with the provisions relating to registerable interests (should such provisions be introduced) "without reasonable excuse" will be a criminal offence. This will attract a fine of up to level 5 being currently £5,000. The court can also disqualify the member for up to five years. Only the Director of Public Prosecutions can authorise and bring a prosecution for an offence under these provisions so they will only be used for serious cases.

Changes to the common law pre-determination rules

- 3.12 Although this is not a conduct matter as such, it is also worth considering in this context the proposal in the Bill about "predetermination" which have previously been developed in case law. Currently, if a member participates in decision making, particularly quasi judicial decision making, with a closed mind, this may be a ground upon which the decision can be judicially reviewed. Case law has established that it is acceptable for a member to have a predisposition towards making a particular decision about a matter before hearing the arguments, but must not have decided in advance. Recent court decisions have recognised the role that politics play in the decision making processes in local authorities and have recognised that elected members would be entitled to have expressed their views on local issues, including, for example, planning issues.
- 3.13 Under the provisions in the Bill a decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or

might take, in relation to a matter, relevant to the decision. This may simply be codifying the position at common law. The provision is not regarded as this stage as substantially modifying the law on pre-determination.

Decisions to be made by the Council

- 3.14 Full Council will need to make a number of decisions in respect of its future approach to members' conduct in order to respond to the new legal provisions and listed below are the fundamental issues to be considered:
- i Whether to have a code of conduct at all
 - ii If the Council has a code, what form that will take and whether to adopt provisions that are either the same or similar to those being adopted elsewhere particularly taking into account the work being done at the moment on a code for London Authorities
 - iii What procedure to have in place for the investigation of complaints about the conduct of members and the process for referrals to any Standards Committee again having regard to the work by ACSeS.
 - iv What future role the Council sees for a Standards Committee in promoting and maintaining high standards of conduct, and the potential make up of the committee as to inclusion in principle of independent members

Conclusion and recommendations

- 3.15 The proposals in the Localism Bill for changes to the Council member's conduct regime will make significant changes to current arrangements particularly in the area of enforceability and sanctions. A number of decisions will need to be made by members in due course to implement the changes and members are asked to consider and comment upon the information in this report. The current work being undertaken by ACSeS should be considered by members when looking at what will be most useful for the Authority to demonstrate promotion of high ethical standards and behaviours of its elected members

4. Financial Implications

There will be a potential saving in relation to the allowance paid to Independent members should it be decided that such members were no longer required (4 X £415 p/a). In addition there will be a potential saving on the numbers of external investigations undertaken, however in Brent this has not been a large financial issue

5. Staffing Implications

None.

6. Diversity Implications

None

7. Legal Implications

These are contained in the body of the report.

Background Information:

Localism Bill 2010

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BRENT MEMBERS CODE OF CONDUCT

Part 1

General provisions

Introduction and interpretation

1. (1) This Code applies to **you** as a member of an authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State.
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code
"meeting" means any meeting of -
 - (a) the authority;
 - (b) the executive of the authority;
 - (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

"member" includes a co-opted member and an appointed member.

Scope

2. (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you –
 - (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
 - (b) act, claim to act or give the impression you are acting as a representative of your authority,and references to your official capacity are construed accordingly.
- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.
- (4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

- (5) Where you act as a representative of your authority –
- (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3. (1) You must treat others with respect.
- (2) You must not –
- (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
 - (b) bully any person;
 - (c) intimidate or attempt to intimidate any person who is or is likely to be
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings,in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
 - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
4. You must not –
- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where -
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or

- (b) prevent another person from gaining access to information to which that person is entitled by law.
- 5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
- 6. You –
 - (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - (b) must, when using or authorising the use by others of the resources of your authority -
 - (i) act in accordance with your authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- 7. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by –
 - (a) your authority's chief finance officer; or
 - (b) your authority's monitoring officer,where that officer is acting pursuant to his or her statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2

Interests

Personal interests

- 8. (1) You have a personal interest in any business of your authority where either –
 - (a) it relates to or is likely to affect -
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority.
 - (ii) any body -
 - (aa) exercising functions of a public nature;
 - (bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

- (iii) any employment or business carried on by you;
 - (iv) any person or body who employs or has appointed you;
 - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
 - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
 - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
 - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
 - (ix) any land in your authority's area in which you have a beneficial interest;
 - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
 - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
- (2) In sub-paragraph (1)(b), a relevant person is –
- (a) a member of your family or any person with whom you have a close association; or
 - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

- 9.**
- (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
 - (2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
 - (3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
 - (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
 - (5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
 - (6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
 - (7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Prejudicial interest generally

- 10.**
- (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
 - (2) You do not have a prejudicial interest in any business of the authority where that business –
 - (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

- (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
- (c) relates to the functions of your authority in respect of -
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

- 11.** You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where -
- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
 - (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

- 12.** (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority -
- (a) you must withdraw from the room or chamber where a meeting considering the business is being held -
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;
- unless you have obtained a dispensation from your authority's standards committee;

- (b) you must not exercise executive functions in relation to that business; and
 - (c) you must not seek improperly to influence a decision about that business.
- (2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3

Registration of Members' Interests

Registration of members' interests

13. (1) Subject to paragraph 14, you must, within 28 days of
- (a) this Code being adopted by or applied to your authority; or
 - (b) your election or appointment to office (where that is later),
- register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.
- (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

Sensitive information

14. (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.
- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.
- (3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

THE 10 GENERAL PRINCIPLES OF CONDUCT

Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

5. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal Judgement

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to Uphold the Law

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

