

LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE STANDARDS (ADVISORY) COMMITTEE

HELD AT 7 P.M. ON THURSDAY, 10 MAY 2012

**M78, 7TH FLOOR, TOWN HALL, MULBERRY PLACE, 5 CLOVE CRESCENT,
LONDON E14 2BG**

Members Present:

Mr Patrick (Barry) O'Connor (Chair)

Mr. Matthew William Rowe (Vice-Chair)

Ms. Salina Bagum (Independent Member)

Mr Denzil Johnson (Independent Member)

Mr Barry Lowe (Independent Member)

Mr Eric Pemberton (Independent Member)

Councillor Zenith Rahman

Councillor Rachael Saunders

Councillor Joshua Peck [in place of Councillor Carli Harper-Penman]

Councillor David Snowdon [in place of Councillor Zara Davis]

Other Councillors Present:

Officers Present:

Isabella Freeman – (Assistant Chief Executive - Legal Services, Chief Executive's)

John Williams – (Service Head, Democratic Services, Chief Executive's)

David Galpin – (Head of Legal Services (Community), Legal Services, Chief Executive's)

Hugh Sharkey – (Interim Service Head Procurement & Corporate Programmes, Resources)

Simone Scott-Sawyer – (Democratic Services)

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Zara Davis and Sue Rossiter. Councillor David Snowdon deputised for Councillor Zara Davis, and Councillor Joshua Peck deputised for Councillor Carli Harper-Penman.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. MINUTES

That the minutes of the meeting held on 12th January 2012 be approved as a correct record of proceedings.

4. REPORTS FOR CONSIDERATION

The Chair **moved** and it was agreed that the order of business be varied. Accordingly, agenda item 4.1 was considered as the first item of business, followed by 4.3 and 4.2. The published agenda order was resumed after item 4.2 had been discussed.

4.1 Covert investigation and interception of communications - Annual Report 2011/2012

David Galpin, Head of Legal Services, Community presented the report and highlighted the following salient points:

- There had been three authorisations to date;
- No inspections took place during the course of the year;
- The Protection of Freedom Bill had received Royal Assent and was now the Protection of Freedom Act.

The Chair remarked that the inspection of a licence for 24 hours appeared to be modest. Mr Galpin pointed out that this represented a breakthrough in terms of how the Council dealt with touting issues and enforcement was moving in the right direction.

RESOLVED

That the report be noted.

4.2 Localism Act 2011 - The Amended Standards Regime

Isabella Freeman, Assistant Chief Executive, Legal Services presented the report.

The salient points were summarised as follows:

- There was still a statutory duty to promote and maintain a high conduct for Members. There was also a statutory requirement to have a Standards Committee and a need to deal with complaints under the new Code;
- The recommended Code as per Appendix 3 was an amended version of the current Code;

- Paragraph 3 – this still contained the general obligations [bullying, intimidation etc];
- Appendices 4 and 5 – contain two templates for alternative Codes;
- Pecuniary interests –to be defined and was awaiting further Guidance from Government.

New category of 'Independent Person'

- The 'Independent Person' would be consulted when a complaint was received;
- The reasoning behind the introduction of an 'Independent Person' was to get rid of frivolous complaints and offer support and advice to the Monitoring officer if the complaint was presented to the Standards Committee;
- Where there was an investigation, the 'Independent Person' would have the ability to comment prior to the Committee hearing.

The following key proposals had been put forward:

- That existing independent Members be retained as co-optees;
- That the Standards Committee became an advisory Committee for full Council. Some of the key advantages of this model would be to enable the Committee to deal with other matters outside full Council, except in exceptional circumstances, and this would be in line with other local authorities.

Dealing with complaints

- Once a complaint was received, the Monitoring officer and 'Independent Person' would deal with it. If there was a serious breach of the Code, there would be a recommendation that the matter be referred to the Standards Committee. If there was no breach, the matter would remain confidential, and simply reported to the Committee on a quarterly basis;
- Page 32, paragraph 10 – sets out limited sanctions available under the new provisions, with the Member being able to carry out ward duties and attend full Council.

Some of the Members' concerns were outlined as follows:

- One Member outlined his reservations as follows:
 1. The lack of detail and proper consultation with Members, thereby preventing them from properly engaging in the process and having the ability to influence the report;
 2. The lack of timescales and deadlines in the current system was of further concern as claims became protracted;
 3. Although there was no statutory right of appeal, the lack of a proper appeal process was deemed unacceptable;

4. There was a real need for a cross-party discussion, with a view to it being submitted to the General Purpose Committee [as it impinged on the Council's Constitution] and then on to full Council;
5. The broader views of Members ought to be included in the process before it was submitted to full Council. It was essential that the document was 'fit for purpose' from the start.

For the purposes of encapsulating some of the key points of concern in the report, he highlighted the following:

- Page 29, paragraph 4.10 - more clarity was sought around the powers of the LSP or Community forums;
- Page 30, paragraph 7 – the use of the word 'condone' seemed to give the wrong connotation and the paragraph may therefore need rewording;
- Page 31, point 2 – with reference to the 'Independent Person', in order to avoid ambiguity, would we need two independent persons with one acting as a reserve? Ms Freeman clarified that both 'Independent Persons' were to be consulted which was rather confusing, so, one would act as a reserve;
- Page 31, points 3, 4 & 6 – needed clearer timescales;
- Page 31, point 6 – would the Monitoring officer be responsible completing the investigation;
- Page 31, point 8 – where there was evidence of failure, would this mean that the matter was not reported to the Committee? Ms Freeman explained that it was a balancing act and the idea was to ensure that where there was no issue to investigate, the matter would remain confidential. However, such issues would be reported to the Committee on a quarterly basis;
- Page 36, paragraph 3.3 – the use of the word 'confidential' was ambiguous and some clarity was needed;
- Page 38, paragraph 5.2 – reference to "dis-closable pecuniary interests" was silent on Members observing a meeting and needed some clarification.

Other Members were concerned generally about the lack of consultation and highlighted other points of concern as follows:

- They reiterated the need for a proper appeal system to ensure justice was done, and adequate consultation, not just for Members, but also for members of the public and residents as they also had a stake in the process. A robust, fair policy was imperative to inspire confidence. Members were also apprehensive about the manner in which the elected Mayor was called into account as he was not deemed an elected Member, and therefore as the Executive was effectively outside the Standards regime;
- The thrust of the legislation that bad behaviour will result in sanctions, should not be overlooked;
- Another Member wondered if there would be a mechanism in place to monitor compliance. Furthermore, where a letter of advice had been

issued and the Member committed a further offence, would that letter be taken into consideration?

- With reference to page 32, point 11, one Member asked whether the recommendations of Hearing panels were required to be published openly;
- With regards to investigations outside the Committee's remit, or unfounded allegations, would these be exempt from the provisions of the Freedom of Information Act [FOI]?
- There was also concern that although recommendations were freely published, that freedom did not appear to extend to the outcomes of those recommendations.

In response to Members' questions, Ms Freeman explained that regrettably the Council received little notification from Central Government and no guidance on the Code, hence there was little time to adequately consult with Members. It would also be a question of resources as to how feasible it would be to set up an extra-ordinary meeting of the Council to deal with one item. With regards to appeals, Ms Freeman believed that there was some leeway to have some form of an appeal process and would look into this. She also clarified that there was a timescale of 3 months and that there was the possibility of adding extra time for investigations, as the process ought to be fair.

Ms Freeman said that to address Members' concerns Members could have some input into the report now before it was submitted to Council, and that there would be a further opportunity to amend the report post-Council over the summer period. Preliminary views from Members would be welcomed at this stage.

With regards to monitoring compliance, Ms Freeman was of the view that the revised wording of the report could reflect Members' concerns on this. As regards the Mayor, Ms Freeman stated that he was currently bound by the Council's Code of Conduct and would need to check the regulations going forward as nothing had been published on this point.

With reference to the recommendations of Hearing panels, Ms Freeman stated that they were likely to be published in the Committee meeting's minutes in accordance with the access to information provisions.

Ms Freeman pointed out that some complaints regarding information was exempt from the FOI Act, however, it was uncertain as to the extent of this and she endeavoured to look into it with colleagues in other councils and report back in due course. She also stated that it was possible to have a system whereby there was a report on 'previous complaints' to deal with the outcomes of recommendations to Hearing panels.

In conclusion, the Chair stated that the report was in need of further editing and emphasised that the Standards regime in its new format must have an independent element to maintain credibility.

Ms Freeman promised to take Members' concerns into account and report back in due course. She also endeavoured to benchmark with other local authorities on how to appoint an 'Independent Person' and to keep Members apprised. In consultation with the Service Head of Democratic Services, she would look at the possibility of creating new dates to allow for Member involvement in the process.

RESOLVED

That the report be subject to further consultation and amended before going to full Council.

4.3 Ethical Governance Protocol for Corporate Contracts

Hugh Sharkey, Service Head Procurement and Corporate Programmes introduced the report.

The following points were highlighted:

- The protocol governed the relationship between the Council and suppliers, and the conduct of Directors and employees;
- In order for suppliers to be on the Council's payment system, they must comply with the protocol or demonstrate that they would adhere to the Council's requirements;
- The Council's Procurement Strategy had been refreshed;
- It was a requirement of the protocol that the relevant policies were in place before the formation of a contract.

Ms Isabella Freeman, Assistant Chief Executive, Legal Services added that the Council's contract also encompassed Audit provisions to ensure compliance with policies relating to whistle blowing or equalities issues for instance.

Members made the following comments:

- That the Council's "Fair trade" and ethical procurement policies should also be embraced. Mr Sharkey confirmed that the intention was to encapsulate all such policies in one place;
- What form of sanction was meted out when there was evidence of a breach by a contractor, as there appeared to be some confusion over the types of contracts that were covered by the Protocol. Mr Sharkey explained that remedies were available for non-performance of a contract and where a contractor was tardy in making a delivery for instance, they would be subject to damages. In the event that the contractor failed to provide a remedy, the Council was not obliged to honour the contract. Ms Freeman further clarified that, by virtue of specific clauses in the contract, contractors were forbidden from making untoward or political comments.

RESOLVED

That the report be noted.

5. ANY OTHER BUSINESS WHICH THE CHAIR CONSIDERS URGENT

There was none.

The meeting ended at 9 p.m.

Chair, Mr Patrick (Barry) O'Connor
Standards (Advisory) Committee