



Full Council
9 July 2012

**Report from Director of Legal and
Procurement Department**

For action

Wards affected
All

**New Code of Conduct and Standards Regime under the
Localism Act 2011**

1. Summary

A report to inform members of the implications of the Localism Act 2011 in relation to the Member's Code of Conduct, the Standards arrangements and the regulations published on 8th June 2012 setting out the pecuniary interests and to invite Members to adopt the new arrangements. The Localism Act makes reference to the Monitoring Officer who at Brent Council is the Director of Legal and Procurement.

2. Recommendations

That Members

- 2.1 Note the implications of the Localism Act 2011 and in particular that it places an obligation on the council to promote and maintain high ethical standards by its members and co-opted members.
- 2.2 Agree to adopt the Code of Conduct for Members attached as Appendix 1 to this report.
- 2.3 Note the sanctions available to the Full Council in relation to members found to be in breach of the new Code of Conduct set out in paragraphs 12 and 16.7 of this report.
- 2.4 Agree to appoint a new Standards Committee with the terms of reference attached as Appendix 2.
- 2.5 Agree to allocate the seats on the new Standards Committee as set out in paragraph 14.3 of this report.

- 2.6 To appoint a non-voting co-opted member (and alternate) to the new Standards Committee.
- 2.7 Agree to delegate to the Monitoring Officer the decision to refer a written complaint to Standards Committee and to take other action, including no action.
- 2.8 Agree to appoint two 'independent persons' to fulfil the role set out in paragraph 13 of this report.
- 2.9 Agree that delegated authority be given to the Monitoring Officer to take decisions in relation to dispensations, as set out in the Code of Conduct.
- 2.10 Agree that delegated authority be given to the Monitoring Officer, to draw up and agree detailed procedures to support the Code of Conduct and the new standards regime, including detailed powers and duties and procedures for the new Standards Committee following consultation with the Constitutional Working Group.
- 2.11 Note that the new Standards Committee will review and refine the detailed procedures and operation of the new regime at a meeting during the 2012/13 municipal year.
- 2.12 Note the advice note from the Monitoring Officer to all members in relation to the definition of Pecuniary Interests attached as Appendix 3.
- 2.13 Agree that the Constitution be amended in accordance with the track changes shown at Appendix 4.

3. Detail

- 3.1 The Localism Act 2011 received Royal Assent on 15th November 2011 which included changes to the arrangements for Members' Code of Conduct and standards matters. The Government issued guidance and regulations on 8th June 2012 setting out rules regarding pecuniary interests and maintenance of a register of interests.

4. Duty to promote and maintain high standards of conduct

- 4.1 The Act places an obligation on the council to promote and maintain high standards of conduct by Members and co-optees. A co-opted Member is defined as an unelected person who is also a member of a committee or sub-committee or Council representative on a joint committee or joint sub-committee and who is entitled to vote on any question which falls to be decided by any of these meetings.
- 4.2 Members are advised that the Code of Conduct will also be applied to the non-voting co-opted members.
- 4.3 Under the proposed new Standards Committee the independent member will be a non-voting co-opted member of the committee.

5. Duty to have a Code of Conduct

- 5.1 In promoting and maintaining high standards, the council must adopt a Code of Conduct for members and co-optees when they are acting in that capacity (i.e. as a member or co-optee).
- 5.2 The Council's Code must cover the following 7 principles specified in the Act:
- Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership

6. Registration of interests

- 6.1 The council must ensure that its Code of Conduct includes provisions it considers appropriate for the registration in a register, and disclosure of:-
- pecuniary interests, and
 - non pecuniary interests.
- 6.2 The council's Monitoring Officer must establish and maintain a register of interests. That register must be available for public inspection and published on the council's website.

7. Disclosure of pecuniary interests

- 7.1 A Member or co-optee must, before the end of 28 days from the date of election to office or appointment as a co-optee, notify the Monitoring Officer of any disclosable pecuniary interests.
- 7.2 A pecuniary interest is a disclosable pecuniary interest in relation to a person (as specified in regulations) and either –
- (a) It is the Member or co-optee's interest, or
 - (b) It is an interest of:
 - (i) a member's or co-optee's spouse or civil partner,
 - (ii) a person with whom a member or co-optee is living as husband and wife, or
 - (iii) a person with whom a Member or co-optee is living as if they were civil partners,and the Member or co-optee is aware that the other person has the interest.
- 7.3 The definition of pecuniary interest is set out in Appendix 3.

8. Disclosure of pecuniary interest at meetings

- 8.1 If a Member or co-optee is present at a meeting and has a disclosable pecuniary interest in a matter under consideration, if the interest has not been registered they must disclose it at the meeting.
- 8.2 The Member or co-optee may not participate in the discussions or vote on the matter where they have a disclosable pecuniary interest.
- 8.3 Under the Act the Council's constitution may make provisions for the exclusion of a Member or co-optee from a meeting while discussion and voting takes place and the Code has been drafted to include this provision.

9. Sensitive Interests

- 9.1 Where a Member or co-optee has an interest, the disclosure of which the Monitoring Office believes could subject the Member or co-optee to violence or intimidation, the interest should not be placed on the public register. Instead, the register would simply say that the Member or co-optee has an interest, the details of which are withheld under s32 (2) of the Localism Act 2011.

10. Dispensations

- 10.1 The council (or its nominated body or person) may, on written request from a Member or co-optee, grant a dispensation to relieve the applicant from the restrictions on participation and voting. Dispensation may be granted if:-
 - Without the dispensation the number of persons prohibited from participating would be so great a proportion to impede the effectiveness of the meeting,
 - The representation of different political groups would be affected and likely to alter the likely outcome of any voting at the meeting,
 - Granting the dispensation is in the interests of persons living in the Borough,
 - Every Member of the Council's Executive would be precluded from participating in the meeting,
 - It is appropriate to grant a dispensation

Dispensation may be granted for up to 4 years. A dispensation will mean that the Member or co-optee to whom it is granted can speak and vote on a matter in which they have a relevant interest.

11. Political exemptions;

- 11.1 The Local Government and Housing Act 1989 allows for Councils to exempt posts from political restrictions. This function is currently undertaken by the Standards Committee but under the Localism Act is specifically delegated to the Head of Paid Service.

12. Breach of the Code of Conduct

- 12.1 As the Act puts the council under a legal obligation to have a Code of Conduct, it follows that the council must put in place arrangements to deal with complaints about alleged breaches of its Code.
- 12.2 Section 34 of the Act makes it a *criminal offence* without reasonable excuse for a Member or co-optee to fail to comply with the requirements on disclosure of pecuniary interests. Complaints under this provision should be made to and handled by the Police.
- 12.3 A person found guilty is liable to a conviction in the Magistrates Court and a fine not exceeding level 5 (currently £5000). The Magistrates Court are also given the power to disqualify a person from office for a period not exceeding 5 years.
- 12.4 The Act does not provide for sanctions for breach of the Code to be imposed by the council, therefore any findings of a breach would need to be addressed by way of powers that the council has available to it already. For example, public censure, or removal from a committee, apology and/or training.

13 Independent Person

- 13.1 The Act requires each local authority to appoint at least one independent person, whose views should be sought and taken into account before the Council takes a decision in relation an allegation that it has decided to investigate. The views of the independent person(s) may also be sought by the member or co-optee about whom the complaint has been made.
- 13.2 The transitional regulations allow for the appointment of previous independent members of the council provided they are not members of the council on the 1st of July 2012.
- 13.3 Members are recommended to appoint two independent persons.

14 Standards Committee

- 14.1 The Localism Act 2011 abolishes the requirement for the council to have a Standards Committee, although the council has the power to set up a Standards Committee under other legislation. If the council were not to have a standards committee then it would need to put in place some other mechanism to operate and oversee the operation of this Code of Conduct for Members.
- 14.2 Members are advised to appoint a Standards Committee and that the new Standards Committee should be politically balanced. This is a model being widely adopted by other Councils.
- 14.3 The recommended composition of the Standards Committee is set out in the table below. Members are advised against creating a larger committee since it is more effective to conduct any hearings and similar matters with a smaller group.

	Labour Group	Liberal Democratic Group	Conservative Group
Total Council seats	40	17	6
Percentage of seats of the Council	63.49%	26.98%	9.52%
Number of seats on Standards Committee	3	1	1

14.4 The Standards Committee can include non-councillors, however, those non-councillors would have the status of co-optees and would be unable to vote and because of this, it is recommended any future standards committee should be chaired by an elected Member. Notwithstanding the limitation on the role of a co-opted person it is recommended that such be appointed to offer an external view and scrutiny. The ordinary rules on access to information and meetings would apply to work of the Committee.

15 Standards for England

15.1 The Localism Act has abolished Standards for England.

16 Key implications

16.1 A proposed Code of Conduct is set out in Appendix 1 of this report. This Code has been produced following detailed work by the Constitutional Working Group, a cross party working group with officer support. The draft Code aims to preserve the best of the council's existing Code, whilst taking on board the requirements and new priorities of the Localism Act 2012. It should be noted that the Localism Act does not prescribe any of the provisions of the proposed new code of Conduct, save for those relating to the General Principles, dispensations, sensitive interests, and most of those relating to Members Interests. The proposed new Code of Conduct goes considerably further (in terms of standards required of Brent members) than is required by law.

16.2 Disclosure of pecuniary interest: The Monitoring Officer will produce a new form and guidance for members. It is proposed that the council agree that members leave a meeting when they have declared a pecuniary interest, and the draft Code provides for this. It is also recommended that members be required to notify and keep up to date their interests on the Register, even though the Act requires only that interests be registered at the time of election and updated in the event that the member is required to make a declaration during the course of a meeting.

- 16.3 Dispensations: it is proposed that, by reason of the likely time constraints involved, authority be delegated to the Monitoring Officer to deal with dispensation requests. Where the Monitoring Officer is undecided on the best response, and time is not of the essence, the decision could be passed to Standards Committee for decision.
- 16.4 Any alleged breach of the registration of interest's rules should be reported to the police. However a Committee may deal with alleged breach of other parts of the Code of Conduct. The independent person(s) must be consulted before deciding on an allegation it has decided to investigate. It is recommended that the Council delegate authority to the Monitoring Officer to carry out initial filtering of complaints.
- 16.5 Independent Person: it is recommended that the Council appoints 2 Independent Persons, in order to provide some flexibility with regard to availability.
- 16.6 Standards Committee: it is recommended that the council sets up a new Standards Committee, to implement and/or oversee the implementation of the standards requirements of the Localism Act. The recommended terms of reference attached as Appendix 2. It is further recommended that the Monitoring Officer draw up draft procedures for that committee in consultation with the Constitutional Working Group and these be approved by Standards Committee.
- 16.7 Sanctions: the Act prescribes criminal prosecution in respect of breach by members of the provisions within the Code of Conduct relating to registration or declaration of pecuniary interests. However, sanctions for breach of other sections of the Code of Conduct are a matter for the council itself to decide. Because of the lack of statutory force, the council's options are now much more limited than was previously the case. Effectively, options include only censure by Full Council, or a recommendation to Full Council that a member be removed from membership of a particular council body – such as a committee. In addition requirement can be made either for an apology from a member or for training.

17 Financial

- 17.1 There is currently no budget specifically allocated to administration of the standards regime at the council. The workload arising from standards is relatively low, and generally easily absorbed within the workload of the Legal and Procurement Department. However, the demand on resources inevitably increases on occasions when several investigations are in progress at the same time.

18 Legal

- 18.1 The implications of the Localism Act 2011 are set out within the body of the report. It will no longer be a legal requirement that the council has a Standards Committee but members are advised to continue to do so. Although the council is required to have a Code of Conduct for its

members, the form of the Code of Conduct is not prescribed by the Act and subject to reflecting the seven principles set out in the Act the format of the Code is at the Council's discretion.

19. Staffing Implications

None

20. Diversity Implications

None

Background Information:

Localism Act 2011

Brent Council's Constitution

Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012

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