

## MUNICIPAL YEAR 2011/2012 REPORT NO. 205A

### MEETING TITLE AND DATE:

Council – 28 March 2012

### REPORT OF:

Director of Finance,  
Resources and Customer  
Services

Agenda – Part: 1

Item: 10

### Subject:

The Localism Act 2011 – Replacing the  
Standards Regime

Cabinet Member consulted: Not applicable

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### 1. EXECUTIVE SUMMARY

The Localism Act (The Act) received Royal Assent in November 2011. The Act makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted members of local authorities. It is expected that the changes will come into effect on 1 July 2012.

Further guidance is awaited from Central Government on a number of issues in the Act. Regulations will also be issued in due course setting out provisions in more detail. Therefore, this report has been written with the information available to date. A further report will be submitted to the Council in July.

This report sets out the changes to the standards regime and includes the views of both the Standards Committee and the Members' & Democratic Services Group.

### 2. RECOMMENDATIONS

Council is recommended as follows

- (a) To agree the setting up of a Councillor Conduct Committee (to replace the current Standards Committee) to deal with policy, complaints against councillors and issues concerning the members' Code of Conduct. This committee will:

## RECOMMENDATIONS (continued)

- Comprise 4 councillors – both group whips and one more councillor from each side. Council will therefore be asked at the Annual Council meeting to agree to this being exempt from the proportionality rules.
- Have its membership appointed at the Annual Council meeting, with the chairman and vice-chairman coming from each of the political groups.

The Independent Person(s) and the Monitoring Officer will be asked to attend the meetings to offer advice and support.

- Calendar meetings on a quarterly basis but only to meet if there was business to be transacted.
- (b) to retain the following 3 principles currently underpinning the current Code of Conduct within the Council's new Code:
- Respect for others
  - Duty to uphold the law
  - Stewardship
- (c) to instruct the Monitoring Officer to draft the Council's new Code of Conduct to provide for the registration and disclosure for those interests which would (in the current code) amount to personal and/or prejudicial interests, but only require withdrawal as required by the new Act for Disclosable Pecuniary Interests (paragraph 4.4)
- (d) to instruct the Monitoring Officer to propose a much more streamlined process for dealing with complaints for consideration at the Council meeting in July; with the Monitoring Officer being given delegated powers under the new arrangements to deal with such matters particularly with regard to:
- the filtering out of complaints and deciding whether they require investigation (or other form of alternative resolution) – with accountability to the proposed Councillor Conduct Committee for decisions taken (paragraphs 5.3 – 5.4)
  - considering requests from complainants for re-consideration where an initial finding has been no evidence of failure to comply with the Code of Conduct with no further action to be taken. This could be where new evidence is produced. The MO will have the power

to refer matters to the Councillor Conduct Committee if considered appropriate (paragraph 5.5).

- the local resolution of complaints without the need for a hearing. Local resolution should only be agreed after consultation with the Independent Person, where the complainant is satisfied with the outcome, and where a summary report will be made to the Councillor Conduct Committee for information. (paragraphs 5.6 – 5.7).
- (e) to comment and agree the range of possible sanctions available to the new Councillor Conduct Committee (paragraph 5.8)
  - (f) to note that there will be an appeals process contained within the Council's new process – the detail to be decided once statutory regulations are available (paragraphs 5.9 – 5.10)
  - (g) agrees the role of the 'Independent Person' (IP) and at the appropriate time proceeds to recruit 2 IPs, who should be invited to attend the Councillor Conduct Committee as appropriate (paragraphs 6.1 – 6.6)
  - (h) agree that members continue to refresh their register of interests at least annually even though this will no longer be a statutory requirement (paragraph 7.4)
  - (i) to include in the new Code a requirement for members to declare 'Disclosable Pecuniary Interests' at meetings even though they may have included them on the register or have notifications pending (paragraphs 8.1 - 8.2)
  - (j) the Monitoring Officer be given the power to grant dispensations as set out in paragraphs 11.3 (a) and (b).

### **3. STANDARDS COMMITTEES**

- 3.1 The Localism Act places a duty on local authorities to promote and maintain high standards of conduct for its elected and co-opted members.
- 3.2 The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. This therefore means that such committees are no longer a requirement. However, there will still be a need to deal with standards issues and case work so local authorities may choose to retain a Committee for these purposes. If so, they will be a normal Committee of the Council, without the unique features which were conferred by the 2000 Act. This means that:

- (a) The composition of the Committee would normally therefore be governed by proportionality, unless the Council votes otherwise with no member voting against. The present restriction of only one member of the Executive on the Standards Committee will cease to apply.

Both the Standards Committee and the Members and Democratic Services Group agreed that a Councillor Conduct Committee be set up with equal representation from both sides. As stated above, this will require the unanimous approval of Council. The latter also felt that the chairman and vice-chairman should be from each of the two political parties.

- (b) The current co-opted independent members will cease to hold office. The Act provides for a new category of *Independent Persons* (see paragraph 6) who must be consulted at various stages. Recent clarification from the Department for Communities & Local Government has indicated that current independent members may put themselves forward for the new role within the first 12 months of the new arrangements (until 30 June 2013). We understand that the Council can determine the term of office. The new Independent Person(s) can be invited to attend the Standards Committee possibly as non-voting co-opted members.

#### **4. THE CODE OF CONDUCT**

- 4.1 The current General Principles and Model Code of Conduct will be repealed. Members will no longer have to give an undertaking to comply with the Code of Conduct. However, the Council will be required to adopt a new Code of Conduct governing elected and co-opted members' conduct when acting in that capacity. The Council's new code of conduct must, when viewed as a whole, be consistent with the following seven principles:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

- 4.2 This means that 3 of the principles underpinning the current code could no longer apply. These are:

- Respect for others
- Duty to uphold the law
- Stewardship

4.3 The Standards Committee and the Members' & Democratic Services Group supported the inclusion of the above 3 principles in the new code. The Standards Committee asked for a clear definition of 'Stewardship' to be provided. This can be defined as follows:

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

4.4 The Council has discretion as to what it includes in its new code, provided that it is consistent with the above principles in 4.1. However, regulations to be made under the Act will require the registration and disclosure of 'Disclosable Pecuniary Interests' (DPIs) broadly equating to the current prejudicial interests. The Act will also require an Authority's code to contain appropriate requirements for the registration and disclosure of other pecuniary and non-pecuniary interests.

4.5 This means that it is not yet possible to draft code provisions which reflect the definition of DPIs which will appear in the regulations. Advice to date however provides an indicative view of what the Council might consider appropriate to include in the Code in respect of the totality of all interests, including DPIs, other pecuniary and non-pecuniary interests. Unless otherwise required by the above regulations, it is suggested that the Monitoring Officer drafts the new Code to provide for the registration and disclosure for those interests which would (in the current code) amount to personal and/or prejudicial interests, but only require withdrawal as required by the new Act for DPIs.

4.6 It is envisaged that the Council's new Code of Conduct will have to deal with the following matters:

- (a) General Conduct Rules to give effect to the seven principles set out in paragraph 4.1 above (extended to 10 if the Council agrees the proposal from the Standards Committee and the Members' & Democratic Services Group in paragraphs 4.2 & 4.3 above). This corresponds broadly with paragraphs 3 to 7 of the current Code of Conduct, which the Council could consider re-adopting – with subsequent amendments possible if required; and
- (b) Registration and disclosure of interests other than DPIs – effectively replacing the current personal interest

provisions. This will become clearer once the regulations are published.

## **5. DEALING WITH MISCONDUCT COMPLAINTS**

### 'Arrangements'

- 5.1 The Act requires the Council to adopt 'arrangements' for dealing with complaints of breaches of the code of conduct by members. These 'arrangements' must set out in some detail the process for dealing with such complaints and the actions which may be taken against a member who is found to have failed to comply with the Code as agreed by the Council.
- 5.2 The Act also repeals the requirements for separate Referrals, Review and Hearings Sub-Committees and enables Councils to establish their own processes which can include delegation of decisions on complaints. As the new statutory provisions remove the special powers to the Standards Committee and the Monitoring Officer to deal with complaints and undertake investigations, new delegations from Council (under the terms of the 2011 Act) will be required.

### Decision whether to investigate a complaint

- 5.3 The Assessment Sub-Committee role under the current arrangements could be argued to have provided a reasonably robust process for filtering out complaints and deciding whether they require investigation. This however will no longer be obligatory. There is a view therefore that this initial decision making role should be delegated to the Monitoring Officer, subject to consultation with the Independent Person(s) and with the ability to refer particular complaints to the Councillor Conduct Committee where he/she feels that it would be inappropriate for him/her to take a decision. This could for example be where he/she had previously advised the member on the subject matter or the complaint is particularly sensitive. These arrangements also enable the Monitoring Officer to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation.
- 5.4 If such powers are delegated to the Monitoring Officer, he/she should be accountable to the Councillor Conduct Committee for the decisions taken. This could be done through (say) a quarterly report to the above Committee, setting out the number and nature of complaints received and the progress on investigations and any action taken.

### 'No Breach of Code' finding on investigation

- 5.5 Where a formal investigation currently finds no evidence of failure to comply with the Code of Conduct with no further action being taken, the current arrangements provide for the complainant to request that this is re-considered by the Referrals Sub-Committee. This role could now be transferred to the Monitoring Officer but with the power to refer the matter to the Councillor Conduct Committee if considered appropriate ( for example if a conflict of interest arises). It might also be good practice to keep the Independent Person(s) informed of the investigations, with a summary report going to the Councillor Conduct Committee for information.

#### 'Breach of Code' finding on investigation

- 5.6 In such circumstances, the Act still provides the opportunity for the Monitoring Officer to try to bring about a local resolution to the complaint, avoiding the need for a hearing. This might be where an acceptance of fault is given by the member and/or an apology is accepted by the complainant. It is suggested that the Monitoring Officer should only agree such local resolution after consultation with the Independent Person(s); where the complainant is satisfied with the outcome; and where a summary report will be made to the Councillor Conduct Committee for information.
- 5.7 In all other cases, where the formal investigation has found evidence of a failure to comply with the Code of Conduct, it will be necessary for the Councillor Conduct Committee (or more likely a Hearings Sub-Committee set up for this purpose) to hold a hearing. The purpose will be to give the member concerned the opportunity to respond to the investigation report, and to allow the Sub-Committee to determine whether the member did fail to comply with the Code and what action, if any, is appropriate as a result.

#### Action in response to a Hearing finding of failure to comply with the Code

- 5.8 The Act does not give the Council or its Committees any powers to impose sanctions on members. This means that where a failure to comply with the Code of Conduct is found, the range of actions open to an authority in respect of the member concerned is limited and must be directed to securing the continuing ability of the authority to discharge its functions effectively rather than "punishing" that member. In practice, this might include the following:
- (a) Reporting the findings to the full Council

- (b) Recommending to the relevant Group Leader that the member be removed from committees, sub-committees or outside bodies
- (c) Recommending to the Leader of the Council that the member be removed from the Cabinet or from particular portfolio responsibilities
- (d) Instructing the Monitoring Officer to arrange training for the member
- (e) Withdrawing facilities provided to the member by the Council – such as computer access and/or e mail or internet access
- (f) Excluding the member from the Council's offices or other premises – with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- (g) Publishing the findings of the hearing in the local media.

### Appeals

- 5.9 There is no requirement to put in place an appeals mechanism. Decisions will be open to judicial review by the High Court if they were considered unreasonable or if they were taken improperly, or if attempting to impose a sanction beyond the powers of the authority.
- 5.10 The Members' and Democratic Services Group agreed that the issue of a right of appeal for members against decisions and sanctions imposed should be considered further when statutory regulations became available.

## **6. INDEPENDENT PERSON(S)**

- 6.1 The 'arrangements' adopted by the Council must provide for the appointment of at least one Independent Person (IP) (see also paragraph 3.2(b)).
- 6.2 The IP must be appointed through a process of public advertisement, application and appointment by a positive vote of the majority of all members of the Council (not just those present and voting).
- 6.3 Initially, Councils were advised that current independent members of Standards Committees would not be eligible to put themselves forward for the new Independent Persons role. We now understand that due to representations made to

Government, they can seek appointment within the first 12 months of the new arrangements being in place (up to July 2013). We further understand that Councils can set the periods of office.

It is understood that a person will not be eligible to be an IP if he/she is a relative or close friend of a current elected or co-opted member of the Council or its committees and sub-committees, or any officer of the Council

For this purpose “relative” comprises:

- (i) the candidate’s spouse or civil partner
- (ii) any person with whom the candidate is living as if they are spouses or civil partners
- (iii) the candidate’s grandparents
- (iv) any person who is a lineal descendent of the candidate’s grandparents
- (v) a parent, brother, sister, child, of anyone in (i) and (ii) above
- (vi) the spouse or civil partner of anyone within (iii), (iv) or (v) above; or
- (vii) any person living with a person within (iii), (iv) or (v) above as if they were a spouse or civil partner to that person.

6.4 The functions of the Independent Person are:

- (a) they must be consulted by the authority before it:
  - makes a finding of failure on the part of a member to comply with the Code of Conduct; or
  - decides on action to be taken in respect of that member
- (b) they may be consulted by the authority in respect of a standards complaint at any other stage; and
- (c) they may be consulted by a member or co-opted member against whom a complaint has been made

The function in (c) above could compromise the IP. If they have been consulted by the member complained about, it could be argued that they are then prejudiced on the matter and cannot therefore be consulted by the Monitoring Officer – or vice versa.

6.5 The Act gives discretion to appoint one or more IP but provides that each IP must be consulted before any decision is taken on a complaint which has been investigated. Councils could therefore appoint more than one IP or just select the one and

have one or two in reserve (to be called upon at short notice) if the appointed IP is no longer able to fulfil that function. The recommendation to Council is that 2 IPs are appointed.

- 6.6 As the IP is not a member of the authority or of its committees or sub-committees, remuneration for the role no longer falls within the members' allowances scheme. The role of the IP, in comparison to the current Chair or independent members of the Standards Committee, is likely to be less onerous. He/she could be invited to attend all meetings of the Councillor Conduct Committee and related panels, but not as a formal member of either. He/she could be co-opted as a non-voting member but cannot chair the meetings. It's also possible that the IP could be involved in the local resolution of complaints, be consulted by the member or the Monitoring Officer and be involved in granting dispensations. It is suggested that consideration of remuneration is deferred until the July Council meeting.

## **7. REGISTER OF MEMBERS' INTERESTS**

- 7.1 The Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define 'Disclosable Pecuniary Interests' (DPIs). The Monitoring Officer is required to maintain a register of interests which must be available for inspection and on the Council's website.
- 7.2 As referred to in paragraphs 4.4 and 4.5, we do not as yet know what DPIs will consist of, but they are likely to be broadly similar to the current prejudicial interests. The Act does extend the requirement for registration to cover not just the member's own interests, but also those of the member's spouse or civil partner or someone living with the member in a similar capacity. As also mentioned in paragraph 4.4, the Act requires the Council's new Code of Conduct to provide for the registration (and disclosure) of other pecuniary and non-pecuniary interests. The Monitoring Officer will draw up relevant provisions when further information is known.
- 7.3 Each elected or co-opted member must register all DPIs within 28 days of becoming a member. Failure to register is made a criminal offence, but would not prevent him/her from continuing as a member. Failure to register interests other than DPIs will not be a criminal offence but would be a failure to comply with the Code of Conduct.
- 7.4 There is no continuing requirement for a member to keep the register up-to-date, except on re-election or re-appointment. Members will however be encouraged to refresh their interests from time to time in the interests of good governance.

## **8. DISCLOSURE OF INTERESTS AND WITHDRAWAL FROM MEETINGS**

8.1 Members will have a duty to disclose DPIs and withdraw from meetings where that interest is being considered. Disclosure applies even when the member is absent from part of the meeting when the matter is discussed. The member must disclose the existence and nature of the interest. However, there is a change from current requirements. The member does not have to make such a disclosure if he/she has already registered the DPI or at least sent off a request for the Monitoring Officer to register it (known as a 'pending notification'). This means that members of the public attending a meeting may only know about a member's interest if they have read the register.

8.2 In the interests of openness and transparency, the Council may wish to consider positively encouraging members to disclose such interests at meetings even though they may have included them on the register or have notifications pending.

8.3 Where a member makes a DPI disclosure at a meeting, he/she must then notify the Monitoring Officer within the next 28 days so it can be included in the register.

8.4 If a member has a DPI in any matter, he/she must not:

(a) participate in any discussion on the matter at the meeting. The Act does not define 'discussion', but this would appear to preclude making representations as currently permitted under paragraph 12(2) of the existing Code. So members with a prejudicial interest at (say) Planning Committee will no longer be able to speak on the matter before leaving the room.

(b) participate in any vote on the matter

unless he/she has obtained a dispensation to speak and vote on the matter in question (see paragraph 11).

## **9. SINGLE MEMBER DECISION MAKING (PORTFOLIO DECISIONS)**

9.1 Enfield's Scheme of Delegation allows for individual Cabinet members to take portfolio decisions within their Cabinet remit. If a Cabinet member becomes aware that he/she will have to deal with a matter in which they have a DPI, the following applies under the new Act:

(a) unless the DPI is already in the register (or is subject to a 'pending notification' – see paragraph 8.1 above), he/she

has 28 days in which to notify the Monitoring Officer that they have such an interest;

- (b) he/she must take no action in respect of the matter other than refer it to another person to take the decision. In Enfield, this could be full Cabinet, the Leader or, in some case, another Cabinet member.

## **10. SENSITIVE ISSUES**

- 10.1 The Act continues with the current Code of Conduct provisions for sensitive interests.
- 10.2 Where a member is concerned that disclosure of the detail of an interest at a meeting or on the register of interests would lead to that member, or any person connected with him/her being subject to violence or intimidation, they may request the Monitoring Officer to agree that the interest is a 'sensitive interest'.
- 10.3 If this is agreed, the member then merely has to disclose the existence of an interest at a meeting, rather than the detail of it. The Monitoring Officer also excludes the detail of the interest from the published register of interests.

## **11. DISPENSATIONS**

- 11.1 The provisions on dispensations are significantly changed by the Act.
- 11.2 At present, a member who has a prejudicial interest may apply to the Standards Committee for dispensation on two grounds:
  - (a) that at least half of the members of a decision making body have prejudicial interests
  - (b) that so many members of one political party have prejudicial interests that it will upset the result of the vote on the matter.
- 11.3 In future, a dispensation will be granted in the following circumstances:
  - (a) that so many members of the decision making body have DPIs in a matter that would "impede the transaction of the business".
  - (b) that without the dispensation, the representation of different political groups on the body conducting the

business would be so upset as to alter the outcome of any vote on the matter.

- (c) that the authority considers that the dispensation is in the interests of persons living in the authority's area
- (d) that the authority considers that it is otherwise appropriate to grant a dispensation

11.4 Any grant of dispensation must specify how long it lasts, up to a maximum of 4 years.

11.5 The current rules say that dispensations can only be granted by the Standards Committee. The new Act gives discretion for this power to be delegated to the relevant alternative Committee, a Sub-Committee or to the Monitoring Officer. The grounds in (a) and (b) above could possibly be delegated to the Monitoring Officer to quicken the process, with an appeal mechanism to the Councillor Conduct Committee. Those in (c) and (d) however are more subjective and should perhaps be left to the above Committee, after consultation with the Independent Person(s).

## **12. TRANSITIONAL ARRANGEMENTS**

12.1 Regulations under the Act will provide for:

- (a) transfer of Standards for England cases to local authorities after its abolition
- (b) a transitional period for the determination of any outstanding complaints under the current Code of Conduct. The Government has stated that it will allow 2 months for such determination, although it is hoped that the final regulations will allow a little longer
- (c) removal of the power of suspension from the start of the transitional period; and
- (d) removal of the right of appeal to the First Tier Tribunal from the start of the transitional period.

## **13. ALTERNATIVE OPTIONS CONSIDERED**

The Council will have some discretion in elements of the new legislation. These are set out in this report and will continue in the report to the July meeting.

## **14. REASONS FOR RECOMMENDATIONS**

To begin the process of implementing the requirements of the Localism Act in relation to the new Standards Regime.

## **15. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE RESOURCES AND OTHER DEPARTMENTS**

### **15.1 Financial Implications**

The proposals set out in this report will be contained within existing budgets.

### **15.2 Legal Implications**

These are contained within the body of the report.

## **16. KEY RISKS**

None at this stage.

## **17. EQUALITIES IMPACT IMPLICATIONS**

The proposals within this report will help to ensure fair, equal and consistent treatment of complaints against councillors for all parties concerned.

## **18. IMPACT ON COUNCIL PRIORITIES**

### **Fairness for All and Strong Communities**

A strong ethical approach by the Council and the promotion of good conduct on the part of members will have a positive effect on their representational role and a consequential impact on communities.

## **Background Papers**

Bevan Brittan Seminar papers – December 2011