

STANDARDS (ADVISORY) COMMITTEE

Tuesday, 21 October 2014 at 7.30 p.m.

Committee Room 1, 1st Floor, Town Hall, Mulberry Place, 5 Clove
Crescent, London E14 2BG

SUPPLEMENTAL AGENDA 2

This meeting is open to the public to attend.

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**3 .7 Review of Code of Conduct for Members and standards
arrangements**

1 - 12

The OSC will receive an update on progression of draft proposals relating to the review following a meeting of the Interim Monitoring Officer, SAC Chair and Interim Monitoring Officer on 16 October.

Agenda Item 3.7

Committee: Standards (Advisory) Committee	Date: 21 October 2014	Classification: Unrestricted	Report No:	Agenda Item:
Report of: Interim Monitoring Officer Originating officer(s) Meic Sullivan-Gould	Title: Updating the Council's Code of Conduct and Arrangements for Handling Complaints of Breach. Wards Affected: All Wards			

1. **SUMMARY**

- 1.1 At its last meeting, the Standards (Advisory) Committee discussed a presentation by Hoey Ainscough Ltd which reviewed the Council's current Code of Conduct and Arrangements for Handling Breach Complaints. The Committee acknowledged that the Code of Conduct was not up to date and the Arrangements were over-elaborate for the range of sanctions that are now available for proven breaches of the Code. The Committee also noted that there were personal relationships which could give rise to a reasonable perception of bias in decision-making that were not caught by the statutory definition of any Disclosable Pecuniary Interest – particularly in that while the interests of domestic partners were included, those of other family members, friends of Members and organisations that the Member may run, were not.
- 1.2 Following consultation with the Chair of the Committee and the Independent Person, it is recommended that the Committee now considers the principles on which a new Code could be based and the possible sanctions for breach. Once the Committee's views on those issues are established it will be possible, at a later meeting, to consider arrangements for handling breaches as well as the draft of a revised Code for recommendation to the Council.

2. **RECOMMENDATIONS**

The Standards (Advisory) Committee is recommended:-

- (a) To consider the proposed principles (see paras 4.1 to 4.3 below) of an updated Code of Conduct.
- (b) To note the range of Sanctions available to the Council (see Appendix 3) in the event of a breach of the Code.

3. BACKGROUND

- 3.1 Since the implementation of the Localism Act 2011, there has been a fundamental change in the approach to regulating the Conduct of persons elected or appointed to roles in local authorities. The responsibility for establishing a Code has been “remunicipalised” but the range of available sanctions for breach has been reduced. The range of Disclosable Pecuniary Interests has been narrowed but it has become a criminal matter (rather than a breach of Code) if those Interests are not properly registered, declared and acted upon appropriately.
- 3.2 By law, (Localism Act 2011, Chapter 7), the Council must promote and maintain high standards of conduct by members and co-opted members of the authority and must, in particular adopt a code dealing with conduct that is expected of them *when they are acting in that capacity (emphasis added)*. The adopted code must be consistent with the Seven Principles of Public Life and provide for the registration and disclosure of the pecuniary interests of affected members. The Council made changes to its Code of Conduct to absorb the implications of the Localism Act 2011 but did not change its arrangements for handling complaints. In particular the arrangements did not allow for the introduction of criminal liability in respect of some aspects of dealing with personal interests and were not reviewed for proportionality against the reduced range of available sanctions.
- 3.3 The Committee is invited to note the Hoey Ainscough Ltd “Review of Standards Framework” – Appendix 1
- 3.4 The Committee is invited to note the redefinition by the Committee on Standards in Public Life of the Seven Principles of Public Life – Appendix 2
- 3.5 The Committee is also invited to note the Sanctions available to Local Authorities for Breaches of Code – Appendix 3

4. BODY OF REPORT

- 4.1 In respect of the Principles of Public Life, it is suggested that the Council should adopt the most up to date definitions, as stated by the Committee on Standards in Public Life, and structure its Code around promoting compliance with those principles by giving examples of the behaviour that is required. Those behaviours should not be different from the behaviours that the Council requires of its staff towards each other or service users. The implications of non-compliance should also be drawn to the attention of Members.

4.2 In respect of the Personal Interests of Members, It is suggested that the Council's Revised Code needs to accommodate a wider range of personal interests than those defined in the Disclosable Pecuniary Interests Regulation 2012 (where criminal liabilities arise) as there are other personal interests which, if allowed to be ignored, would bring risk of unnecessary cost and risk to the Council eg by losing appeals, judicial review challenges or findings of maladministration. Those additional interests should comprise what would be the Disclosable Pecuniary Interests of Family Members (not just those of domestic partners), Close Associates and Organisations or Bodies which are managed or controlled by the Member – so far, of course, as the Member is aware of such interests.

4.3 Since the speediest and most direct process for dealing with misbehaviour at meetings should be action by the Chair of the Meeting at the time, it should be adopted as a principle that those Members when chairing Council Meetings need to be empowered to enforce the Code of Conduct in addition to their established powers to deal with obstructive, offensive or otherwise irregular or improper behaviour.

5. COMMENTS OF THE CHIEF FINANCIAL OFFICER

5.1 There are no specific financial implications arising from the recommendations set out in the report.

6. LEGAL COMMENTS

6.1 Included in body of report.

7. ONE TOWER HAMLETS CONSIDERATIONS

7.1 None.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 Not applicable.

9. RISK MANAGEMENT IMPLICATIONS

9.1 Reputational and challenge risks.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 Better understanding of criminal liability by those who are particularly affected should assist in maintaining compliance with the criminal law.

11. EFFICIENCY STATEMENT

11.1 Clarity in required standards of behaviour should reduce the need for taking specialist advice and handling complaints. Having proportionate arrangements for handling complaints should reduce the time and effort involved in resolving complaints.

**Local Government Act, 1972 Section 100D (As amended)
List of “Background Papers” used in the preparation of this report**

Brief description of “background papers”	Name and telephone number of holder and address where open to inspection.
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None

N/A

12. APPENDICES

1. “Review of Standards Framework” Hoey Ainscough Ltd
 2. “Seven Principles of Public Life” Committee on Standards in Public Life
 3. Sanctions Summary.
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Appendix 1

Review of standards framework: some issues for Tower Hamlets to consider

1. Initial assessment

Current situation

MO makes decision whether or not to investigate. Must send non-referrals to committee for ratification. He may also consult other persons

Suggestions

- a) Add 3rd possible outcome – investigate, not investigate, seek to resolve informally
- b) No need for non-referrals to be ratified by committee – allow MO discretion OR require all decisions to be ratified by committee. Our preferred option is not to seek ratification as it slows down process and is not necessary for majority of cases
- c) Seek the views of the subject member before reaching a decision unless there are exceptional circumstances not to. This can speed up the process and allow greater early resolution.

2. Informal resolution

Current situation

MO can seek to resolve a matter informally once a matter is under investigation or once an investigation has been completed. Can only be resolved 'to the complainant's satisfaction'.

Suggestions

- a) Allow for earlier informal resolution (see above)
- b) While complainant's views are important, they should not be allowed a veto – lack of sanctions means they may often not be satisfied anyway so if MO and IP satisfied with outcome of informal resolution the case should be halted

3. Investigations

Current situation

Should be completed within one month – need to consult committee if extension needed. MO may seek local resolution during investigation 'to satisfaction of complainant'

Suggestions

- a) See above re local resolution
- b) Ensure investigation timelines are enforced – month may be too short but, for example, three month target should be achievable in nearly all cases. Extensions to be agreed with chair and IP rather than need for committee to consider.

4. Finding – no breach of Code of Conduct

Current situation

MO needs sub-committee to ratify finding of no breach.

Suggestions

As above – we see no need for sub-committee ratification unless MO thinks it is necessary.

5. Finding – breach of Code of Conduct

Current situation

MO may seek local resolution in consultation with IP ‘to satisfaction of complainant’. Otherwise goes for hearing

Suggestion

We support local resolution at this stage but see comments above about need to satisfy complainant.

6. Hearing, sanctions and appeals

Current situation

If committee find breach will recommend sanction to full council

Member may make representations to council on sanction within 5 days

Member and complainant may both appeal within 15 days to appeals sub-committee – appeal on facts or defective procedure

Suggestion

- a) Sanctions be delegated to the committee wherever possible. Avoids delay, risk of politicisation and ‘re-trial’
- b) Confusing rights of appeal. We recommend no need for appeal is allowed – sanctions do not remove from councillor to office, so are lighter touch and do not need to be HRA-compliant. Appeals delay process.

7. Composition of standards committee

Councillor membership reflects political balance of authority, but has number of lay members and must be chaired by a lay member

Suggestion

Composition seems fair and reflects political reality of council, as well as signalling to public its non-partisan nature insofar as legislation allows. Ensure hearing sub-committees do not look over-dominated by one political group.

8. Code of Conduct

Current situation

First part of Code – ‘behaviours’ based around old Code. Second part – ‘interests’ – draws language from old Code but interpolates statutory requirements around Disclosable Pecuniary Interests

Suggestions

Code doesn't set out rules for members on what to do if they have interests other than a DPI, though they are covered by the Code. Also, there is duplication between the list of ‘other interests’ and categories of DPIs. The interests provisions should be re-written to provide greater clarity.

PAUL HOEY NATALIE AINSCOUGH
CO-DIRECTORS
HOEY AINSCOUGH ASSOCIATES LTD

18 September 2014

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Appendix 2

The Committee on Standards in Public Life:

THE SEVEN PRINCIPLES OF PUBLIC LIFE

The Seven Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The Principles also have application to all those in other sectors delivering public services.

SELFLESSNESS

Holders of public office should act solely in terms of the public interest.

INTEGRITY

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

OBJECTIVITY

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

ACCOUNTABILITY

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

OPENNESS

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

HONESTY

Holders of public office should be truthful.

LEADERSHIP

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

The Seven Principles were established in the Committee's First Report in 1995; the accompanying descriptors were revised following a review in the Fourteenth Report, published in January 2013.

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Appendix 3

Sanctions for Breach of a Local Code of Conduct

Since July 2012, the sanctions available are:

- To censure the Offending Member
- To request the Offending Member to give a written apology in a form determined by the decision-making Body
- To request the Offending Member to undertake such training as may be specified by the decision-making Body
- To request the Offending Member to participate in such conciliation as may be specified by the decision-making Body
- To report the outcome to the Council with recommendations as to limiting the Offending Member's access to Council facilities or resources.
- To advise the Leader of the Political Group to which the Offending Member belongs recommending that they take action.

Note that there is not a definitive list of possible sanctions. The above are generally agreed by practitioners but in addition authorities have sought:

- Financial contributions from Offending Members towards the costs of the process.
- Removal of IT equipment.
- Removal of Ward Budget.
- Removal of Mobile Phone
- Removal of Internet access
- That a Councillor use a Single Point of Contact to correspond with the Council.

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