

 the low tax borough	<b>London Borough of Hammersmith &amp; Fulham</b>  <b>COUNCIL</b>  <b>23 OCTOBER 2013</b>
<b>ANNUAL REVIEW OF THE CODE OF CONDUCT AND CONSTITUTION REPORT</b>	
<b>Report of the Monitoring Officer - Tasnim Shawkat</b>	
<b>Open Report</b>	
<b>Classification:</b> For Decision	
<b>Key Decision:</b> No	
<b>Wards Affected:</b> All	
<b>Accountable Executive Director: Jane West, Executive Director of Finance and Corporate Governance</b>	
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## 1. EXECUTIVE SUMMARY

- 1.1. The Council at its meeting on 4 July 2012 delegated to the Audit, Pensions and Standards Committee the statutory role under the Localism Act 2011 and the specific responsibility of maintaining high standards of conduct for Members. The Council also approved the Members Code of Conduct and the arrangements for dealing with complaints alleging a breach of the Code.
- 1.2. The new arrangements have been in operation for just over a year and officers have undertaken a review, as a matter of good practice. This report highlights the outcome of the review and makes recommendations for some minor changes. Council is asked to consider these revisions to the Code and the Arrangements.

## 2. RECOMMENDATIONS

- 2.1. That the proposed changes to the “Arrangements for dealing with complaints alleging a breach of the Members’ Code of Conduct” set out in paragraph 5.6 of the report and Appendix 1, be approved.
- 2.2. That the Audit, Pensions and Standards Committee’s terms of reference include “ To consider any applications for dispensations from Councillors

and co-opted members to allow them to participate in decisions”, be approved.

- 2.3. That in the event of an application for dispensation being received, a three member, Audit, Pensions and Standards (Dispensation) Sub Committee would be set up to consider the request, be noted.
- 2.4. That the draft guidance for applications for dispensations attached at Appendix 2, be approved.
- 2.5. That the Director - Property Service and Asset Management and Head of Building Services be granted authority to deal with Party Wall Matters under the Building Act 1984 and Party Wall Act 1996, be agreed.

### **3. REASONS FOR DECISION**

- 3.1. The Localism Act 2011 places a duty on a local authority to ensure that its Members and co-opted Members maintain high standards of conduct. It 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 and adopt a code of conduct for its Members.
- 3.2. As the new regime has been in place for only one year it is appropriate to review its operations and make any necessary changes.

### **4. INTRODUCTION AND BACKGROUND**

- 4.1. The Localism Act 2011 abolished the Standards regime and introduced a new framework for the regulation of Member conduct. The Act placed a duty on local authorities to ensure that their Members and co-opted Members maintain high standards of conduct.
- 4.2. The Council approved its Code of Conduct for Members on 4 July 2012 along with the arrangements to deal with allegations that Members have failed to comply with the Code. The Audit, Pensions and Standards Committee was charged with the responsibility to review the operation of the Code and the arrangements for dealing with complaints after a year.
- 4.3. The Code and the Arrangements are all on the Council’s website.
- 4.4. The Parliamentary Committee on Standards on Public Life published its 2012 – 13 Annual Report in August 2013. It welcomed the mandatory requirement for all local authorities to adopt a local code of conduct. It also listed some concerns in paragraphs 38 to 40 of its report attached as appendix 3 as follows:
  - The new regime is likely to do less well where there is inadequate leadership to support the process,
  - The current sanctions against poor behaviour are insufficient,

- The current level of involvement of the Independent Person is not sufficient to provide assurance that justice is being done, and equally important, that it is seen to be done, and
- By June 2012, many local authorities had not adopted a local code of conduct nor appointed an Independent person.

## **5. PROPOSAL AND ISSUES**

### **• REGISTER OF INTERESTS**

- 5.1. All Members have submitted the requisite forms to register their disclosable pecuniary interests. During the year all changes have been sent to the Governance section which has updated the Members' records online.
- 5.2. Following the election next year, new Members will be asked to complete registration of disclosable pecuniary interests forms. As part of this exercise, the Monitoring Officer will be reminding returning Members to ensure that their registration is up to date.

### **• COMPLAINTS**

- 5.3. Since the Arrangements were adopted in July 2012, the Monitoring Officer has received two complaints about Members.
- 5.4. The first was received on 22 June 2012 and it was not possible to deal with it by 1 July 2012 when the law changed the new Arrangements. The complaint was that the Councillor had brought his office into disrepute. The Monitoring Officer met with the Independent Person and concluded, on the basis of the evidence presented, that there had not been a breach of the Code of Conduct and as such the complaint did not merit an investigation.
- 5.5. The second complaint was withdrawn after the Councillor concerned apologised for overlooking some correspondence and dealt with the matters raised.

### **• ARRANGEMENTS FOR DEALING WITH COMPLAINTS**

- 5.6. Paragraph 4.3 of the Arrangements sets out the criteria which the Monitoring Officer will take into account to decide whether or not a complaint merits investigation. It is suggested that two of the criteria need further clarification namely:
- (c) The complaint is not "tit for tat"
  - (d) The complaint appears not to be politically motivated
- 5.7. Notes have been added to the relevant paragraphs as set out in Appendix 1 to clarify these criteria.

- **INDEPENDENT PERSON**

- 5.8. On 4 July 2012 Council agreed that two Independent Persons should be appointed in conjunction with the Royal Borough of Kensington and Chelsea, to consider complaints against Members and to offer their impartial views on each case, including any investigations undertaken.
- 5.9. Ms Janis Cammel OBE was appointed on 4 July 2012 and Ms Johanna Holmes was appointed on 29 May 2013.

- **DISPENSATIONS**

- 5.10. The Localism Act 2011 also places the responsibility for considering any applications from Councillors and co-opted members to allow them to participate in decisions in circumstances where they have disclosable pecuniary interests on the Council. The Members' Code of Conduct sets out which interests are disclosable pecuniary interests. A Member with a disclosable pecuniary interest, in a matter being considered at a Committee or by the Executive, must not participate in that decision unless he or she has been granted a dispensation.
- 5.11. Section 33 of the Localism Act 2011 provides that a dispensation may be granted only if, having had regard to all the relevant circumstances, the Committee considers that:
- without the dispensation, the number of Members prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;
  - without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;
  - granting the dispensation is in the interests of persons living in the Borough;
  - without the dispensation each member of the Cabinet would be prohibited from participating in any particular business to be transacted by the Cabinet; or
  - it is otherwise appropriate to grant a dispensation.
- 5.12. A dispensation may be granted for one meeting or for a specific period (up to a maximum of 4 years).
- 5.13. Currently, this function is not clearly stated in the Committee's terms of reference. The Council is requested to amend the Audit, Pensions and Standards Committee's terms of reference as follows:-
- To consider any applications for dispensations from Councillors and co-opted members to allow them to participate in decisions.

5.14. Council is also requested to note that in the event of an application being received a three member Audit, Pensions and Standards (Dispensation) Sub Committee would be set up to consider the request. The membership would be from the main Committee.

5.15. Council is asked to approve the draft guidance for applications for dispensations attached at Appendix 2. Once approved, it will be put on the Council's website for use.

- **RELATED PARTY TRANSACTIONS**

5.16. For the purposes of the Council's Statement of Accounts, Members are required annually to complete and return a related party transactions form. This form is returned to the Corporate Accountancy and Capital team acting on behalf of Executive Director of Finance and Corporate Governance. The form declares whether a Member or any close members of their families, companies they own or have a major shareholding in or other organisations over which they have an element of control have been in receipt of income or made payments to the Council. The forms must be returned, at the very latest, by early June in time for the issuing of the Council's draft Statement of Accounts for the preceding financial year. The forms are made available to and reviewed by the Council's external auditors.

5.17. The opportunity will be taken to align this process with the declaration of any related party transactions for the previous financial year.

- **PARTY WALL MATTERS (Building Act 1984 and Party Wall Act 1996).**

5.18. Currently, the Director - Building & Property Management is responsible for this Party Wall matters. Officers are requesting for additional officers – the Director - Property Service and Asset Management and Head of Building Services to be granted responsibility for this function as Party Wall Matters are mainly related to Housing & Regeneration Department (Housing Properties).

## **6. CONSULTATION**

6.1. The Independent Person and Audit, Pensions, Standards Committee have been consulted.

## **7. EQUALITY IMPLICATIONS**

7.1. There are no specific equality and diversity implications for this report.

## **8. LEGAL IMPLICATIONS**

8.1. The legal implications are contained in the body of the report.

Implications completed by: Janette Mullins, Principal Housing and Litigation Solicitor

## **9. FINANCIAL AND RESOURCES IMPLICATIONS**

9.1. There are none.

## **10. RISK MANAGEMENT**

10.1. Not applicable.

## **11. PROCUREMENT AND IT STRATEGY IMPLICATIONS**

11.1. There are no procurement related issues contained in this report.

Implications completed by: Janette Mullins, Principal Housing and Litigation Solicitor.

- **LOCAL GOVERNMENT ACT 2000**
- **LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

<b>No.</b>	<b>Description of Background Papers</b>	<b>Name/Ext of holder of file/copy</b>	<b>Department/ Location</b>
1	None		