

Meeting of the

STANDARDS COMMITTEE

Thursday 10th May at 7.30 p.m.

A G E N D A

VENUE

M78, 7th Floor, Town Hall, Mulberry Place, 5 Clove Crescent, London
E14 2BG

Members:	Deputies (if any):
Chair: Mr Patrick (Barry) O'Connor Vice-Chair: Mr Matthew William Rowe Ms. Salina Bagum Mr. Denzil Johnson Mr. Barry Lowe Mr. Eric Pemberton Ms Sue Rossiter Two Vacancies	
Councillor Zara Davis Councillor Carli Harper-Penman Councillor Fozol Miah Councillor Md. Maium Miah Councillor Zenith Rahman Councillor Rachael Saunders	Councillor Gloria Thienel, (Designated Deputy representing Councillor Zara Davis) Councillor Harun Miah, (Designated Deputy representing Councillor Fozol Miah) Councillor Khaled Uddin Ahmed, (Designated Deputy representing Councillors Carli Harper-Penman, Zenith Rahman and Rachael Saunders) Councillor Joshua Peck, (Designated Deputy representing Councillors Carli Harper-Penman, Zenith Rahman and Rachael Saunders) Councillor Motin Uz-Zaman, (Designated Deputy representing Councillors Carli Harper-Penman, Zenith Rahman and Rachael Saunders)
[Note: The quorum for this body is 3 Members, of whom two must be Independent Members].	

If you require any further information relating to this meeting, would like to request a large print, Braille or audio version of this document, or would like to discuss access arrangements or any other special requirements, please contact: Simone Scott-Sawyer, Democratic Services:

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LONDON BOROUGH OF TOWER HAMLETS

STANDARDS COMMITTEE

Thursday 10th May 2012

7.30 p.m.

1. APOLOGIES FOR ABSENCE

To receive any apologies for absence.

2. DECLARATIONS OF INTEREST

To note any declarations of interest made by Members, including those restricting Members from voting on the questions detailed in Section 106 of the Local Government Finance Act, 1992. See attached note from the Chief Executive.

	PAGE NUMBER	WARD(S) AFFECTED
3. MINUTES		
To confirm as a correct record of the proceedings the minutes of the ordinary meeting of the Standards Committee held on 12 th January 2012.	3 - 8	
4. REPORTS FOR CONSIDERATION		
4 .1 Covert investigation and interception of communications - Annual Report 2011/2012	9 - 16	
4 .2 Localism Act 2011 - The Amended Standards Regime	17 - 46	
4 .3 Ethical Governance Protocol for Corporate Contracts	47 - 50	
5. ANY OTHER BUSINESS WHICH THE CHAIR CONSIDERS URGENT		

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Agenda Item 2

DECLARATIONS OF INTERESTS - NOTE FROM THE CHIEF EXECUTIVE

This note is guidance only. Members should consult the Council's Code of Conduct for further details. Note: Only Members can decide if they have an interest therefore they must make their own decision. If in doubt as to the nature of an interest it is advisable to seek advice **prior** to attending at a meeting.

Declaration of interests for Members

Where Members have a personal interest in any business of the authority as described in paragraph 4 of the Council's Code of Conduct (contained in part 5 of the Council's Constitution) then s/he must disclose this personal interest as in accordance with paragraph 5 of the Code. Members must disclose the existence and nature of the interest at the start of the meeting and certainly no later than the commencement of the item or where the interest becomes apparent.

You have a **personal interest** in any business of your authority where it relates to or is likely to affect:

- (a) An interest that you must **register**
- (b) An interest that is not on the register, but where the well-being or financial position of you, members of your family, or people with whom you have a close association, is likely to be affected by the business of your authority more than it would affect the majority of inhabitants of the ward affected by the decision.

Where a personal interest is declared a Member may stay and take part in the debate and decision on that item.

What constitutes a prejudicial interest? - Please refer to paragraph 6 of the adopted Code of Conduct.

Your personal interest will also be a prejudicial interest in a matter if (a), (b) and either (c) or (d) below apply:-

- (a) A member of the public, who knows the relevant facts, would reasonably think that your personal interests are so significant that it is likely to prejudice your judgment of the public interests; AND
- (b) The matter does not fall within one of the exempt categories of decision listed in paragraph 6.2 of the Code; AND EITHER
- (c) The matter affects your financial position or the financial interest of a body with which you are associated; or
- (d) The matter relates to the determination of a licensing or regulatory application

The key points to remember if you have a prejudicial interest in a matter being discussed at a meeting:-

- i. You must declare that you have a prejudicial interest, and the nature of that interest, as soon as that interest becomes apparent to you; and
- ii. You must leave the room for the duration of consideration and decision on the item and not seek to influence the debate or decision unless (iv) below applies; and

- iii. You must not seek to improperly influence a decision in which you have a prejudicial interest.
- iv. If Members of the public are allowed to speak or make representations at the meeting, give evidence or answer questions about the matter, by statutory right or otherwise (e.g. planning or licensing committees), you can declare your prejudicial interest but make representations. However, you must immediately leave the room once you have finished your representations and answered questions (if any). You cannot remain in the meeting or in the public gallery during the debate or decision on the matter.

LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE STANDARDS COMMITTEE

HELD AT 7.30 P.M. ON THURSDAY, 12 JANUARY 2012

**ROOM C1, TOWN HALL, MULBERRY PLACE, 5 CLOVE CRESCENT, LONDON,
E14 2BG**

Members Present:

Mr Patrick (Barry) O'Connor (Chair)

Mr Matthew William Rowe (Vice-Chair, in the Chair)

Ms. Salina Bagum (Independent Member)

Mr Eric Pemberton (Independent Member)

Ms Sue Rossiter (Independent Member)

Councillor Zara Davis

Councillor Zenith Rahman

Councillor Rachael Saunders

Councillor Joshua Peck (In place of Councillor Carli Harper-Penman)

Other Councillors Present:

Officers Present:

Isabella Freeman	– (Assistant Chief Executive - Legal Services, Chief Executive's)
Tony Qayum	– (Corporate Fraud Manager, Internal Audit, Resources)
David Galpin	– (Head of Legal Services (Community), Legal Services, Chief Executive's)
John Williams	– (Service Head, Democratic Services, Chief Executive's)
Antonella Burgio	– (Democratic Services)

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors; Maium Miah, Md. Mukit MBE and Carli Harper-Penman. Councillor Joshua Peck deputised for Councillor Harper-Penman.

Apologies for lateness were received from Councillor Zara Davies and Chair, Mr Patrick (Barry) O'Connor who were serving on a Standards Sub-Committee meeting immediately prior to the committee.

2. DECLARATIONS OF INTEREST

No declarations of personal or prejudicial interests were made.

3. MINUTES

The minutes of the meeting held on 11th October 2011 were approved as a correct record of proceedings.

4. REPORTS FOR CONSIDERATION

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

4.1 Corporate Complaints:- Half year report 2011/12

David Galpin, Head of Legal Services – Community presented the report circulated at agenda item 4.1. Members were asked to note performance for FOI requests at paragraph 4.17 and the analysis of the following variations in performance:

- the rise in parking services complaints was attributed partly to seasonal variation caused by renewals of residents' permits and permit books and in part to some technical faults that arose during the implementation of a new IT system.
- the increase in complaints relating to dry recycling as a percentage of total complaints for refuse was very small and not considered significant
- the increase in complaints relating to summer events in parks was a seasonal variation for the half-year period reported.
- the fall in Tower Hamlets Homes (THH) complaints was larger than expected. There had been no changes in service levels therefore the Council and THH were investigating whether there had been underreporting.
- performance for Ombudsman complaints compared favourably to other London councils.

In response to Members' questions the following information was provided:

- the increase in street cleansing and parks cleansing complaints was noted. However levels of street cleanliness had remained at around 70% and performance was increasing. The service was characteristically high-volume therefore the Director was of the view that the variation was not significant. A response concerning Park cleansing complaints would be circulated following the meeting

Action: Head of Legal Services - Community

- in the second and third quarters, around 90% of Freedom of Information requests were responded to within the statutory time frame. Should performance fall below 85%, the Information Commissioner would be come involved in monitoring performance
- in all three quarters, 100% performance against response times was achieved for Stage Three Complaints.

The Committee was informed that written answers to the following questions would be provided:

- what action was taken where poor recycling practices were evidenced in the community.
- whether Stage One to Three Complaints data displayed any geographical pattern
- whether the trend for Stage One complaints resolved had increased or decreased
- whether the closure of Jack Dash House one-stop-shop had caused increased complaints

Action: Head of Legal Services - Community

RESOLVED

That subject to the actions above, the report be noted.

4.2 Annual Anti Fraud Report 2010-11

Tony Qayum, Corporate Fraud Manager presented the report circulated at agenda item 4.2 which summarised work on sensitive and reactive enquiries that had been undertaken during 2010 – 11. The Committee was asked to note the changes in structural arrangements of the Antifraud Team which was now managed through one management structure. Additionally members were asked to note the proactive initiatives at 4.7 of the report.

In response to Members' questions the following information was provided:

- statistics for staff that had left the Council following NFI probity checks referred to employees that had had incorrect work visas. Data matching had identified inconsistencies such as false National Insurance numbers. This kind of data was small and found to occur generally in low risk areas such as cleansing and catering. Employees tended to leave immediately when they were approached for investigation.
- the noted rise in insurance claims, was due to better analysis and more robust procedures. Data was represented on a rolling basis; therefore where a claim made in 2009 was not settled until 2010 an effect might be seen in statistics reported.
- the Council's Antifraud Unit had strong working relationships with all registered providers in the Borough since protocols on sharing information with RSL's provided that any referrals were evaluated and

investigated no matter whether they belonged to the Council or to the registered providers.

The Committee considered the recent conviction of a Member of the Council for fraud that had been reported in the press and enquired what were the implications on the Council. Members were informed that the Councillor concerned had pleaded guilty to failing to declare a change of circumstances however implications on his/her position as a Member of the Council would not be known until a sentence had been given. Should a sentence of more than three months be handed down, then disqualification would occur. However should there be an appeal against the conviction, no disqualification could be imposed until this had been determined. The Committee voted to suspend standing orders to allow a member of the public to comment on this matter. The member of the public, who was a prospective parliamentary candidate, wished to express his extreme concern and that of the people of the Borough on the activity the Councillor who had been convicted. In his view, this was an ethical matter and he felt that Standards Committee should send a strong message to the Mayor enquiring whether the Member concerned could be relieved of her duties. The Committee agreed to note the concerns expressed.

The Committee was asked to note that the Localism Act would impose changes on the Standards regime; however all existing matters would be dealt with under current provisions until new arrangements were in force. A transitional period would operate from 1 April 2012 until the beginning of the new Municipal Year.

RESOLVED

That the report and comments of the member of the public be noted

4.3 Covert Investigation Under the Regulation of Investigatory Powers Act 2000

David Galpin, Head of Legal Services - Community presented the report circulated at agenda item 4.3 which reported: the Council's use of covert investigations under the Regulation of Investigatory Powers Act 2000 (RIPA) in the third quarter 2011 – 2012, further information on authorisations in quarters one and two and a comment on the reduction in covert activities that had been previously requested by the Committee.

In discussion the following matters were noted:

- illegal moneylaundering investigations were no longer investigated by the Council but were dealt with through a national office.
- a Member commented that in his view RIPA authorisations for investigations that required longer surveillance seemed difficult to secure and this hindered enforcement actions by Partners. Members were informed that powers other than those under RIPA were available to Registered Social Landlords (RSL). RSL's could opt to undertake

surveillance themselves, work jointly with the Council or go to the Police.

- a Member felt that surveillance activity wasn't effectively reported to the community therefore facts and figures were doubted by the public.

The Committee made the following requests:

- that future, data be reported in the different categories of enforcements that were undertaken by the Council
- the monitor of surveillance activity might be reported more comprehensively. The Head of Legal Services - Community agreed to explore how further surveillance information could be collected and reported in future

Action: David Galpin, Head of Legal Services - Community

RESOLVED

That the report be noted

4.4 Members' Attendance, Timesheets and Declaration of Interests: Monitoring Report

John Williams, Service Head, Democratic Services presented the report circulated at agenda item 4.4 and tabled the latest timesheet performance update at the meeting.

The following matters were discussed:

Concerning data at appendix 1, the Committee:

- was informed that performance on timesheet returns was more or less constant. It was noted that those inclined to submit returns continued to do so and vice-versa.
- asked the returns submitted in respect of Councillors Kabir Ahmed Joshua Peck and Craig Aston be checked again.
- asked that a letter be written to Councillor Shahed Ali regarding the lack of returns submitted.

Action: John Williams, Service Head, Democratic Services

Concerning data at appendix 3, the Committee was informed that:

- cells shaded grey, indicated that Members were not required to undertake the designated mandatory training.
- Members were required to update the register of interests only where their circumstances had changed. Written reminders were sent half yearly.

RESOLVED

That the report be noted

4.5 Localism Act 2011: Changes to the Standards Regime

Isabella Freeman, Assistant Chief Executive, Legal Services gave an oral report and tabled a briefing for Committee Members. The following summary of the changes to the standards regime effective from 1 April 2012 was provided:

- the requirement for a Standards Committee would cease
- a Member level body would still however be required to deal with standards issues.
- a statutory duty remained to promote and maintain high standards of conduct

- the requirement for Referrals, Review and Hearing Sub-Committees was repealed
- Standards Committee's power to impose sanctions was repealed
- the Council would be enabled to establish its own hearings processes.

- the current Members' Code of Conduct would be repealed
- the Council would be required to adopt a new code of conduct consistent with the seven principles of conduct in public life
- paragraphs 3 to 7 of the present Members' Code of Conduct would be included in the new code

- Members would be required to register and disclose "Disclosable Pecuniary Interests"
- failure to register interests would become a criminal offence
- any interests not registered would need to be disclosed at meetings

Transitional arrangements would be operated from 1 April 2012.

RESOLVED

That the verbal report be noted.

5. ANY OTHER BUSINESS WHICH THE CHAIR CONSIDERS URGENT

Nil items.

The meeting ended at 9.00 p.m.

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

Agenda Item 4.1

Committee: Standards	Date: 10 May 2012	Classification: Unrestricted	Report No:	Agenda Item:
Report of: Assistant Chief Executive (Legal Services) Originating officer(s) David Galpin, Head of Legal Services - Community		Title: Covert investigation and interception of communications – Annual Report for 2011/2012 Wards Affected: All		

1. Summary

- 1.1. The codes of practice issued by the Home Office in relation to Part 2 of the Regulation of Investigatory Powers Act 2000 (“RIPA”) recommend that elected members have oversight of the Council’s use of covert investigation. The Standards Committee’s terms of reference enable the committee to receive reports on the Council’s authorisation of covert investigations under RIPA.
- 1.2. This report reviews the Council’s activities under RIPA in 2011/2012, reports on the results of inspections and summarises the impacts expected when the Protection of Freedoms Bill becomes law.

2. Decisions required

The Committee is recommended to consider and comment on the following –

- 2.1. The information regarding RIPA activity by the Council in 2011/2012.
- 2.2. The information about the Protection of Freedoms Bill.

3. Fourth Quarter

- 3.1. In the fourth quarter of 2010/2011, a single authorisation was granted with the unique reference number CS0003. A summary of this authorisation is contained in Appendix 1.

4. Directed surveillance authorisations in 2010/2011

- 4.1. In total 3 covert surveillance matters are recorded on the central record for the 2011/2012 financial year. These applications all came from the council’s communities localities and culture directorate and were dealt with as follows –

Application outcomes:

Authorisation granted	3
Authorisation refused	0
Application rejected by gatekeeper	0
Application withdrawn	0
Total:	3

- 4.2. The 3 authorisations granted compared to 12 in 2010/2011. The authorisations were granted for investigations in the following enforcement areas –

Subject matter of investigation:

Anti-social behaviour	1
Touting	2
Total:	3

- 4.3. The two touting related investigations were focussed on Brick Lane and surrounding streets. The remaining investigation was concerned with activity at the Glamis Estate in Shadwell ward.

- 4.4. The reasons for the reduction in authorisations in 2011/2012 were examined in the report to the Standards Committee of 12 January 2012. An examination of the Council's overall enforcement activity during 2011/2012 is currently being carried out. In terms of prosecutions, the Council dealt with 1308 cases in 2011/2012 compared with 818 in 2010/2011. This is a significant increase and supports the reasons given to the Committee on 12 January.

- 4.5. The following priority areas are expressed in the Council's covert surveillance policy –

- Anti-social behaviour
- Fly-tipping
- Unlawful street vending of DVDs and tobacco
- Underage sales of knives, tobacco, alcohol and fireworks
- Fraud, including misuse of disabled parking badges and claims for housing benefit
- Illegal money-lending and related offending
- Breach of licence.

- 4.6. Two of the authorisations in 2011/2012 dealt with touting, which is not, in itself, an expressed priority area. That said, touting may involve anti-social behaviour, depending upon how it is conducted. The Council's approach to touting has also involved focussing on the responsible premises, particularly the imposition of conditions on any premises licence under the Licensing Act 2003 to control touting and checking whether the conditions are complied with. Both anti-social behaviour and breaches of licence are expressed priority areas. The use of

covert investigation was considered appropriate by the authorising officer in each of the touting cases.

- 4.7. Throughout the year, covert investigation was the subject of regular discussion at safer communities operations meetings organised by the Council's communities, localities and culture directorate. These meetings are attended by relevant officers in the Council, as well as police and a representative from Tower Hamlets Homes Ltd. The meetings provided an opportunity to discuss the appropriateness of covert surveillance in individual cases and to check the progress of any live authorisations (additional to formal review by the authorising officer). Training was carried out on 8 February 2012 for officers who may engage in covert investigation.
- 4.8. The enforcement activity consequent on the Council's three covert investigations may be summarised as follows –

URN	Enforcement activity
CS0001	This investigation concerned touting in the Brick Lane area. As a result of the investigation, two premises had their licences reviewed, with the result that: one of the premises had licensable activities suspended for 24 hours and had conditions imposed on its licence; and one of the premises had licensable activities suspended for seven days.
CS0002	This investigation concerned instances of homophobic and racist graffiti. The Council worked with the police and East End Homes. As a result of the investigation an individual was convicted of criminal damage and sentenced to eight weeks in prison.
CS0003	This investigation concerned touting in the Brick Lane area. The investigation only concluded on 14 April 2012 and it is too early to report on follow-up enforcement activity.

5. Covert Human Intelligence Sources

- 5.1 There were no requests during 2010/2011 for authorisation to use covert human intelligence sources. This is consistent with the Council's policy, which requires officers to first demonstrate to the satisfaction of the Assistant Chief Executive (Legal Services) that they have the skill and experience to handle a covert human intelligence source, before seeking authority to use a covert human intelligence source.

6. Interception of communications

- 6.1 The interception of communications is dealt with under Part 1 of RIPA (by contrast, directed surveillance and the use of covert human intelligence sources are dealt with under Part 2 of RIPA). The interception of communications is regulated by the Interception of Communications Commissioner's Office (IOCCO). The IOCCO reports on a calendar year. During 2011, the Council had: two notices requiring disclosure of communications data; and 59 authorisations to acquire communications data. All of these were processed by the National Anti-Fraud Network (NAFN) as the Council's single point of contact. All of these were subsequently approved by the Council's designated person (who is also the Council's authorising officer for covert surveillance). In each case the applications were for subscriber records.

7. Inspections in 2011/2012

- 7.1. The Council was not inspected by the Office of Surveillance Commissioners or the Interception of Communications Commissioner's Office during 2011/2012.

8. Protection of Freedoms Bill

- 8.1. The Protection of Freedoms Bill was referred to in the report to the Committee on 19 July 2011. The Bill remains at the committee stage in the House of Lords. A further report will be made to the Committee once the Bill has been passed.

8. Comments of the Chief Finance Officer

- 8.1. This is a report of the Council's use of the Regulation of Investigatory Powers Act 2000 ("RIPA") to the Standards Committee. There are no financial implications arising from the recommendations in this report.

9. Concurrent report of the Assistant Chief Executive (Legal)

- 9.1. Legal implications are addressed in the body of the report.

10. One Tower Hamlets

- 10.1. Enforcement action that complies with the five principles expressed in the Council's enforcement policy should help to achieve the objectives of equality and personal responsibility inherent in One Tower Hamlets.
- 10.2. The Council's enforcement policy was the subject of an equality impact assessment before adoption and it is considered that any indirect discrimination arising from targeted action is justifiable and not unlawful under the Equality Act 2010.

- 10.3. Necessity and proportionality are key considerations in respect of every application for authorisation under RIPA to ensure that the action comes within Article 8(2) of the European Convention on Human Rights and that the Council does not breach its obligations under the Human Rights Act 1998.

11. Sustainable Action For A Greener Environment

- 11.1. The Enforcement Policy seeks to target the Council's enforcement action in accordance with the Community Plan. The Community Plan contains the Council's sustainable community strategy for promoting or improving the economic, social and environmental well-being of Tower Hamlets and contributing to the achievement of sustainable development in the United Kingdom. To the extent that the Enforcement Policy aligns enforcement action with the Community Plan it will tend to promote sustainable action for a greener environment.

12. Risk Management Implications

- 12.1. Enforcement action carries with it a variety of inherent risks, including the potential for allegations of over- or under-enforcement, discrimination, adverse costs orders and damage to the Council's reputation. It is considered that proper adherence to RIPA, the codes of practice, the Council's policies and guidance will ensure that risks are properly managed. Oversight by the Standards Committee should also provide a useful check that risks are being appropriately managed.

13. Efficiency Statement

- 13.1 The report does not propose any direct expenditure. Rather, it is concerned with regularising decision-making in areas in which the Council is already active. The Enforcement Policy seeks to ensure that enforcement action is targeted to the Council's policy objectives. This is more likely to lead to efficient enforcement action than a less-controlled enforcement effort. It is also proposed that members will have an oversight role through the Standards Committee. This will provide an opportunity to judge whether the Council's enforcement action is being conducted efficiently.

14. Appendices

Appendix 1 Summary of Quarter 4 RIPA authorisations

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

Brief description of "back ground papers"

Name and telephone number of holder and address where open to inspection.

None

N/A

APPENDIX 1 - SUMMARY OF QUARTER 4 RIPA AUTHORISATIONS

CS0003	Summary information
Service area:	Trading Standards
URN granted:	31 October 2011
Application on correct form?	Yes
Date of gatekeeper clearance:	12 March 2012
Date of authorisation:	15 March 2012
Expiry date and time:	14 June 2012
Scheduled review date(s):	16 April 2012
Dates of reviews:	16 April 2012
Cancellation:	16 April 2012
Total time open:	32 days
Type of covert investigation:	Covert surveillance
Subject matter of investigation:	Touting in Brick Lane and surrounds
Necessity:	Preventing or detecting crime and disorder. Particular offences are under: Licensing Act 2003, section 136(1) (breach of licence condition); Local Government Act 1972, section 237 (breach of anti-touting bye-law); Consumer Protection from Unfair Trading Regulations 2008, regulations 9 and 11 (false inducements and aggressive commercial practices).
Proportionality:	The Council has prosecuted touts, but touting persists in this area and there is a need to target restaurants. There has been widespread publicity of anti-touting enforcement. Every restaurant in the vicinity was written to in February 2011 and July 2011. Overt patrols, including by uniformed officers, do not gather sufficient evidence.
Collateral intrusion:	Collateral intrusion was considered likely. It was proposed that any unused material would be kept under seal for the purposes of disclosure in the event of any criminal proceedings being brought.
Outcome:	A single covert test purchase was conducted. This showed the tout's interaction with the purchaser and the relationship between the tout and the restaurant.

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Agenda Item 4.2

Committee/Meeting: Standards Committee Council	Date: 10 May 2012 16 May 2012	Classification: Unrestricted	Report No:
Report of: Assistant Chief Executive (Legal) Originating officer(s) Isabella Freeman, Monitoring Officer		Title: Localism Act 2011 – The Amended Standards Regime Wards Affected: All	

Lead Member	Deputy Mayor
Community Plan Theme	One Tower Hamlets
Strategic Priority	Work efficiently and effectively as one council

1. **SUMMARY**

- 1.1 This report updates the Council on the current position with regard to the Standards regime in the Localism Act 2011. It is anticipated that the new arrangements will fully come into force from 1 July 2012. A decision on establishing a Standards Advisory Committee; adopting a draft new Code of Conduct; and the appointment of a statutory Independent Person is sought so that arrangements can be put in place for a July commencement.

2. **DECISIONS REQUIRED**

- 2.1 The Council is recommended to approve the following with effect from the relevant commencement dates under the Localism Act 2011:-
- 2.2 The establishment of a Standards Advisory Committee with terms of reference as set out in Appendix 1.
- 2.3 The current seven Independent Members of the Standards Committee be reappointed as Co-Optees to the new Standards Advisory Committee when formed.
- 2.4 The arrangements for dealing with allegations of a breach of the Code of Conduct as set out in Appendix 2.
- 2.5 Authorise the Monitoring Officer to explore options for, and take the necessary action to appoint, an Independent Person whose appointment shall be confirmed by Full Council.

- 2.6 The delegation to the Monitoring Officer of authority to consider applications for dispensations from the restrictions on participation in any matter in which there is a disclosable pecuniary interest.
- 2.7 The adoption of a new Code of Member Conduct for the Council with effect from 1 July 2012 as set out in Appendix 3.

3. BACKGROUND

- 3.1 The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted members. The date for implementation of these changes is currently proposed to be 1 July 2012. It is therefore necessary for the new arrangements to be agreed at the meeting of Council in May 2012. Some of the changes are already effective in so far as they relate to referrals to the Standards Board for England.
- 3.2 This report describes the changes and recommends the actions required for the Council to implement the new regime. It will be necessary for the Council to approve a new Code of Conduct. A recommended draft code for Tower Hamlets is attached at Appendix 3. Whilst a Code will not be prescribed the Local Government Minister has published a model short form code (Appendix 4). The Local Government Association has also circulated a suggested template code (Appendix 5). However, other London Authorities have adopted a similar code to the previous model code and this is also proposed for Tower Hamlets.
- 3.3 The authority will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members. As far as possible this report recommends a framework close to the current one as that is now well established and understood by members.
- 3.4 When in force the Act will repeal Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. So, there will be no requirement for a Standards Committee. However, there will still be a need to deal with standards issues and case work. Tower Hamlets had a Standards Committee before the current regime was introduced in the 2000 Act. This report proposes that similar arrangements are adopted under the new provisions as existed in Tower Hamlets before the current statutory requirements. Such a Committee will be a Committee of Council under S101 of the Local Government Act of 1972 without the unique features or statutory powers which were conferred on statutory Standards Committees. The composition of any Committee will be subject to proportionality. It is possible to co-opt non elected members onto a Committee of the Council however such co-optees cannot vote unless the committee is advisory.
- 3.5 The Act establishes a new category of Independent Persons (see below) who must be consulted at various stages, but provides that the existing co-

opted independent members of Tower Hamlets' Standards Committee cannot serve as Independent Persons for 5 years. Independent Persons may be invited to attend meetings of the Standards Committee, but are unlikely to be co-opted onto the Committee. Instead their role is one of input into any investigation of an alleged breach of the Code before the Council takes a decision in relation to the allegation.

- 3.6 However, that does not stop the Council establishing a Committee with co-optees. Section 13(4)(e) Local Government Housing Act 1989 provides that co-optees have to be non-voting unless the Committee is an advisory Committee and not decision making established under Section 102(4) of the Local Government Act 1972. Under Section 12 of the 1972 Local Government Act, the Chair must have a casting vote. Accordingly, the committee cannot have an independent Chair unless it is an advisory committee. Tower Hamlets adopted a Standards Committee regime before the 2000 Act provisions were enacted that comprised co-optees from outside the elected membership with advisory powers. This report largely proposes similar arrangements to those for the Standards Committee after the Act comes into force. The role of the proposed committee will be advisory as its remit will be to recommend action to be taken in relation to investigation of complaints and to monitor and review the Council's arrangement for upholding high standards of conduct amongst its elected members and make recommendations to the Council in that regard.

4. CODE OF CONDUCT

- 4.1 The current ten General Principles and Model Code of Conduct will be repealed. However, the Council is required to adopt a new Code of Conduct governing elected and co-opted member's 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 and Leadership
- 4.2 The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles. The Code needs to be adopted at the May 2012 Meeting of the Council to come in to effect from 1 July 2012.
- 4.3 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 provisions of the Act also require an authority's code to contain appropriate requirements for the registration of other pecuniary interests and non-pecuniary interests. The result is that it is not possible yet to draft Code provisions which reflect the definition of DPIs which will appear in Regulations yet to be drafted.
- 4.4 However, it is known that the Council's new Code of Conduct to have effect from 1 July 2012 should include provisions which deal with the following matters:-

- General conduct rules, to give effect to the seven principles. This corresponds broadly with paragraphs 3 to 7 of the current Code of Conduct, applies to conduct of an elected or co-opted member of the Council or any of its committees or sub committees. [The Council can amend its Code of Conduct subsequently if it wishes.]
- A requirement for registration and disclosure of pecuniary and non-pecuniary interests but only requiring withdrawal as specified by the Act in relation to Disclosable Pecuniary Interests
- Arrangements for dealing with an alleged breach of the Code.

5. **ARRANGEMENTS FOR DEALING WITH MISCONDUCT COMPLAINTS**

- 5.1 The Act requires that the Council adopt “arrangements” for investigating and deciding upon complaints of breach of Code of Conduct. The proposals in this report are to establish a Standards Advisory Committee which will operate in much the same way as it did before the 2000 Act came into effect. The committee would operate as an advisory committee (thus enabling co-optees to be fully participating members). Its powers (which are very much reduced under the new legislation) would be advisory.
- 5.2 This report proposes that Council delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation, subject to consultation with the Independent Person. Where the Monitoring Officer feels that it would be inappropriate to take a decision on it, for example where s/he has previously advised the member on the matter or the complaint is particularly sensitive then may refer it to the Standards Advisory Committee for advice. It is also recommended that the Monitoring Officer has delegated powers to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation.
- 5.3 Where a formal investigation finds no evidence of failure to comply with the Code of Conduct, it is proposed to delegate this decision to the Monitoring Officer, who would be required to consult with the Independent Person (under the Act) but with the power to refer a matter to Standards Advisory Committee if s/he feels appropriate. Copies of all investigation reports will be provided to the Independent Person to enable them to give their view as required by the Localism Act.
- 5.4 Where a formal investigation finds evidence of failure to comply with the Code of Conduct, there may yet be an opportunity for local resolution, avoiding the necessity of a local hearing. The Monitoring Officer should only agree a local resolution after consultation with the Independent Person and where the complainant is satisfied with the outcome.
- 5.5 In all other cases, where the formal investigation finds evidence of a failure to comply with the Code of Conduct, it is proposed that the Standards Advisory Committee (in practice a Hearings Panel constituted as a Sub-Committee of Standards Advisory Committee) hold a hearing at which the member against

whom the complaint has been made can respond to the investigation report, and the Hearing Panel can consider whether the member did fail to comply with the Code of Conduct and if so what action, if any, is appropriate to recommend as a result. The Independent Person's views would have to be incorporated into this process.

- 5.6 The Act does not give the Council or its proposed Standards Advisory Committee any powers to impose sanctions such as suspension or requirements for training or an apology on members. So, where a failure to comply with the Code of Conduct is found, the range of actions which the authority can take in respect of the member is limited and must be directed to securing the continuing ability of the authority to continue to discharge its functions effectively, rather than "punishing" the member concerned. Case law made before the 2000 Act provisions confirms the limited extent of powers without any statutory provisions. The proposed Terms of Reference appended set out the extent of those powers and have been framed as advisory powers only in view of the recommendations in this report for the committee's constitution.
- 5.7 There will be no statutory ability to require an apology (as at present) however the process proposed would ensure the Monitoring Officer sought local resolution whenever possible which maybe via an apology. It is only likely that those cases not suitable for an apology or where the member has refused to give one would be likely to go to the Standards Advisory Committee.
- 5.8 The Standards Advisory Committee will be able to write a formal letter to the Member informing them of their advice in relation to their conduct under the Code.
- 5.9 Likewise, the Committee would be subject to the access to meetings and information rules and so its recommendations would be published.
- 5.10 Without a statutory framework it is difficult to see how any appeals mechanism could operate. However were a subject member to be dissatisfied with the recommendation from the Standards Advisory Committee he/she could say so and request that the Committee take alternative action. Were a complainant dissatisfied it would be open to them to provide further information of relevance the Monitoring Officer and Independent Person who would deciding whether the matter warranted further consideration and they would have to access the Council's complaints process. Ultimately the actions of the authority could be subject to Judicial Review.

6. **INDEPENDENT PERSON(S)**

- 6.1 The "arrangements" adopted by the Council must include provision for the appointment by the Council of at least one Independent Person. The Independent Person must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority

of all members of the Council (not just of those present and voting). The Act sets out specific statutory prohibitions on who can be an Independent Person and excludes previous and current members and Co-optees, their relatives and close friends.

- 6.2 The independent Person must be consulted by the authority before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that member. They may be consulted by the authority in respect of a standards complaint at any other stage; and they may be consulted by a member or co-opted member of the Council against whom a complaint has been made. This causes some problems, as it would be inappropriate for an Independent Person who has been consulted by the member against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint. However it is most likely that members would seek such advice from the Monitoring Officer or her deputy rather than the Independent Person.
- 6.3 The Act gives discretion to appoint one or more Independent Persons, but provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing more than one Independent Person or the process will be unwieldy. It is recommended that reserve candidates are retained and can be activated at short notice, without the need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.
- 6.4 As the Independent Person is not a member of the authority or of its Committees or Sub-Committees, the remuneration of the Independent Person no longer comes within the scheme of the members' allowances, and can therefore be determined without reference to the Independent Remuneration Panel. It is appropriate to undertake a proper review of the function before setting the remuneration and to see what other authorities are proposing.

7. THE REGISTER OF MEMBERS' INTERESTS

- 7.1 The Localism 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 available on the Council's website.
- 7.2 At present we do not know what Disclosable Pecuniary Interests will be, but they are likely to be broadly equivalent to the current prejudicial interests. The intention was to simplify the registration requirement, but in fact the Act extends 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. Failure to comply with these provisions may lead to criminal sanctions.

7.3 The provisions of the Act in respect of the Code of Conduct require an authority's Code to contain appropriate requirements for the registration of other pecuniary interests and non-pecuniary interests.

8. DISCLOSURE OF INTERESTS AND WITHDRAWAL FROM MEETINGS

8.1 If a member has a Disclosable Pecuniary Interest (as will be defined by the Regulations) in any matter, he/she must not take part in any discussion or vote. Failure to comply becomes a criminal offence, rather than leading to sanctions.

8.2 The Council's Code of Conduct must make "appropriate" provisions for disclosure and withdrawal for interests other than DPIs. Failure to comply with these requirements would be a breach of the Code of Conduct but not a criminal offence.

9. SENSITIVE INTERESTS

9.1 The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests. Where a member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which he/she would be required to disclose) at a meeting or on the register of members' interests would lead to the member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest".

9.2 If the Monitoring Officer agrees, the member thereby merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the register of members' interest.

10. DISPENSATIONS

10.1 The provisions on dispensations are significantly changed by the Localism Act. At present, a member who has a prejudicial interest may apply to Standards Committee for a dispensation. In future, a dispensation will be able to be granted in the following circumstances.

10.1.1 That so many members of the decision-making body have DPIs in a matter that it would "impede the transaction of the business". In practice this means that the decision-making body would be inquorate as a result;

10.1.2 That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. This assumes that members are predetermined to vote on party lines on the matter, in which case, it could be inappropriate to grant a dispensation to enable them to participate.

- 10.1.3 That the authority considers that the dispensation is in the interests of persons living in the authority's area;
 - 10.1.4 That without a dispensation, the Mayor (or where the Cabinet is discharging executive functions on behalf of the Mayor, sufficient members of the Cabinet) would be unable to participate on this matter. It will be necessary to make provision in the scheme of delegations from the Mayor to cover this, admittedly unlikely, eventuality); or
 - 10.1.5 That the authority considers that it is otherwise appropriate to grant a dispensation.
- 10.2 Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.
- 10.3 The Local Government Act 2000 required that dispensations be granted by Standards Committee. The Localism Act gives discretion for this power to be delegated. If the proposal is for the committee to be advisory the decision would need to be delegated to the Monitoring Officer or another committee or the Council. The Standards Committee could have an advisory role. Such requests have not arisen to date in Tower Hamlets.

11. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 11.1 There are no financial implications arising from this report.

12. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)

- 12.1 The Assistant Chief Executive (Legal) is the author of this report and the legal implications arising from this matter are set out in the body of the report.

13. ONE TOWER HAMLETS CONSIDERATIONS

- 13.1 Equalities considerations have been included in the Code.

14. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 14.1 There are no implications arising from this report.

15. RISK MANAGEMENT IMPLICATIONS

- 15.1 There are no implications arising from this report.

16. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 16.1 There are no implications arising from this report.

17. EFFICIENCY STATEMENT

17.1 There are no implications arising from this report.

18. APPENDICES

- Appendix 1 – Draft terms of reference for the Standards Advisory Committee
 - Appendix 2 – Draft arrangements for dealing with complaints of breach of the Code of Conduct
 - Appendix 3 – Draft Code of Conduct
 - Appendix 4 – Model Short Form Code
 - Appendix 5 – LGA Template Code of Conduct
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**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.
No unpublished background papers have been relied upon to a material extent in preparing this report	n/a

DRAFT TERMS OF REFERENCE FOR THE STANDARDS ADVISORY COMMITTEE

1. Standards Advisory Committee

The Council using the powers under section 102(4) of the Local Government Act 1972 have established a Standards Advisory Committee.

The Standards Advisory Committee shall have the power to create Sub-Committees in order to discharge its advisory role.

2. Composition

The Standards Advisory Committee shall be comprised of five Members of the Council, appointed by the Council in accordance with the requirements of political proportionality; and up to seven persons who are not Members or officers of the Council or any other relevant authority (i.e. Co-opted members.)

The Co-opted member(s) will be entitled to vote at meetings under the provisions of S13 (4) (e) of the Local Government and Housing Act 1989.

The Committee shall establish Hearing Sub-Committees in accordance with these terms of reference.

3. Appointment of Co-Opted Members

A person may not be appointed as a Co-opted member of the Standards Advisory Committee or one of its sub-committees unless the appointment is approved by Full Council.

The term of appointment shall be for four years unless otherwise determined by Full Council or the Co-optee does not continue to fulfil any required conditions as may be determined by the Authority from time to time. Co-opted members may serve as many terms of appointment as the Council considers appropriate.

4. Role and Function

The Standards Advisory Committee has the following roles:

- 4.1 To recommend to the Monitoring Officer whether complaints of a breach of the Members Code of Conduct should be referred for investigation by the Monitoring Officer or an investigator appointed by the Monitoring Officer where the Monitoring Officer considers it appropriate to refer the complaint to the Standards Advisory Committee for consideration,

- 4.2 To receive reports from the Monitoring Officer on the numbers of complaints of the Code received, the decisions taken by the Monitoring Officer (in consultation with the Independent Person) on such complaints and investigation outcomes where the investigation determines there was no evidence of a failure to comply with the code or where the investigation outcome recommends a local resolution.
- 4.3 To convene a Hearings Sub-Committee or at least 3 Members of the Standards Advisory committee to consider any matter where the investigation finds evidence of a failure to comply with the Code and a local resolution is not possible or appropriate.
- 4.4 To make such recommendations as the Hearings Sub-Committee considers appropriate as a result of any matter referred including;
- Reporting its findings to Council for information;
 - Recommending to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) removal from any or all Committees or Sub-Committees of the Council;
 - Recommending to the Mayor removal from the Executive, or from particular Portfolio responsibilities;
 - Recommending the Monitoring Officer arrange training for the member;
 - Recommending removal from outside appointments to which he/she has been appointed or nominated;
 - Recommending withdrawing facilities provided to the member by the Council, such as a computer, website and/or email and Internet access;
 - Recommending excluding the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Executive Committee and Sub-Committee meetings;
 - Recommending the Member to contact the Council via specified point(s) of contact.
- 4.5 Promoting and maintaining high standards of conduct by Members of the Council, co-opted members and church and parent governor representatives and where the Committee considers that there may be issues of concern recommending that the Monitoring Officer considers and reports on the issues raised.
- 4.6 Assisting Members of the Council, co-opted members and church and parent governor representatives to observe the Council's Code of Conduct for Members;
- 4.7 Advising the Council on the adoption or revision of the Code of Conduct for Members;
- 4.8 Monitoring the operation of the Code of Conduct for Members;

- 4.9 Advising, training or arranging to train Members of the Council, co-opted members and church and parent governor representatives on matters relating to the Code of Conduct for Members:
- 4.10 To act as an advisory body in respect of any matters referred to the Standards Committee by the LSP or Community Forums in respect of probity issues arising out of the codes and protocols applicable to relevant members of the LSP and Community Forums as set out in the Community Forum handbook and as may be amended from time to time.
- 4.11 Advice on allegations of Member breaches of the Protocols set out in the constitution as maybe referred to the Committee by the Monitoring Officer and to make recommendations with regard to such allegations as maybe so referred.
- 4.12 Advising on local protocols for both Officer and Member governance.
- 4.13 To monitor and review Member and Officer Procedures for Register of Interests and declaring gifts and hospitality.
- 4.14 To receive periodic reports on the Council's Ethical Governance arrangements, on whistle blowing arrangements and complaints.
- 4.15 As requested by the Monitoring Officer, to advise on any applications for dispensations in relation to participation at a meeting by a member with a Disclosable Pecuniary Interest.

5. Validity of proceedings

A meeting of the Standards Advisory Committee or one of its sub-committees shall only be quorate where at least three members of the Committee or sub-committee are present for its duration.

Part VA of the Local Government Act 1972 applies in relation to meetings of the Standards Advisory Committee or its sub-committees as it applies to meetings of the Council.

6. Hearing Sub-Committee

Any Hearing Sub-Committee shall comprise a minimum of 3 Members of the Standards Advisory Committee at least 1 of whom shall be a co-opted Member.

The Hearing Sub-Committee shall consider complaints referred to it that an elected or co-opted Member of the Council may have failed to comply with the Council's Code of Conduct for Members or local protocol where the complaint has been subject to an investigation arranged by the Monitoring Officer and shall make recommendations accordingly. The Hearings Sub Committee shall decide at the outset of the meeting whether it is in the public interest that

the Hearing is held in a public or private session in accordance with relevant statutory guidance as advised by the Monitoring Officer.

7. Attendance Requirements

At any meeting when any Member of the Committee is unable to attend, the meeting shall consider whether they shall condone the non-attendance. The Member concerned shall be notified of the Committee's decision in connection with their non-attendance.

If the Committee has condoned non-attendance for the same Member for at least two consecutive meetings then in the event of further consecutive non-attendance at a meeting the Committee shall (a) if it is an Elected Member decide whether it is appropriate for them to inform the relevant group of the non-attendance or (b) if it is an independent Member decide if they should inform the Council that a vacancy has arisen.

The Committee shall not declare such a vacancy has arisen without first giving the absent Member an opportunity to make representations (which may be made in writing) as to their non-attendance and any matters they wish the Committee to take into account.

8. Procedures

The Committee shall agree a set of procedures to enable it to discharge the arrangements under these Terms of Reference.

DRAFT ARRANGEMENTS FOR DEALING WITH COMPLAINTS OF BREACH OF THE CODE OF CONDUCT

1. The Monitoring Officer shall be the Proper Officer to receive complaints of failure to comply with the Code of Conduct.
2. The Monitoring Officer shall ensure that the Council appoints at least one Independent Person and at least one reserve Independent Person.
3. The Monitoring Officer shall, after consultation with the Independent Person, determine whether a complaint merits formal investigation and arrange such investigation.
4. The Monitoring Officer may refer complaints of failure to comply with the Code to the Standards Advisory Committee to recommend whether or not the complaint requires investigation where s/he feel that it is inappropriate for him/her to take the decision without seeking their advice.
5. The Monitoring Officer will report quarterly (or less frequently if there are no complaints to report) to the Standards Advisory Committee on the number and nature of complaints received and action taken as a result.
6. If a complaint of failure to comply with the Code is referred for investigation the Monitoring Officer shall appoint an investigator or complete the investigation him/herself. Such investigation should be completed within 3 months of the decision to refer the matter for investigation.
7. The Monitoring Officer may, during the course of the investigation, seek local resolution of the matter to the satisfaction of the complainant before the investigation is concluded.
8. Where any investigation into a complaint of breach of the Code finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer shall close the matter, provide a copy of the report and findings of the investigation which shall be kept confidential to the complainant and to the member concerned and to the Standards Advisory Committee for information.
9. Where the investigation finds evidence of a failure to comply with the Code of conduct, the Monitoring Officer in consultation with the Independent Person, may seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Advisory Committee. Where such local resolution is not appropriate or not possible the Monitoring Officer shall report the investigation findings to a Hearings Panel of the Standards Advisory Committee for local hearing and recommendations. The Hearings Panel may sit in private after advice from the Monitoring Officer.

10. A Hearings Panel will advise whether or not the Panel considers there has been a breach of the Code and may if it considers sanction is appropriate having heard the matter:-
 - Report its findings to Council for information;
 - Recommend to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - Recommend to the Mayor that the member be removed from the Executive, or removed from particular Portfolio responsibilities;
 - Recommend the Monitoring Officer to arrange training for the member;
 - Recommend removing from all outside appointments to which he/she has been appointed or nominated;
 - Recommend withdrawing facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
 - Recommend excluding the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Executive Committee and Sub-Committee meetings;
 - Recommend the member to contact the Council via specified point(s) of contact;
 - Write to the member with their advice on their conduct.
11. The recommendations of the Hearing Panels shall be published.
12. Should a complainant be dissatisfied with the outcome of their complaint of a breach of the Code there is no formal right of appeal. However in the event that the Complainant submits additional relevant information the Monitoring Officer shall consider and decide if the matter warrants further consideration under these arrangements in which case it shall be treated as a fresh Complaint.

Draft Code of Conduct for Members

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Section	Subject
1	Introduction
2	Scope and Interpretation
3	General Obligations
4	Interests
5	Disclosable Pecuniary Interests
6	Interests arising in relation to Overview and Scrutiny Committees
7	Effect of Disclosable Pecuniary Interest on Participation at Meetings
8	The Register of Members' Interests
9	Sensitive Information

1. INTRODUCTION

1.1 Tower Hamlets Council has adopted this Code of Conduct for Members in accordance with the Localism Act 2011. The Code will assist the authority in providing excellent local government for the people of the borough. This Code of Conduct applies to the Mayor and all Members and Co-Opted Members of the authority or any of its committees or sub-committees and it is your responsibility to comply with the provisions of this Code.

1.2 Tower Hamlets' Code of Conduct

- (a) Any alleged breach of the provisions of the Code of Conduct by a Member or co-opted Member of the authority shall be dealt with in accordance with the arrangements set out in Appendix A to this Code.

1.3 Additional Codes and Protocols

- (a) The Council has approved the following additional Codes and Protocols:
- Planning Code of Conduct
 - Licensing Code of Conduct
 - Member/Officer Protocol
 - Employees' Code of Conduct

This Code should be read in conjunction with these Codes and Protocol's that have been adopted by the Council as supplementary guidance for Members and officers. These Codes and Protocols do not form part of the Code of Conduct but Members and officers are required to comply with their provisions.

- (b) Any failure by a Member to comply with these additional Codes and Protocols may be investigated in accordance with the arrangements set out at Appendix A to this Code
- (c) Any failure by an officer to comply with these additional Codes and Protocols will be referred to the relevant Corporate Director and where appropriate disciplinary action may be taken.

1.4 General Principles of Conduct

You should read this Code together with the general principles prescribed by the Localism Act 2011. These principles are listed below and they should guide all aspects of your conduct as a member of the authority:-

- (a) selflessness;
- (b) integrity;
- (c) objectivity;
- (d) accountability;
- (e) openness
- (f) honesty; and
- (g) leadership.

1.5 Further Guidance

If you require further guidance on the application or interpretation of the provisions of this Code of Conduct or any of the additional Codes and Protocols approved by the Council you should contact the Monitoring Officer.

2. SCOPE AND INTERPRETATION

2.1 In this Code 'meeting' means any meeting of:

- (a) the authority;
- (b) the executive of the authority (currently known as the cabinet);
- (c) any of the authority's or its cabinet's committees, sub-committees, joint committees, joint sub-committees, panels, or area committees

2.2 In this Code 'Member' includes a co-opted Member and an appointed Member.

2.3 Subject to paragraph 2.4, you must comply with this Code whenever you:

- (a) conduct the business of the authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
- (b) act, claim to act or give the impression you are acting as a representative of the authority;

and references to your official capacity are construed accordingly.

2.4 Where you act as a representative of the authority:

- (a) on another relevant authority (as defined by section 49(6) of the Local Government Act 2000), you must, when acting for that other authority, comply with any code of conduct adopted by that other authority;
- (b) on any other body, you must, when acting for that other body, comply with this Code of Conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

3. GENERAL OBLIGATIONS

3.1 You must treat others with respect.

3.2 You must not:

- (a) do anything which may cause the authority to breach the Equality Act 2010 or any other equality enactment;
- (b) bully any person;
- (c) intimidate or attempt to intimidate any person who is or is likely to be:
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings,in relation to an allegation that a Member (including yourself) has failed to comply with his or her authority's code of conduct;
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

3.3. You must not:

- (a) prevent another person from gaining access to information to which that person is entitled by law.
- (b) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, **except** where:
 - (i) you have the consent of a person authorised to give it; or
 - (ii) you are required by law to do so; or
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is—
 - (a) reasonable **and** in the public interest **and** made in good faith **and** in compliance with the reasonable requirements of the authority.

3.4 You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the authority into disrepute.

3.5 You:

- (a) must not use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;
- (b) must, when using or authorising the use by others of the resources of the authority:
 - (i) act in accordance with the authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes);
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

3.6 When reaching decisions on any matter you must have regard to any relevant advice provided to you by:

- (a) the authority's Chief Finance Officer; and/or
- (b) the authority's Monitoring Officer,

where they are acting pursuant to their statutory duties.

3.7 You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the authority.

4. INTERESTS

4.1 You have an interest in any business of the authority where either:

(a) it relates to or is likely to affect:

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the authority;

(ii) any body

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in the authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between the authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in the authority's area in which you have a beneficial interest;

(x) any land where the landlord is the authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision.

4.2 In paragraph 4.1(b), a relevant person is:

- (a) a member of your family or any person with whom you have a close association; or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of a type described in paragraph 4.1 (a) (i) or (ii).

5. DISCLOSABLE PECUNIARY INTERESTS

5.1 A Disclosable Pecuniary Interest (DPI) is *(to be inserted when the relevant regulations have been issued)*.....

NB: A Member's DPIs include his/her own relevant interests and also those of his/her spouse or civil partner; or a person with whom the Member is living as husband and wife; or a person with whom the Member is living as if they were civil partners; if the Member is aware that that other person has the interest.

5.2 Subject to paragraphs 5.3 to 5.6, where you have a Disclosable Pecuniary Interest in any business of the authority which is not included in the Member's register of interests and you attend a meeting of the authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent; and must within 28 days notify the Monitoring Officer of the interest for inclusion in the register.

- 5.3** Paragraph 5.2 only applies where you are aware or ought reasonably to be aware of the existence of the interest.
- 5.4** Where you have an interest but, by virtue of section 9, sensitive information relating to it is not registered in the authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- 5.5** Subject to paragraph 7.1 (b), where you have an interest in any business of the authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- 5.6** In this Code 'executive decision' is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.
- 5.7** You do not have a Disclosable Pecuniary Interest in any business of the authority where that business:
- (a) does not affect your financial position or the financial position of a person or body described in section 4 above;
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in section 4 above; or
 - (c) relates to the functions of the authority in respect of:
 - (i) housing, where you are a tenant of the authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to Members;
 - (v) any ceremonial honour given to Members; or
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.
- (NB: The above provision to be reviewed when the regulations regarding DPIs are issued)*

6. INTERESTS ARISING IN RELATION TO OVERVIEW AND SCRUTINY COMMITTEES

- 6.1** You have an interest in any business before an overview and scrutiny committee of the authority (or of a sub-committee of such a committee) where:
- (a) that business relates to a decision made (whether implemented or not) or action taken by the Mayor or the authority's cabinet or another of the authority's committees, sub-committees, joint committees or joint sub-committees : and
 - (b) at the time the decision was made or action was taken, you were the Mayor or a member of the cabinet, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

7. EFFECT OF DISCLOSABLE PECUNIARY INTERESTS ON PARTICIPATION AT MEETINGS

- 7.1** Subject to paragraph 7.2 where you have a DPI in any business of the authority:
- (a) you must withdraw from the room or chamber where a meeting considering the business is being held:
 - (i) in a case where paragraph 7.2 applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;unless you have obtained a dispensation from the authority's Monitoring Officer;
 - (b) you must not exercise executive functions in relation to that business; and
 - (c) you must not seek improperly to influence a decision about that business.
- 7.2** Where you have a Disclosable Pecuniary Interest in any business of the authority, or in relation to business before an Overview and Scrutiny Committee of the kind described at section 6 above, you may attend a meeting (including a meeting of the Overview and Scrutiny Committee or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the

business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

8. THE REGISTER OF MEMBERS' INTERESTS

8.1 Subject to paragraph 9, you must, within 28 days of:

- (a) this Code being adopted by the authority; or
- (b) your election or appointment to office (where that is later); or
- (c) Disclosing a DPI at a meeting of the authority, its executive or any committee or sub-committee;

Notify the Monitoring Officer in writing, for inclusion in the authority's Register of Members' Interests, of details of your Disclosable Pecuniary Interests and other interests that fall within any of the categories mentioned in paragraphs 4.1 (a).

8.2 Subject to paragraph 9, you must, within 28 days of becoming aware of any new DPI or change to any interest registered under paragraph 8.1, register details of that new personal interest or change by providing written notification to the authority's Monitoring Officer.

9. SENSITIVE INFORMATION

9.1 Where you consider that the information relating to any of your personal interests is sensitive information, and the authority's Monitoring Officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 8.

9.2 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 9.1 is no longer sensitive information, notify the authority's Monitoring Officer asking that the information be included in the authority's Register of Members' Interests.

9.3 In this Code, 'sensitive information' means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

Illustrative text for code dealing with the conduct expected of members and co-opted members of the authority when acting in that capacity

You are a member or co-opted member of the [name] council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a member or co-opted member -

You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.

You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.

You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.

You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.

You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in the box below.

You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

Registering and declaring pecuniary and non-pecuniary interests

You must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours,

your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.

If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.¹

Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non pecuniary interest as defined by your authority.

¹ A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

Local Government Association

Template Code of Conduct

As a member or co-opted member of *[X authority]* I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

SELFLESSNESS: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP: Holders of public office should promote and support these principles by leadership and example.

The Act further provides for registration and disclosure of interests and in *[X authority]* this will be done as follows: *[to be completed by individual authorities]*

As a Member of *[X authority]*, my conduct will in particular address the statutory principles of the code of conduct by:

- Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first.
- Dealing with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially.
- Not allowing other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework, the interests of the *[county][borough][Authority's area]* or the good governance of the authority in a proper manner.
- Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a member/co-opted member of this authority.
- Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
- Being accountable for my decisions and co-operating when scrutinised internally and externally, including by local residents.
- Contributing to making this authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other members to account but restricting access to information when the wider public interest or the law requires it
- Behaving in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.
- Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
- Always treating people with respect, including the organisations and public I engage with and those I work alongside.
- Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.

Agenda Item 4.3

Committee: Standards Committee	Date: 10 May 2012	Classification: Unrestricted	Report No:	Agenda Item:
Report of: Corporate Director of Resources Originating officer(s) HUGH SHARKEY Service Head Procurement & Corporate Programmes		Title: Ethical Governance Protocol for Corporate Contracts Wards Affected: All		

1. SUMMARY

- 1.1 There have been reports submitted to the Standards Committee in October 2008, July 2009, and February 2010 on the introduction and adoption of the Council's Ethical Governance protocol (the protocol). This report provides information regarding the adoption of the protocol and observations that the Standards Committee are to note in improving visibility of the protocol being used by key suppliers of the Council.

2. RECOMMENDATIONS

- 2.1 Standards Committee is recommended to note the contents of this report.

3. BACKGROUND

- 3.1 The Council has operated its Ethical Governance protocol since Autumn 2008. The Council adopted an Ethical Governance protocol for its major contracts, these are for contracts that are above the European Union thresholds and require procurement competitions. The thresholds are £4,348,350 for Works and £173,934 for Supplies and Services. The thresholds apply between 01 January 2012 to 31 December 2013.
- 3.2 This protocol requires our suppliers and providers to demonstrate that they have in place a written policy for regulating:
- The conduct of their employees and directors,
 - The working relationships between their employees/directors and Council staff/elected Members,
 - Whistle blowing.

- 3.2 In its major contracts the Council uses a Pre-Qualification Questionnaire that requires companies that are bidding for a contract to read the protocol and confirm that they will comply with it if they are successful in being awarded a contract.
- 3.3 Following contract award the supplier may be registered on the Council's R2P system for payment purposes. At this point the supplier is required to acknowledge the Council's protocol and confirm that it will comply with it. A supplier is required to adopt the protocol regardless of the size of the organisation, the work to be performed and the value of the contract.

4. ADOPTION OF PROTOCOL

- 4.1 Surveys have been conducted on the adoption of the protocol in the past. The last survey was conducted in 2010 and this showed that 484 suppliers had confirmed their adoption of the protocol, and this represented approximately £227m of expenditure.
- 4.2 There was no survey conducted in 2011, this was due to a re-organisation of the Council and changes in staff to manage the Procurement services.
- 4.3 Whilst the Council would prefer that all its suppliers have their own ethical governance policies and agree to comply with our protocol it should be noted that the Council may need to re-assess when the protocol is mandatory and when it is voluntary.
- 4.4 The size and purpose of organisations that the Council does business with are factors to be considered when adjudicating on the need to adopt the ethical governance protocol. With the Council's promotion of doing business locally and creating opportunities for local micro, small and medium sized organisations the requirement to comply with the protocol may be perceived as being onerous for the associated contract. However, there may be the opportunity to draft a letter in the Form of Undertaking that covers the key issues without the need for a policy.
- 4.5 The focus on major contracts that is made at PQQ stage mentioned above is correct and could be improved. The adoption of the protocol should be flexible and proportionate to the size of the contract the Council has or intends to award and the organisations it is doing, or seeking to do business with.
- 4.6 There is a point to consider on what is the appropriate action to be taken when a supplier does not abide by the protocol. This point requires consideration because the Council is to introduce a new Tollgate, as part of the Procurement process. The new tollgate is for Contract Review and for the Council to consider the performance of a supplier. Its focus will be on major contracts and will seek to have assurance

from the contractor that the Council's policies are being implemented, the requirements of the contract are being delivered and for the contract price.

4.7 One Tower Hamlets has addressed that the protocol is to apply to key suppliers, see below. A definition of what is associated with being a key supplier should be made available to assist in applying the protocol.

4.8 For future monitoring of compliance with the protocol there needs to be further consideration of the responsibility for providing evidence. This is best managed by the contract user and by each directorate of the Council.

4.9 The Standards Committee would benefit from having information on who the key suppliers of the Council are in each directorate and use this in requesting further information on the adoption of the protocol.

5. RECOMMENDATIONS

5.1 Standards Committee is recommended to:-

- Note the contents of this report.

6. COMMENTS OF THE CHIEF FINANCIAL OFFICER

6.1 There are no financial implications.

7. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)

7.1 There are no legal implications of this report.

8. ONE TOWER HAMLETS CONSIDERATIONS

8.1 The adoption of a standard ethical governance protocol by key suppliers is important in achieving a consistent, ethical approach in service delivery. As many of the Council's essential services are delivered by external suppliers, it is imperative that the suppliers maintain the same high standards required of the Council. Monitoring of compliance will be an ongoing activity.

9. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

9.1 There are no specific sustainability implications.

10. RISK MANAGEMENT IMPLICATIONS

10.1 The main risk management implications are in relation to reputational risk, in the event that a key supplier's ethical standards are found to be unsatisfactory.

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

None.