



## GOVERNANCE COMMITTEE

## REPORT

31 May 2012

<b>Subject Heading:</b>	<b>STANDARDS OF MEMBERS' CONDUCT – Localism Act 2011: new Members' Code of Conduct</b>
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<b>Policy context:</b>	The Localism Act 2012 requires the adoption of a new Code of Conduct for Members
<b>Financial summary:</b>	There are no financial implications

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

### SUMMARY

The Localism Act 2011 abolishes, with effect from 1 July 2012, the current statutory regime for regulating Members' standards of conduct, introduced by the Local Government Act 2000.

This report deals with the need for a new Members' Code of Conduct and for mechanisms required to deal with alleged breaches of it.

## RECOMMENDATIONS

1. To **RECOMMEND** to the Council the adoption of the Code of Conduct set out at Appendix 1 to this report.
2. To authorise the Monitoring Officer to amend the section of the Code that deals with interests if necessary to comply with any subsequent secondary legislation on interests
3. To adopt the procedure for investigating and adjudicating on alleged breaches of the Code of Conduct.

## REPORT DETAIL

### Introduction

- 1 The regime for regulating Members' standards of conduct that was introduced by the Local Government Act 2000 will be abolished (apart from any outstanding matters then current) with effect from 1 July 2012 and a new, less prescriptive, regime implemented.
- 2 Local authorities are required "to promote and maintain high standards of conduct by Members" and must adopt a Members' Code of Conduct (referred to in this report as "the Code"). Local authorities will, however, be required to deal with any alleged breaches themselves as the Standards Board for England has been abolished as has the requirement for a Standards Committee. The existing statutory sanctions for breaches of the current Code are also abolished. Aside from the steps required to comply with the terms of the Act, no guidance is expected to be given by the government as to how alleged breaches should be investigated or as to the sanctions that might be applied.
- 3 The Act requires that the Code should reflect the Nolan Principles of Conduct in Public life, which are:

**SELFLESSNESS:** Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

**INTEGRITY:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

**OBJECTIVITY:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

**ACCOUNTABILITY:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**OPENNESS:** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

**HONESTY:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

**LEADERSHIP:** Holders of public office should promote and support these principles by leadership and example.

- 4 The Code must also provide for registration of interests, both pecuniary and non-pecuniary (the current division of interests into “personal” and “prejudicial” is repealed). This is one area where detailed provisions are expected, but the relevant statutory instruments have not yet been finalised by the government.
- 5 The Act requires that allegations of breaches of the Code must be investigated and adjudicated upon. It also provides that if, following investigation, a Member is found to have breached the terms of the Code, he or she may be subjected to “sanctions”, although it does not specify what such sanctions might be. Although under the current regime a range of sanctions is available, including suspension or even disqualification, the new regime will not permit such severe sanctions to be applied.

#### Code of conduct

- 6 The Council's current Code of Conduct, which was based on a national model produced by the Standards Board for the purposes of the current regime, is more complex than is required to comply with the new regime.
- 7 Both the Local Government Association (LGA) and the Department for Communities & Local Government (DCLG) have produced model Codes, and others are available. Appendix 1 to this report is a suggested draft Code for Havering, which is an amalgam of the LGA and DCLG models.
- 8 It will be seen that the proposed Code is greatly simplified, which should make it easier for Members to comply with it. However, such simplification could result in the scope of the Code actually being wider than the current detail/prescriptive Code.

#### Handling allegations of breaches of the Code

- 9 The Localism Act requires that allegations of breaches of the Code must be investigated and, following that investigation, a decision made upon them. The Act is silent as to the means of investigation and how a decision is to be made.
- 10 The Council has already decided that investigations shall be dealt with by Hearings Panels of the Adjudication & Review Sub-Committee. Appendix 2 sets out a suggested approach to the investigation and adjudication of allegations of breaches of the Code.

Registration and disclosure of interests

- 11 There continues to be need for a register of Members' interests, which the Act requires the Monitoring Officer to establish and maintain. The register applies to both elected Members and co-optees.
- 12 The prescriptive requirements of the register that apply in the current regime have been repealed and the Council has some leeway as to what needs to be registered. There are a few statutory requirements but it is for the Council to decide whether to go beyond them. The obligation to register a Member's interests ceases when he or she no longer has the particular interest or ceases to be a Member (unless re-elected or re-appointed). The register must be open to public inspection and published on the Council's website.
- 13 The requirements of the register are that:
  - (a) Within 28 days of election (or appointment, if co-opted) a Member must notify the Monitoring Officer of any disclosable pecuniary interest (other than any interest already disclosed by a re-elected or re-appointed Member)
  - (b) The Secretary of State will by regulation determine what interests are disclosable. Any such interest must be disclosed if it is an interest:
    - (i) of a Member or
    - (ii) of a Member's spouse, civil partner or a person with whom the Member lives as if they were spouses or civil partners, and the Member is aware of that interest
  - (c) The Monitoring Officer must register any interest disclosed, whether or not it is in fact an interest that must be disclosed.
- 14 A Member (elected or co-opted) who has a pecuniary interest in a matter that is being considered at a meeting of the Council, of the Cabinet or of a Committee or Sub-Committee is present at that meeting then he or she must disclose that interest, whether or not it is registered. An interest disclosed at a meeting must be registered within 28 days of that meeting.
- 15 A Member who has disclosed an interest at a meeting must not participate in any discussion of the matter at the meeting, nor vote upon it. Where a decision is to be taken by an individual Cabinet Member, that Member may not take a decision in relation to any matter in which he or she has a pecuniary interest. It is for the Council to decide whether any Member who has made a disclosure should withdraw from the meeting as well as not participate in discussing or voting upon it.
- 16 In certain circumstances, where a Member (or a person connected with that Member) could be subjected to violence or intimidation, such an interest must not be on the public part of the register nor need details of it be disclosed at a meeting.
- 17 The Council may (by decision at a meeting of the full Council) grant a dispensation from the obligation to make a disclosure where
  - (a) So many Members would be prohibited from participating that the transaction of business would be impeded; or

- (b) Without a dispensation the balance of the representation of different political groups would be so upset as to impede the truncation of business; or
  - (c) It is in the interests of persons lining within he area that a dispensation be granted; or
  - (d) Without the dispensation, each Member of the Cabinet would be prohibited from participating or
  - (e) it is otherwise appropriate to grant a dispensation.
- 18 Once granted a dispensation applies for a maximum of four years.
- 19 Failure to register or to disclose a disclosable interest, without reasonable excuse, is an offence, as is participating or voting on a matter in which a Member has a disclosable interest. It is also an office knowingly to make a misleading, reckless or untrue disclosure. Conviction for such an offence, in addition to a heavy fine, could result in up to five years' disqualification. A prosecution for these offences may be instigated only by, or on behalf of, the Director of Public Prosecutions.

## **IMPLICATIONS AND RISKS**

### **Financial Implications and Risks**

There are no significant or specific financial implications or risks arising from this report.

### **Equalities and Social Inclusion Implications and Risks**

No specific implications or risks have been identified. The maintenance of high standards of conduct by Members is in the interest of all sections of the community.

Members will be expected to:

- Behave in accordance with all the Council's legal obligations, alongside any requirements contained within its policies, protocols and procedures, including those on the use of the Council's resources.
- Value colleagues and staff, engaging with them in an appropriate manner and one that underpins the mutual respect between Members and staff that is essential to good local government.
- Treat people with respect, including the organisations and public they engage with and those they work alongside.
- Comply with the Council's Equality in Employment, Equality in Service Provision and Harassment and Bullying at Work Policy

### **Environmental Implications and Risks**

There are no implications or risks for the environment.

### **Legal Implications and Risks**

The Localism Act obliges the Council to adopt a Code of Conduct and to take specified measures to ensure compliance with it.

Failure to carry out the duties imposed by the Act would risk challenges by way of judicial review and/or the Local Government Ombudsman; and could also expose the Council to a risk of decisions being challenged and over-turned.

### **Human Resources Implication and Risks**

There are no implications or risks for Human Resources.

**BACKGROUND PAPERS**

Model Codes of Conduct suggested by the Local Government Association and the Department for Communities and Local Government.

## DRAFT

### LONDON BOROUGH OF HAVERING

#### Members' Code of Conduct

Members or co-opted members of the Council of the London Borough of Havering have a responsibility to represent the community and work constructively with the Council's staff and partner organisations to secure better social, economic and environmental outcomes for all.

#### Principles of conduct in public office

In accordance with the provisions of the Localism Act 2011, when acting in the capacity of a Member, they are committed to behaving in a manner that is consistent with the following principles to achieve best value for the Borough's residents and to maintain public confidence in the Council.

**SELFLESSNESS:** Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

**INTEGRITY:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

**OBJECTIVITY:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

**ACCOUNTABILITY:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**OPENNESS:** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

**HONESTY:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

**LEADERSHIP:** Holders of public office should promote and support these principles by leadership and example.

#### Personal conduct

Accordingly, Members must act solely in the public interest and:

- never improperly confer an advantage or a disadvantage or seek financial or other material benefits for family members, friends or close associates

## Governance Committee, 31 May 2012

- never place themselves under a financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties
- make all decisions on merit alone
- are accountable to the public for their decisions and must co-operate fully with whatever scrutiny is appropriate to their office
- be open as possible about their decisions and actions, and those of the Council, be prepared to explain the reasons for those decisions and actions
- declare any private interests, pecuniary or non-pecuniary, that relate to their public duties and take steps to resolve any conflicts of interest that arise, including registering and declaring interests in accordance with the Council's agreed procedures
- ensure that they do not use, nor authorise the use by others of, facilities provided by the Council for any purpose that would be improper, including for party political purposes, and must have regard to any Local Authority Code of Publicity made under the Local Government Act 1986
- promote and support high standards of conduct when serving in their public post, in particular as characterised by the requirements of this Code, by leadership and by example

As a Member of the Council, each Member will in particular address the statutory principles of the code of conduct by:

- Championing the needs of residents – the whole community and in a special way their constituents, including those who did not vote for them - and putting residents' interests first.
- Dealing with representations or enquiries from residents, members of local communities and visitors fairly, appropriately and impartially.
- Not allowing other pressures, including their own financial interests or those of others connected to them, to deter them from pursuing constituents' casework, the interests of the Borough or the good governance of the Council in a proper manner.
- Exercising independent judgement and not compromising their position by placing themselves under obligations to outside individuals or organisations who might seek to influence the way they perform their duties as members/co-opted members of the Council.
- Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
- Being accountable for their decisions and co-operating when scrutinised internally and externally, including by local residents.
- Contributing to making the Council's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding members to account but restricting access to information when the wider public interest or the law requires it



## Governance Committee, 31 May 2012

- Behaving in accordance with all the Council's legal obligations, alongside any requirements contained within its policies, protocols and procedures, including on the use of the Council's resources.
- Valuing colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between Members and staff that is essential to good local government.
- Always treating people with respect, including the organisations and public they engage with and those they work alongside.
- Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within the Council.

Members will be expected to:

- Behave in accordance with all the Council's legal obligations, alongside any requirements contained within its policies, protocols and procedures, including those on the use of the Council's resources.
- Value colleagues and staff, engaging with them in an appropriate manner and one that underpins the mutual respect between Members and staff that is essential to good local government.
- Treat people with respect, including the organisations and public they engage with and those they work alongside.
- Comply with the Council's Equality in Employment, Equality in Service Provision and Harassment and Bullying at Work Policy

### Pecuniary and non-pecuniary interests

The Act further provides for registration and disclosure of interests and in Havering, this will be done as follows:

#### Registration

A disclosable interest must be notified to the Monitoring Officer, who shall arrange for it to be registered in the Council's register immediately following receipt:

- (a) within 28 days of taking office as a Member or Co-opted Member and
- (b) forthwith in any other circumstances.

"Interest" includes not only interests of the individual Member but also those of the Member's spouse, civil partner (or a person with whom the Member lives as spouse or civil partner).

Notice of an interest will be placed in the public part of the register unless the Monitoring Officer is satisfied that, pursuant to s.32 of the Localism Act 2012 it is sensitive and should not be made public.

#### Disclosure

A Member must disclose an interest at any meeting at which a matter to which it relates is considered. Once an interest has been disclosed, the Member may not participate in the

**Governance Committee, 31 May 2012**

discussion of, or voting on, that matter but may, with the permission of the Chairman of that meeting, remain in the meeting room.

**Proposed procedure for investigating and deciding allegations of breaches of the Members' Code of Conduct**

- 1 All allegations that a Member (including a co-opted Member) has breached the Council's Members' Code of Conduct shall be referred in the first instance to the Monitoring Officer, who shall advise the Independent Person of the receipt of the allegation and provide him or her with a copy of it.
- 2 The Independent Person shall take such steps as he/she deems necessary to carry out the functions assigned to him/her by section 28 of the Localism Act 2011.
- 3 The Monitoring Officer shall consider the allegation initially to establish whether there is *prima facie* evidence of the alleged breach. The Monitoring Officer may make enquiries of the person submitting the allegation in order to clarify any point or reference within the allegation.
- 4 Upon conclusion of the initial consideration, the Monitoring Officer shall refer the allegation to an Initial Assessment Panel of the Adjudication & Review Sub-Committee. The Panel shall consider the report and any recommendation of the Monitoring Officer and may:
  - (i) Require the Monitoring Officer to seek (further) clarification of the person making the allegation and adjourn to reconvene when that clarification is to hand;
  - (ii) Dismiss the allegation as showing no, or insufficient, evidence of a breach warranting further investigation or
  - (iii) Require the Monitoring Officer formally to investigate the allegation and, upon completion of the investigation, to report thereon to a Hearings Panel.
- 5 A person aggrieved by a decision under paragraph 3(ii) above to discontinue an investigation may ask for a review of that decision by a second Initial Assessment Panel, which shall re-consider it in accordance with paragraph 4. The decision of the second Panel shall be final.
- 5 A Hearings Panel dealing with an allegation in accordance with paragraph 4(iii) shall consider the report of the Monitoring Officer and any recommendation made by him at a hearing, which shall take place in public unless the Panel decides that it should be heard, wholly or in part, in private if the nature of the information that might be disclosed is such as to warrant being treated as exempt in accordance with section 100B( 4) of the Local Government Act 1972..
- 6 When considering the report, the Hearings Panel shall do in an inquisitorial style. Those having a right to be heard shall be:
  - (i) The person making the allegation
  - (ii) The Member against whom the allegation is made
  - (iii) The Monitoring Officer
  - (iv) The Independent Person
  - (v) Any person named by the person making the allegation, the Member against whom the allegation is made or the Monitoring Officer as a material witness to the matter (provided that a witness may be invited to attend but shall be under no compulsion to do so)

**Governance Committee, 31 May 2012**

- 7 Having heard all relevant evidence, the Hearings Panel shall retire to consider its decision in private. Once a decision has been reached, it shall be announced in public and a record of the proceedings published on the Council's website.
- 8 The Hearings Panel may decide:
  - (i) That the allegation is proven, wholly or in part and uphold it, wholly or in part
  - (ii) That the allegation is not proven and dismiss it
- 9 Where the Hearings Panel decides that the allegation is proven and upheld, it shall decide what recommendation to make to the Council about the matter.