



Monitoring Officer's Report

4 July 2012

Leader LOCALISM ACT 2011 – MEMBERS' COMPLAINT PROCEDURES, APPOINTMENT OF INDEPENDENT PERSONS AND CHANGES TO THE CONSTITUTION **WARDS**
Councillor **Nicholas Botterill** **ALL**

Summary

Cabinet Member for Communications + Chief Whip

The Localism Act 2011 abolished the existing Standards regime and introduced a new framework for the regulation of Member conduct. This report sets out the relevant provisions of the Act along with notable implications for the Council and proposals for local implementation.

Councillor **Mark Loveday**

RECOMMENDATIONS:

1. That the revision to the advice in the Council's 'Guidance for Councillors and Officers dealing with Planning and Licensing' as outlined in the report, be adopted.
2. That the specific responsibility of maintaining high standards of conduct for Members be delegated to the Audit, Pensions and Standards Committee.
3. That the Members' Code of Conduct, attached as appendix 1, be adopted, and that the rules requiring Members to register and disclose pecuniary and non-pecuniary interests be noted.
4. That two Independent Members (names to be tabled) be appointed, in conjunction with the Royal Borough of Kensington and Chelsea, as Independent Persons to consider complaints against Members and to offer their impartial views on each case, including any investigations undertaken.
5. That a flat rate allowance of £500 per annum be paid to the Independent Person appointed by LBHF in 12 monthly instalments on the 15th of each month.
6. That the arrangements for dealing with complaints alleging a breach of the Members' Code of Conduct, attached as appendix 2, be approved.
7. That the terms of reference of the Audit, Pensions and Standards Committee and the Audit, Pensions and Standards Sub Committees, as outlined in Appendix 3, be approved.
8. That Standing Order rule 20 be amended as set out in Appendix 4.

CONTRIBUTORS

Monitoring Officer Head of Governance and Scrutiny

1. BACKGROUND

- 1.1 The Localism Act 2011 abolished the existing Standards regime and introduced a new framework for the regulation of Member conduct. The relevant provisions of the Act are set out below along with notable implications for the Council and proposals for local implementation. The new provisions will come into effect from 1st July 2012.

2. THE NEW PROVISIONS ON PREDETERMINATION

Chapter 6, Section 25 - Prior indications as to view of a matter not to amount to predetermination

- 2.1 This clarifies how the common law concept of 'predetermination' applies to councillors in England and Wales. Predetermination occurs where someone has a closed mind, with the effect that they are unable to apply their judgment fully and properly to an issue requiring a decision. Decisions made by Councillors later judged to have predetermined views have been quashed.
- 2.2 The Section makes it clear that if a Councillor has given a view on an issue this does not mean that the councillor has a closed mind on that issue. Therefore if a Councillor has campaigned on an issue or made public statements about his/her approach to an item of Council business, he or she will be able to participate in discussion of that issue in the Council and to vote on it if it arises in an item of Council business requiring a decision.
- 2.3 Despite the views of some that the provision is of wider application than the current common law position, the better view is that that it confirms the current position (which was arrived at after some years of uncertainty). The advice in the Council's 'Guidance for Councillors and Officers dealing with Planning and Licensing' will be revised as follows:-

"The courts have accepted that Members may be politically predisposed on matters of policy or on the grant or refusal of planning permission on a particular site. This will only become unlawful predetermination if a Member firmly closes his or her mind to all other arguments and representations.

Section 25 of the Localism Act 2011 has clarified the law in this respect. It provides that a Member should not be taken to have had, or appear to have had a closed mind "just because" he or she had previously done anything that directly or indirectly indicated what view he or she might take in relation to a particular decision.

Members are not inhibited from fulfilling their political, democratic and representative roles but they must also be careful to take decisions properly and to be seen to do so. Members should be cautious about

making statements which may give the impression that he or she has already decided an issue before a decision has been made. At all times Members must go into a decision making meeting with an open mind, prepared to listen to argument and to have careful regard to the advice and material contained in the agenda.”

3. THE NEW PROVISIONS ON STANDARDS

Section 26 - Amendments of existing provisions

- 3.1 Section 26, and Schedule 4, abolishes the Standards Board regime, which consists of the Standards Board for England, standards committees of local authorities, the jurisdiction of the First-tier Tribunal in relation to local government standards in England, and model codes of conduct for Councillors. None of the functions of the Standards Board for England are preserved.
- 3.2 The power for the Secretary of State to issue a model code of conduct and to specify principles to govern the conduct of Members is removed together with the requirement for relevant authorities to establish standards committees. The First-tier Tribunal loses its jurisdiction over Councillor conduct issues. The Local Government Ombudsman retains jurisdiction on complaints of maladministration arising from Member conduct issues.

Section 27 - Duty to promote and maintain high standards of conduct

- 3.3 This places a duty on a relevant authority to ensure that its Members and co-opted Members maintain high standards of conduct and requires such authorities to adopt a code of conduct for their Members.
- 3.4 It is recommended that the specific responsibility of maintaining high standards of conduct for Members in LBH&F be delegated to the Audit, Pensions and Standards Committee. The additional burden for the Committee will be very limited. An extra meeting per year would be sufficient to consider issues of training and publicity, receive such reports from the Monitoring Officer as may be desired and to review the code of conduct and constitutional arrangements to ensure that they continue to be fit for purpose.

Section 28 – Codes of Conduct

- 3.5 This requires the Council as a relevant authority to adopt a code which must be consistent with the seven ‘Nolan’ principles of standards in public life (selflessness, integrity, objectivity, accountability, openness, honesty and leadership), and must set out the rules that the authority wants to put in place with regard to requiring Members to register and disclose pecuniary and non-pecuniary interests.

- 3.6 The Council proposes to adopt the LGA draft model code as outlined in Appendix 1 to this report.
- 3.7 It also requires an authority to put in place arrangements under which it can investigate an allegation of a breach of a code made in writing and, if it is considered that an investigation is warranted, requires the authority to appoint at least one Independent Person whose views must be sought after it has made an investigation and before it takes a decision.

Section 28 - Independent Persons

- 3.8 The legislation requires an authority to appoint at least one Independent Person:-

(a) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and

(b) whose views may be sought—

(i) by the authority in relation to an allegation in circumstances not within paragraph (a),

(ii) by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation, and

(iii) by a member, or co-opted member, of a parish council if that person's behaviour is the subject of an allegation and the authority is the parish council's principal authority.

- 3.9 It is recommended that Royal Borough of Kensington and Chelsea and Hammersmith and Fulham Councils each appoint a single Independent Person. They will be appointed separately by each Borough but jointly “form” a pool and either of them could be called upon to act. The pool would ensure that there are sufficient numbers to be consulted by any of the parties involved in the process. An allowance in the region of £500 per annum would be paid to the Independent Person. Council is asked to appoint two Independent Persons (Names to be tabled) in conjunction with the Royal Borough of Kensington and Chelsea.

Complaint Process

- 3.10 The Council is required to put in place arrangements under which allegations of a failure to comply with the Code are dealt with. The proposed arrangements are at Appendix 2. The criteria, set out in section 4 of the arrangements, are intended to ensure that only serious complaints, or those that affect the proper functioning of the Council or the reputation of the Council as a whole, are investigated. It is proposed that the initial assessment of a complaint will be delegated to the Monitoring Officer who will consult with one of the Independent Persons.

Where they do not consider there to be a breach, the Monitoring Officer will inform the complainant of his/her decision and no further action will be taken. Where they consider that there might be a breach, the complaint will be referred to the Audit, Pensions and Standards Committee for investigation. The Audit, Pensions and Standards Committee will appoint a Sub-Committee to hear the complaint and determine whether or not there has been a breach of the Code. The views of the Independent Person will be sought after the investigation has been carried out and before the Audit, Pensions and Standards Sub-Committee takes a decision on the complaint. Arrangements for dealing with complaints alleging a breach of the Members' Code of Conduct is attached as Appendix 2 to the report. The Audit, Pensions and Standards Committee will review the operation of the Code and the arrangements for dealing with complaints after a year.

- 3.11 The Council is recommended to establish two Sub Committees of the Audit, Pensions and Standards Committee – Audit, Pension and Standards (Complaints) and Audit, Pensions and Standards (Appeals) Sub Committees. The terms of reference of the Audit, Pensions and Standards Committee and the two Sub Committees are attached as Appendix 3.

Sanctions

- 3.12 There are no statutory sanctions for breach of the new Code of Conduct (other than the criminal sanctions for failure to notify a disclosable pecuniary interest) but common law principles suggest that possible sanctions could include:-
- the issue of a formal letter,
 - formal censure through a motion,
 - recommendation to a political group of removal from membership of a Committee (with potential financial consequences arising from the loss of a special responsibility allowance),
 - Publicising the decision that a Member had breached the authority's code of conduct
 - Other options that do not interfere with the fulfilment of the Member's democratic role could also be considered.

Appeals Process

- 3.13 Where a Member is dissatisfied with the decision of the Audit, Pensions and Standards (Complaints) Sub-Committee in respect of a complaint against him/her the Member can appeal to an Audit, Pensions and Standards (Appeals) Sub-Committee (comprising a different membership to the Complaints Sub-Committee). The Appeals Sub-Committee will either uphold the decision or conclude that there is no breach and dismiss the complaint.

Section 29 - Register of interests

- 3.14 This requires the Monitoring Officer of the relevant authority to establish and maintain a register of Members' and co-opted Members' interests, to make the register available for inspection and to publish it on the Council's website. All H&F Members' declarations are already available online. The current arrangements for the declaration of interests will be slightly modified. It was proposed that the Code will require Members to register any disclosable pecuniary interests by 28th July 2012.

Section 30 - Disclosure of pecuniary interests on taking office

- 3.15 This requires Members to notify the Monitoring Officer of any disclosable pecuniary interests, held either by them or a spouse, civil partner or a person they live with as a spouse or civil partner, within 28 days of taking up office. There is no duty to keep these up to date and declare new interests arising on the 29th day or thereafter until the next election, other than in respect of matters arising at meetings.
- 3.16 The Section allows the Secretary of State to make regulations defining a 'disclosable pecuniary interest', and requires the Monitoring Officer to enter any notified disclosable pecuniary interest in the authority's register, as well as any other interest notified to them, whether or not it is pecuniary.

Section 31 - Pecuniary interests in matters considered at meetings or by a single member

- 3.17 This requires Members to disclose a disclosable pecuniary interest that they are aware of (apart from a sensitive interest) at a meeting or, if acting alone, where any matter to be considered relates to his/her interest. If the interest is not already registered, it requires Members to register it within 28 days. The Monitoring Officer must then enter the interest in the authority's register.
- 3.18 It also prohibits a Member from participating in discussion or voting on any matter relating to his/her interest or, if acting alone, from taking any steps in relation to the matter (subject to any dispensations). In line with good practice, the Code and Council's Standing Orders will require a Member to leave the room when a matter in which he or she has a disclosable pecuniary interest is debated or voted on.
- 3.19 The Act also requires that the Code includes such provisions as the authority considers appropriate in respect of the registration and disclosure of pecuniary interests and interests other than pecuniary interests. Paragraphs 14 and 15 of the Code deals with the declaration of those interests (i.e. those which are not disclosable pecuniary interests) at meetings or when executive decisions are taken. The Code does not require those interests to be registered but, for reasons of transparency and in order to promote and maintain high standards, it is proposed that

the Code should require such interests to be declared at meetings. Such declarations of interests might include, for example, a declaration at a Planning Committee that the applicant for planning permission is a Member's son or daughter. Such an interest is not a "disclosable pecuniary interest" and would not need to be registered but is clearly an interest which should be declared to avoid an allegation of bias or conflict of interest. The Code does not specify or identify all such interests but expects Members to exercise their judgment. If, in future, it is felt to be necessary further guidance will be considered and provided by the Audit, Pensions and Standards Committee.

- 3.20 The receipt of gifts and hospitality are not "disclosable pecuniary interests" and therefore are not required to be registered as such. The proposed Code, at Appendix 1, provides nonetheless that they should be declared and registered if over a certain value. The value proposed is £50 for both gifts and hospitality. It is recommended that Rule 20 "Declaration of Interests" in Standing Orders is amended to reflect the change in the law as set out in appendix 4.

Section 32 - Sensitive interests

- 3.21 This provides for details about a registered interest to be excluded from versions of the register that are available for public inspection or published where a Member and Monitoring Officer agree that the disclosure of these details could lead to harm or intimidation of the Member or his/her family. It provides for Members to disclose only the fact that they have a disclosable pecuniary interest in the matter concerned at meetings or when acting alone.
- 3.22 This broadly replicates our existing practice whereby a Member can exclude his or her home and work details from the published version of the register.

Section 33 - Dispensations from section 31(4)

- 3.23 Section 33 empowers the Council, on receipt of a written request, to grant dispensations for up to four years for a Member to be able to participate in or vote at meetings where they have a disclosable pecuniary interest.
- 3.24 The Council may grant dispensations if they consider that by not granting a dispensation, the business of the authority or committee is likely to be impeded; or that the political balance of the committee or authority is so upset as to alter the outcome of a vote; or that granting the dispensation is in the interests of residents; or that all members of the executive are unable to participate in business to be carried out by the executive; or that they consider it appropriate to grant a dispensation for other reasons.

- 3.25 The arrangements for granting dispensations will fall within the terms of reference of the Audit, Pensions and Standards Committee which could set up a Sub Committee to consider the request.

Section 34 - Offences

- 3.26 Section 34 makes it a criminal offence if a Member or co-opted Member fails, without reasonable excuse, to comply with requirements under section 30 or 31 to register or declare disclosable pecuniary interests (but not other such interests as the Council may include in its Code), or take part in Council business at meetings or when acting alone when prevented from doing so.
- 3.27 It empowers the magistrates` court, upon conviction, to impose a fine of up to level 5 (currently £5,000), and an order disqualifying the person from being a Member of a relevant authority for up to five years. It extends the time for bringing a prosecution for the offence by allowing a prosecution to be brought within 12 months of the prosecuting authorities having the evidence to warrant prosecution, but any prosecution must be brought within 3 years of the commission of the offence and only by or on behalf of the Director of Public Prosecutions.
- 3.28 The Monitoring Officer in consultation with the Independent Persons and the Chairman of the Audit, Pension and Standards Committee will refer alleged offences to the Police for investigation.

4. Comments of the Executive Director of Finance and Corporate Governance

- 4.1 There are no financial implications to this report.

5. Comments of the Director (Legal and Democratic Services)

- 5.1 The comments of the Director are contained within this report.

LOCAL GOVERNMENT ACT 2000 **BACKGROUND PAPERS**

No.	Brief Description of Background Papers	Name/Ext. of holder of file/copy	Department/Location
1.	Localism Act 2011	Kayode Adewumi	Legal, First Floor HTH, Room 133a
	Responsible Officer	Kayode Adewumi 020 8753 2499	