CONSTITUTION WORKING PARTY

Date: WEDNESDAY, 6 JUNE 2012 at 7.30 pm

Committee Room 3
Civic Suite
Lewisham Town Hall
London SE6 4RU

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Telephone: 0208 314 9327 (direct line)

MEMBERS

Councillor Obajimi Adefiranye (L)
Councillor Christine Allison (C)
Councillor Kevin Bonavia (L)
Councillor Jenni Clutten (LD)
Councillor Damien Egan (L)
Councillor Vicky Foxcroft (L)
Councillor Alan Hall (L)
Councillor Stella Jeffrey (L)
Councillor Philip Peake (LD)
Councillor Susan Wise (L)

Members are summoned to attend this meeting

Barry Quirk
Chief Executive
Lewisham Town Hall
Catford
London SE6 4RU
Date: 25 May 2012

The public are welcome to attend our committee meetings, however occasionally committees may have to consider some business in private. Copies of reports can be made available in additional formats on request.
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CONSTITUTION WORKING PARTY

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<th>ELECTION OF CHAIR AND VICE CHAIR</th>
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<td>Key Decision</td>
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**Recommendation**

It is recommended that a Chair and Vice Chair of the Working Party be appointed for the municipal year 2012/13
Recommendation

It is recommended that the Minutes of the meeting of the Working Party, which was open to the press and public, held on 15 November 2011 (copy attached) be confirmed and signed.
LONDON BOROUGH OF LEWISHAM

MINUTES of the meeting of the CONSTITUTION WORKING PARTY, which was open to the press and public, held in COMMITTEE ROOM 2, LEWISHAM TOWN HALL, CATFORD, SE6 4RU on TUESDAY, 15 NOVEMBER 2011 at 6 p.m.

Present

Councillors Hall (Chair) Daby, Foxcroft, Onuegbu, Owolabi - Oluyole, and Wise.

Apologies for absence were received from Councillors Allison, Smith and De Ryk.

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<td><strong>1</strong></td>
<td><strong>ELECTION OF CHAIR AND VICE-CHAIR</strong> (page)</td>
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<td>RESOLVED that Councillor Hall be elected Chair and Councillor Wise Vice-Chair of the Constitution Working Party for the municipal year 2011/12.</td>
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<td><strong>2</strong></td>
<td><strong>MINUTES</strong> (page)</td>
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<td>RESOLVED that the minutes of the meeting of the Constitution Working Party held on June 2010 be confirmed and signed.</td>
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<td><strong>3</strong></td>
<td><strong>DECLARATIONS OF INTERESTS</strong> (page)</td>
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<td><strong>4</strong></td>
<td><strong>ADOPTION PANEL CHANGES</strong> (page)</td>
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<td><strong>4.1</strong></td>
<td>The Head of Law introduced the report, stating that the Adoption Agencies Regulations 2005 had been amended by the Adoption Agencies and Independent Review of Determinations (Amendment) Regulations 2011 which had come into force in April 2011.</td>
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<td><strong>4.2</strong></td>
<td>The Chair noted adoption panels would consist of members drawn from a central list as opposed to having a fixed membership and he asked if several elected members would be added to the list from whom the single elected member representative would be chosen. The Head of Law said it would be sensible to add more people to the central list.</td>
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<td>RESOLVED that the amended provisions relating to the Adoption Panel shown proposed in paragraph 5 of the report be agreed for submission to the Council for inclusion in the Constitution.</td>
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5. POSITIVE AGEING COUNCIL: RECOMMENDATIONS ON CHANGES TO COUNCIL CONSTITUTION

5.1 The Head of Law reported the Mayor had pledged in 2010 to establish an ‘Elders Council’ and that in February 2011 he agreed a model of a community-based Positive Ageing Council with four meetings per year, following the local assembly format, which would be open to any resident over the age of 60 to attend and give a view.

5.2 The Mayor also noted changes to the Council’s Constitution would be required in order that the Positive Ageing Council could be formally recognised within the Council’s reporting framework and agreed that suggested changes to the Constitution would be considered by this Working Party.

5.3 The Working Party considered the changes and received a representation from Councillor Fitzsimmons objecting to the proposed limit on referrals to Mayor & Cabinet shown in paragraph 4.4 of the report.

5.4 The Working Party believed that as there was only a single Positive Ageing Council holding four meetings a year, any limit on referrals was unnecessary and they asked the Head of Law to amend the Constitution to allow any referral agreed at a main Council meeting to be forwarded to the Mayor & Cabinet.

RESOLVED That

(i) the establishment of the Positive Ageing council be endorsed; and

(ii) the changes set out in section 4 be agreed for submission to the Council for inclusion in the Constitution subject to 4.4 being amended by the Head of Law to allow the Positive Ageing Council to make referrals to the Mayor & Cabinet as long as they were agreed at a main PAC meeting.

6. COUNCIL SCHEME OF DELEGATION

6.1 The Head of Law said changes to the Scheme of Delegation had previously been considered by the Council Urgency Committee on October 20 2011 and two substantive changes had been recommended. The first allowed for changed Directorate responsibilities given the reduction in Directorates from five to four. The second reserved to Planning Committees all town and country planning matters relating to the demolition of any
building that is in use as a public house, or which is currently unoccupied but was in use as a public house immediately prior to becoming unoccupied.

**RESOLVED**  That the Council Scheme of Delegation be endorsed and Council be recommended to amend the Constitution accordingly.

7  **LEGISLATIVE UPDATE** (page 7)

7.1 The Head of Law presented a report outlining current proposals in both the Localism Bill and the Health and Social Care Bill and invited comments on matters likely to affect the Council's Constitution.

7.2 The Working Party considered ethical arrangements and concluded that Lewisham should retain a Standards Committee and draw up a Local Code of conduct. The Chair asked for proposals to be worked up and considered at a future meeting. He added he did not expect current arrangements to be replicated, and he urged officers to look again at the model which existed in Lewisham before national mandatory requirements were introduced.

7.3 The Working Party considered at length the implications for the Council of community empowerment and decided that this and other aspects of the Localism Bill should be the subject of a further report to the Working Party once the Bill became law.

7.4 In terms of the Health and Social Care Bill, the Working Party noted the Bill made the formal consultative body on health matters the authority rather than a scrutiny body. The Working Party asked that the authority use its discretion to authorise the Healthier Communities Select Committee to continue to make representations on health matters. The Chair observed that this Bill and the Localism Bill both had widespread implications for the authority which the Working Party should consider in greater detail once the Bills became law.

**RESOLVED** that the contents of the Localism Bill and the Health and Social Care Bill be noted and officers be requested to further report once the Bills had been enacted setting out the implications for the Council's Constitution and any recommendations for amendment.

8  **CONSTITUTIONAL UPDATE** (page 8)

The Head of Law provided the Working Party with a schedule of
minor amendments to the Constitution arising from various previous items and reports.

In discussion on the Bribery Act the Head of Law confirmed officers, like members, followed a Code of Conduct and that all officers graded SMG1 and above completed a full declarations of interest return.

The Working Party requested that a schedule of changes be produced for ease of reference at the Council meeting.

The Chair raised the issue of Rule J11 and the Working Party agreed that the Appointments Committee be added to the list of bodies exempted from this rule as, owing to its small size, almost all of the membership were ineligible to be Chair owing to the other positions they already held.

RESOLVED That

(i) the amendments shown in Appendix 1 of the report be approved; Head of Law

(ii) Rule J11 be amended to add the Appointments Committee to the list of bodies exempted from the rule; Head of Law

(iii) a schedule of changes be produced for the November Council; and Head of Law

(iv) the Constitution be recommended to the Council for adoption and be made publicly available. Head of Law

The meeting ended at 7.28p.m.

Chair
Declaration of interests
Members are asked to declare any personal interest they have in any item on the agenda.

Personal interests
There are two types of personal interest :-
(a) an interest which you must enter in the Register of Members’ Interests*
(b) an interest where the wellbeing or financial position of you, (or a “relevant person”) is likely to be affected by a matter more than it would affect the majority of inhabitants of the ward or electoral division affected by the decision.

*Full details of registerable interests appear on the Council’s website.

(“Relevant” person includes you, a member of your family, a close associate, and their employer, a firm in which they are a partner, a company where they are a director, any body in which they have securities with a nominal value of £25,000 and (i) any body of which they are a member, or in a position of general control or management to which they were appointed or nominated by the Council, and (ii) any body exercising functions of a public nature, or directed to charitable purposes or one of whose principal purpose includes the influence of public opinion or policy, including any trade union or political party) where they hold a position of general management or control,

If you have a personal interest you must declare the nature and extent of it before the matter is discussed or as soon as it becomes apparent, except in limited circumstances. Even if the interest is in the Register of Interests, you must declare it in meetings where matters relating to it are under discussion, unless an exemption applies.

Exemptions to the need to declare personal interest to the meeting
You do not need to declare a personal interest where it arises solely from membership of, or position of control or management on:

(a) any other body to which your were appointed or nominated by the Council
(b) any other body exercising functions of a public nature.

In these exceptional cases, unless your interest is also prejudicial, you only need to declare your interest if and when you speak on the matter.

Sensitive information
If the entry of a personal interest in the Register of Interests would lead to the disclosure of information whose availability for inspection creates or is likely to create a serious risk of violence to you or a person living with you, the interest need not be entered in the Register of Interests, provided the Monitoring Officer accepts that the information is sensitive. Where this is the case, if such an interest arises at a meeting, it must be declared but you need not disclose the sensitive information.

Prejudicial interests
Your personal interest will also be prejudicial if all of the following conditions are met:

(a) it does not fall into an exempt category (see below)
(b) the matter affects either your financial interests or relates to regulatory matters - the determining of any consent, approval, licence, permission or registration
(c) a member of the public who knows the relevant facts would reasonably think your personal interest so significant that it is likely to prejudice your judgement of the public interest.

Categories exempt from being prejudicial interest

(a) Housing – holding a tenancy or lease with the Council unless the matter relates to your particular tenancy or lease; (subject to arrears exception)
(b) School meals, school transport and travelling expenses; if you are a parent or guardian of a child in full time education, or a school governor unless the matter relates particularly to the school your child attends or of which you are a governor;
(c) Statutory sick pay; if you are in receipt
(d) Allowances, payment or indemnity for members
(e) Ceremonial honours for members
(f) Setting Council Tax or precept (subject to arrears exception)

Effect of having a prejudicial interest
If your personal interest is also prejudicial, you must not speak on the matter. Subject to the exception below, you must leave the room when it is being discussed and not seek to influence the decision improperly in any way.

Exception
The exception to this general rule applies to allow a member to act as a community advocate notwithstanding the existence of a prejudicial interest. It only applies where members of the public also have a right to attend to make representation, give evidence or answer questions about the matter. Where this is the case, the member with a prejudicial interest may also attend the meeting for that purpose. However the member must still declare the prejudicial interest, and must leave the room once they have finished making representations, or when the meeting decides they have
finished, if that is earlier. The member cannot vote on the matter, nor remain in the public gallery to observe the vote.

**Prejudicial interests and overview and scrutiny**

In addition, members also have a prejudicial interest in any matter before an Overview and Scrutiny body where the business relates to a decision by the Executive or by a committee or sub committee of the Council if at the time the decision was made the member was on the Executive/Council committee or sub-committee and was present when the decision was taken. In short, members are not allowed to scrutinise decisions to which they were party.
1. Summary

This report updates members on progress of the implementation of the Localism Act 2011 and other legislation, highlights actions taken to respond to date and poses questions to be addressed by the Council in future to ensure that its Constitution reflects compliance in future.

2. Purpose

The purpose of this report is to ensure that recommendations are made to Council at the appropriate time to ensure that the Constitution remains fit for purpose.

3. Recommendations

That CWP note the constitutional issues which need attention and ask officers to bring a further report back to a subsequent meeting of this CWP at the appropriate time but in any event prior to the next meeting of the Council in September 2012.

4. Background

There has been a raft of recent legislative change which will require amendments to the Council’s Constitution. These include:-

- The Localism Act 2011 (see Appendix 1 for presentation summary)
- Health and Social Care Act 2012 (see Appendix 2)
- Public Services (Social Value) Act 2012 (See Appendix 3)

5. The Localism Act 2011

5.1 This is a lengthy Act which makes huge changes to local government, which came into law in November 2011. It has 271 sections, 25
schedules and 142 regulation making powers and is being given practical force through a series of commencement orders, regulations and statutory guidance. Some of the key features and the state of implementation are very briefly listed below:-

- A new power of general competence – in force now
- Changes to the permissible models of political governance model – in force now
- Clarification of the law on pre-determination – in force now
- The introduction of a new ethical framework – to be effective from 1.7.12, some regulations still awaited.
- Provisions relating to pay accountability – in force now.
- Requirement for Council Tax referendum if Council Tax exceeds Secretary of State “principles”
- Community right to challenge through which community, voluntary or employee bodies have the right to express an interest in providing a local authority service. – sections in force with regulations to make operational laid on 21st May 2012 alongside draft statutory guidance to be effective from 27th June 2012.
- Assets of community value – a new duty to maintain a list of assets of community value, with a procedure to be implemented before a disposal may be effected – in force new but awaiting regulations to make operational.
- Neighbourhood planning – all in force now save provisions relating to referendums, with regulations in place.
- Housing – changes to allow local authorities to choose “qualifying persons for allocation policy; flexible tenancies; self financing – in force now.

5.2 The Council has already made some changes to comply with the Localism Act 2011. For example in March this year, the Council approved a pay policy statement for 2012/13, as it was bound by law to do before 1st April 2012. Also, there appears elsewhere on this agenda a report which sets out a proposal for a new ethical framework which is designed to comply with the requirement to have a new code of conduct and procedure for handling complaints of breach from 1st July 2012.
5.3 Other changes may require the Council to adopt new procedures but will not require major constitutional change. The new power of competence, the provisions on housing and on London exemplify this.

5.4 Some new provisions will need changes to the Council’s Constitution, (or at least to be considered in relation to the schemes of delegation) but there are no regulations in place to allow this to happen yet. For example, the provisions relating to assets of community value require regulation and statutory guidance but at the time of writing these had not been published.

5.5 Included in the Council’s Constitution are several provisions where the Council has anticipated the impact of the Localism Act. For example, the Act is explicit that there must be a Scrutiny Officer with functions defined by law and there are already provisions in the Council’s Constitution for the councillor call for action.

6 Localism Act Issues

6.1 Some provisions will require changes to the Constitution and/or schemes of delegation.

Flood management

6.2 The Act requires that those authorities who are lead flood management authorities, like Lewisham, ensure that there is an overview and scrutiny body which has the function of reviewing and scrutinising the exercise by risk management authorities of flood risk management or coastal erosion risk management functions affecting the area. Council will need to decide which overview and scrutiny body is to fulfil this function and amend its terms of reference.

Petition scheme

6.3 The Act abolishes the requirement to have a petition scheme, which is currently reflected in the Council’s Constitution. Members will need to decide whether they wish to continue with that petition scheme, discontinue it or modify it in some way.

Co-option scheme

6.4 The Localism Act 2011 allows for co-opted members to be allowed to vote on overview and scrutiny bodies if the Council has adopted a co-option scheme. The Council does not have such a scheme at present and may wish to consider whether it wishes this to remain the case.
Community right to challenge

6.5 The regulations and statutory guidance relating to the community right to challenge have been published as recently as 21 May and will be effective from 27th June, provided parliamentary approval is forthcoming before then as is expected. The community right to challenge allows community, voluntary and employee bodies to express an interest in providing relevant Council services. Though certain services are excluded by regulation, (mainly health services or those services provided to named persons with complex individual health or social care needs), the regulations and statutory guidance set out the criteria for rejection of an expression. These include Insufficient information to demonstrate that the organisation has:-

- Sufficient financial resources
- Capability to provide or assist in the provision of the service.
- Identified the service and the geographical area to which their expression of interest relates
- Identified the outcomes to be achieved and how they will promote the social environmental or economic wellbeing of the area, and
- How they will meet users’ needs

6.6 An expression of interest may be made at any time unless the Council has published a period for expressions of interest outside which it may refuse to consider any expression. A decision will need to be made about whether this is appropriate and if so when, but this is not a constitutional matter.

6.7 The Council may only reject an expression of interest on grounds set out in the regulations or statutory guidance. This includes:-

- failure to comply with the Act or Guidance
- failure to provide adequate information in the expression
- unsuitability to provide the service (based on the requirements for information to be set out in the expression)
- where a decision has been made and evidenced in writing to stop the service provision
- the service is subject to a procurement exercise already
- negotiations are in train with a third party to provide the service
- the Council has published its intention to consider the provision of the service by an employee body
- the expression is vexatious or frivolous
- acceptance would be likely to lead to a breach of the law/statutory duty

6.8 If an expression of interest is accepted, then the Council has no choice but to conduct a procurement exercise in accordance with existing law even if there was no previous intention to externalise the service. This does not mean that the organisation submitting the expression of
interest will be successful in that exercise, merely that the Council must
conduct it.

6.9 The statutory guidance sets out procedural matters for timescales and
the procurement exercise, including consideration of social value in the
decision whether to award, timing of decision notices etc.

6.10 These provisions and those contained in the Public Services (Social
Value) Act 2012 (which is summarised at Appendix 2) mean that a new
set of contract procedure rules will be required. Work has begun to
revise the existing procedure now that the law is clear and the draft
statutory guidance available. A report will be available for submission
to the CWP in time for a detailed report to be submitted to full Council
in September 2012.

6.11 In the meantime if an expression of interest is received it is proposed
that decisions required to ensure compliance with the community right
to challenge be delegated to the ED Resources and Regeneration on
advice from the Head of Law. This is generally a matter for the
Mayoral Scheme of Delegation.

Neighbourhood planning

6.12 The provisions relating to neighbourhood planning are summarised at
Appendix 1. Regulations are in place save those which will relate to
referenda in this context. The regulations relate to applications to
become a neighbourhood area, designation as a neighbourhood forum
and the procedures pertaining to both. They also relate to the
procedure for the adoption of a neighbourhood development plan and
orders. Officers are working up those procedures in detail but the most
relevant point for members to consider at this juncture is who should be
responsible for decisions in relation to neighbourhood planning.

6.13 There have been no new regulations relating to the responsibility for
planning functions, so it appears that the responsibility for planning
matters remains split between the Mayor and Council as now.
Members are however asked to give consideration as to whether
matters relating to neighbourhood planning should be reserved to
members explicitly and not delegated to officers.

Assets of community value

6.14 There are very detailed provisions relating to the requirement to
maintain a register of assets of community value and the procedures
which must be followed before such an asset may be disposed of.
These are summarised in Appendix 1. However operational
regulations and guidance are awaited and these will be dealt with in a
subsequent report to CWP. They may not be available until October
2012. In the meantime, officers are making preparations for
implementation of new procedures so far as is possible without the detailed regulations.

Joint committees

6.15 On 4\textsuperscript{th} May 2012 regulations were published which deal with the power of Councils and their executives to form joint committees. They appear to offer more flexible arrangements for the discharge of functions by another authority and/or its executive. The implications of these regulations on the Council’s current arrangements seems minimal at this stage, but a further report will deal with their impact in due course. They appear to accommodate the situation, previously not allowed, that an executive may wish to delegate the discharge of its functions to another authority which does not have executive arrangements.

7 Health and Social Care Act 2012

7.1 The main provisions of the Act are summarised in Appendix 2. In respect of constitutional matters, the two most significant elements of the Act are the requirement to establish Health and Wellbeing Boards and the transfer of public health functions to the Council.

Health and Wellbeing Boards (HWBs)

7.2 There is to be a new duty on local authorities to establish a Health and Wellbeing Board for its area. It comes into effect in April 2013. The Act provides that the HWB consist of :-

1. At least one councillor of the authority who is nominated by the Mayor (and may include the Mayor)
2. The Council’s director of adult services
3. The Council’s director of children’s services
4. The Council’s director of public health
5. A representative of the Local Healthwatch organisation for the area
6. A representative of each relevant clinical commissioning group and
7. Such other persons or representatives of such other persons as the Council thinks appropriate

7.3 This means that the Mayor can nominate whichever councillors he chooses (under (1) above) and the Council must appoint them; and the Council can appoint whichever people, councillors or otherwise, it chooses under (7), subject only to the Council’s own constitutional requirements, which the Council is free to specify.

7.4 In addition the Board can appoint such other persons as it considers appropriate and a person may represent more than one clinical commissioning group on the Board if the Board agree.
7.5 After the Board is established the local authority must consult the HWB before the Council may make another appointment. This does not apply to Mayoral nominations.

7.6 The HWB is to be a committee of the Council as if established under Section 102 Local Government Act 1972 unless there are regulations disapplying provisions that would apply to other committees.

7.7 There is a great deal of flexibility in these provisions, and members will need to make a decision about the constitution of the HWB.

Functions of the HWB

7.8 The HWB:-

- Must encourage persons who arrange for the provision of any health or social services in the area to work in an integrated manner, for the purpose of advancing the health and wellbeing of the area

- Must provide such advice, assistance or other support as it thinks appropriate for the purpose of encouraging the making of arrangements under Section 75 NHS Act 2006 in connection with the provision of such services

- May encourage persons who arrange for the provision of health related services in its area to work closely with the HWB

- Must prepare joint strategic needs assessments (as set out in Section 116 Local Government Public Involvement in Health Act 2007), in respect of which the Council and each partner clinical commissioning group will prepare a strategy for meeting the needs included in the assessment by the exercise of the functions of the Council, the NHS Commissioning Board or the clinical commissioning groups

- May give its opinion to the Council on whether the Council is discharging its duty to have regard to any joint strategic needs assessment (under Section 116 Local Government Public Involvement in Health Act 2007) and any joint health and wellbeing strategy prepared (under Section 116A Local Government and Public Involvement in Health Act 2007) in the exercise of its functions

- May exercise any functions that are exercisable by the Council, and the Council may arrange for the exercise of such functions by the HWB, save that the HWB may not exercise the Council's functions under Section 244 NHS Act 2006 (statutory consultee in relation to substantial variations in service etc)
NHS Commissioning Board participation in HWB

7.9 Where the HWB is preparing a joint strategic needs assessment or a joint health and wellbeing strategy, the NHS Commissioning Board must appoint a representative to join the HWB to participate in its preparation. If the HWB is considering a matter that relates to the exercise or proposed exercise of the commissioning functions of the NHS Commissioning Board, the NHS Commissioning Board will appoint a representative to participate in consideration of that matter if the HWB so requests.

Joint arrangements

7.10 Two or more HWBs may make arrangements to exercise any of their functions jointly, or by a joint sub-committee, or may appoint a joint sub committee to advise them on any matter.

Supply of information to HWB

7.11 For the purposes of assisting it in the performance of its functions, a HWB may request such information as may be specified in the request from the following people who must comply with the request:-

- The Council
- Any representative of the Local Healthwatch organisation on the HWB
- Any representative of a clinical commissioning group on the HWB
- Any person appointed by the Council other than by Mayoral nomination
- Any other person appointed to the Board by the Board

7.12 Such information may only be used by the HWB to enable or assist it to perform its functions and must relate to a function of the person of whom the request is made, or a person in respect of whom that person exercises a function.

A Shadow Health and Wellbeing Board

7.13 The Council already operates a shadow health and wellbeing board on which sit those people set out in Appendix 2. This accords with best practice in preparations for the implementation of the Act. The Council will have to decide whether to formalise these arrangements in its constitution, both in the interim until implementation of the Health and Social Care Act, and after. The Healthier Communities Select Committee is considering a report on the work of the Shadow Health and Wellbeing Board on 30th May and any views will be available for the meeting of CWP.
7.14 Public health functions which were previously the responsibility of Primary Care Trusts will transfer to the local authority in April 2013. The Act provides that a local authority, acting jointly with the Secretary of State must appoint an officer to be known as the director of public health. Among the responsibilities of the director of public health will be a requirement to produce an annual report on the health of the people in the area. The report must be published by the Council. There is likely to be guidance to which the Council must have regard in relation to the appointment of the director and the discharge of their public health functions.

7.15 Constitutional arrangements will need to be drafted dealing with such matters as:-

(1) the composition, terms of reference and rules of procedure for the HWB

(2) the appointment and dismissal procedures for the director of public health recognising him/her as a statutory officer with statutory functions

(3) schemes of delegation in relation to public health matters

(4) arrangements for the scrutiny of health functions, and the relationship of scrutiny bodies with the HWB

8 Effecting changes

8.1 This report brings together some strands of constitutional change which will need to be made over the next few months. Some, like those relating to the community right to challenge and the new ethical framework, are more imminent than others. Given the scale and pace of change, this report is not exhaustive. It simply sets out some of the key areas that are known now and urges members to give consideration to them. Officers propose that a report be submitted to full Council in June to effect changes to the ethical framework and to facilitate decision making in respect of the community right to challenge on a temporary basis from 27th June.

8.2 Thereafter it is proposed that a much fuller report be prepared for the September meeting of Council to move constitutional changes on to reflect the changing legislative landscape. At that point new contract procedure rules to implement the community right to challenge should have been finalised for submission to Council and other matters referred to in this report may be dealt with.

8.3 It may also be that the regulations and guidance about other elements requiring constitutional change will be available in time for that meeting,
but if not, it may be that there will need to be a series of reports to CWP and full Council over the coming year requesting piecemeal amendment to the Council’s constitutional arrangements as regulations and statutory guidance come into effect.

9 Legal implications

9.1 Changes to the Council’s constitution are a matter for full Council through the role of the CWP is to advise the Council on any amendments.

9.2 The main legal implications are contained in the body of the report.

9.3 The Constitution must comply with the provisions of the Local Government Act 2000 as amended by the Localism Act and contain statutory elements set out in primary and secondary legislation. The report is designed to ensure compliance.

9.4 Where changes are necessary to schemes of delegation to reflect new law, the responsibility for amending them will rest either with the Mayor or the Council depending on whether the matter is an executive or non-executive function. Save for regulations dealing with joint arrangements between Councils, there are no new functions regulations amending executive and non-executive responsibilities, and the procedures for amending schemes of delegation set out in the constitution currently will apply unless and until any further regulations are made.

10 Financial implications

There are no specific financial implications arising from this report

11 Equalities implications

11.1 The Equality Act 2010 (the Act) brings together all previous equality legislation in England, Scotland and Wales. The Act includes a new public sector equality duty (the equality duty or the duty), replacing the separate duties relating to race, disability and gender equality. The duty covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

11.2 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
• foster good relations between people who share a protected characteristic and those who do not.

11.3 As was the case for the original separate duties, the new duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

11.4 The Equality and Human Rights Commission issued guides in January 2011 providing an overview of the new equality duty, including the general equality duty, the specific duties and who they apply to. The guides cover what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guides were based on the then draft specific duties so are no longer fully up-to-date, although regard may still be had to them until the revised guides are produced. The guides do not have legal standing unlike the statutory Code of Practice on the public sector equality duty. However, that Code is not due to be published until April 2012. The guides can be found at: http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/new-public-sector-equality-duty-guidance/

11.5 Members must be mindful of this duty in considering any proposed amendments to the Constitution.

12 Crime and Disorder and Environmental implications

There are no specific crime and disorder or environmental implications, save that the Constitution will still retain overview and scrutiny bodies with responsibility for these functions.

Background Papers

None reported

If there are any queries on this report please contact Kath Nicholson: tel 020 8314 7648.
APPENDIX 1

Localism Act 2011

Kath Nicholson
April 2012

Fundamental change

- 271 sections
- 25 schedules
- 142 regulation making powers
- Assent 15th November 2011
- Implementation through to July 2012

Localism Act 2011

- COMPETENCE
- GOVERNANCE
- PRE-DETERMINATION
- STANDARDS
- PAY ACCOUNTABILITY
- EU FUND
- MODERNISATION
- TAX
- COMMUNITY RIGHT TO CHALLENGE
- ASSETS OF COMMUNITY VALUE
- NEIGHBOURHOOD PLANNING
- HOUSING
- LONDON

Competence

- Power of general competence
- Replaces S2 LGA 2000
- Breaks the link with functions, etc
- LA to be able to do what an individual could
- Change of language
- Impact?
- In force now

Governance

- 3 Governance models:
  - Mayor & Cabinet
  - Strong executive leader & cabinet
  - Committee system
- Binding referendum to move away from Mayoral model
- 10 year gap
- Elections – referendum this November
- Lots dropped
- Effective now

Pre-determination

"An elected or co-opted member is not to be taken to have had, or to appear to have had, a closed mind when making a decision, just because the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would take or might take, in relation to a matter, and the matter was relevant to the decision." (FH underlining)

In force now – since 15.01.12
Standards
- The old regime goes
- Duty to promote high standards
- Local Code of Conduct – 7 principles
- Disclosable pecuniary interests
- Complaints procedure locally determined
- No compulsory Standards Committee
- Non-disclosure of pecuniary interest = crime
  (CPP)

Fully effective July 2012

Pay accountability
- Duty to publish a Pay Policy Statement to set out policy re remuneration of COEs & DCOEs
- Relationship between COEs & non COOs must be explicit
- By 31/03 and annually
- Can’t pay outside the Pay Policy
- Publish on web
- Drafted policy – Remuneration Panel – went to Council in March

Council tax
- Secretary of State ‘principles’
- If LA sets Council Tax, in excess of ‘principles’ then LA must hold binding referendum.
  - I A must prepare alternative compliant budget.
  - Refunds if referendum result is No.
  - In force now but referendum regulations currently before parliament.
  - ‘Principles’ for LBL this year – 3.5% increase
    - 4% GLA

Community right to challenge
- Community, voluntary or employee bodies have the right to express an Interest (EOI) in providing LA service.
  - If accepted, LA must conduct procurement exercise.
  - LA can determine period for EOI.
  - Relevant Service – regulations to come.
  - Reject EOI only on grounds in regs to come.
  - LA must consider whether acceptance promotes economic, social or environmental wellbeing.
  - Procurement law applies.
  - No prohibition on DSO bid.

Sections partly in force with regs awaited by April 2012

Assets of Community Value (ACV)
- LA must keep 2 lists ‘PASS’ and ‘FAIL’
- Community nomination (parish or voluntary/community body with local connection)
- Notification to landowner
- Local land charge
- Review of decision to list – appeal process.

Definition - ACV
In the Council’s opinion

EITHER, the actual main current use furthers the social wellbeing or social interests of the local community and it is reasonable to think that such use can continue and will further such interests.

OR, In the recent past, such main use furthers the social wellbeing or social interests and it is reasonable to think that such use can continue to further such wellbeing or interests.
Impact of ACV

No relevant disposal unless process followed
- Interim moratorium (6 weeks) – full moratorium (6 months)
- 18 months to complete disposal
- Sale in breach can be set aside by the courts.
- Compensaion by the LA

ACV criteria

- Secretary of State can prescribe the criteria for an ACV
- Proposed exclusions
  - Residential/operational
  - Exemptions proposed
  - Gifts/inheritence/port site, etc.

Planning

- Regional Strategies gone
- Duty to co-operate
- CIL – Regs can require LA to give to another

Neighbourhood Areas

LA may designate a neighbourhood area on application of qualifying body (QB)

QB = parish or organisation that could be a neighbourhood forum

Neighbourhood Forums

Organisation
- Established to further economic, social, environmental wellbeing of individuals living/wanting to live in neighbourhood area, or promotes trades, etc., in the area.
- 21 members
- Written constitution
- Open to all living or working in the neighbourhood and councillors
- Other prescribed by regs
- 5 years

Neighbourhood Plan

- Proposed by QB
- Becomes part of LDF
- Must be consistent with our Development documents
- Referendum
- We adopt
- Regs
<table>
<thead>
<tr>
<th>NDO</th>
<th>Community Right to Build Order (CRBO)</th>
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<tr>
<td>NDO – an order that grants planning permission for specific site</td>
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<table>
<thead>
<tr>
<th>Housing</th>
<th>Housing</th>
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<tr>
<td>Allocation policy</td>
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<tr>
<td>• LA can decide &quot;qualifying persons&quot;</td>
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<tr>
<td>• Council determines priorities on finance, behaviour, local connection</td>
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<tr>
<td>• Discharge homelessness duty in private sector without applicant’s agreement</td>
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<tr>
<td>Tenancy strategy</td>
<td></td>
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<tr>
<td>• Flexible tenure</td>
<td></td>
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<tr>
<td>• Secure – minimum 2 years</td>
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<tr>
<td>• Succession to non-spouses, non-partners goes</td>
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<thead>
<tr>
<th>London</th>
<th>What else is current?</th>
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<td>LDA goes</td>
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<td>MDCs</td>
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<td>HCA functions to Mayor</td>
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<td>Power to delegate ministerial powers to Mayor</td>
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<td>Trading powers</td>
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<td>Economic Development Strategy for London</td>
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<td>Open Services White Paper</td>
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<td>Local Government Finance Bill (NDR and TIF)</td>
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<td>Continuing challenges re equalities and consultation</td>
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<td>Health restructuring</td>
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<td>Welfare reform</td>
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Health and Social Care Act

Mayor's briefing

May 2012

Community Services – Strategy and Policy

Executive summary

- On 27 March 2012, the Health and Social Care Bill received Royal Assent to become the Health and Social Care Act.
- The Bill spent over a year in Parliament and had more than 1,000 amendments in the House of Commons and the House of Lords.
- The Act will result in significant structural change for the NHS and local authorities.
- Substantial local activity has already taken place to ensure that the Council and its partners are prepared for these changes including the establishment of the Shadow Health and Wellbeing Board and the location of the Public Health team within the Council.
- The majority of the Act's major changes will come into effect in April 2013.

Activity for 2012/13

- Transition of public health functions and staff to the Council
- Commissioning a local Healthwatch organisation
- Establishing a statutory Health and Wellbeing Board and producing its Health and Wellbeing Strategy
- Submission of Lewisham Healthcare Trust’s Foundation Trust application
- Authorisation of Lewisham’s Clinical Commissioning Group
Government's Intentions

'Putting patients and the public first'

1. Increase diversity of supply, competition and choice for patients by establishing Monitor as an economic regulator; by extending choice of provider to a wider range of services and by allowing providers from all sectors to compete on an equal footing under the principle of 'any qualified provider'.

2. Extend choice into other areas of care, including community services and mental health, with the aim of implementing choice for most NHS-funded services by 2013/14. Patients will be able to register with any GP practice, regardless of where they live.

3. Improve accountability and patient voice by strengthening the role of the Care Quality Commission and by establishing a national patient voice organisation, HealthWatch England, and local HealthWatch organisations.

Government's Intentions

'Increasing autonomy, accountability and democratic legitimacy'

Key aspects of the Act

1. Establishes an independent NHS Commissioning Board to operationally manage the NHS, allocate resources and commission Primary Care Services and those services that are more appropriately commissioned at a national level.

2. Allows GPs to commission services on behalf of their patients by establishing Clinical Commissioning Groups to take on local health commissioning functions in April 2013, at which point PCTs will be abolished.

3. Expands the role of local authorities in the health system, giving them responsibility for Public Health and creating Health and Wellbeing Boards.

4. Promote integration by making it a duty on the NHS Commissioning Board and Health and Wellbeing Boards and by making provisions to enable the Board or consortia to establish pooled funds.

5. All NHS providers must become Foundation Trusts by April 2014.
Government’s Intentions

‘Cutting bureaucracy and improving efficiency’

Key aspects of the Act

1. Cuts the number of health bodies to help meet the Government’s commitment to cut NHS administration costs by a third including abolishing Primary Care Trusts and Strategic Health Authorities.

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Main responsibilities</th>
<th>Replaces</th>
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<tbody>
<tr>
<td>NHS Commissioning Board</td>
<td>• Oversee the overall NHS commissioning</td>
<td>Strategic Health Authorities</td>
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<td></td>
<td>• Support, develop and hold, to account a comprehensive system of clinical commissioning groups.</td>
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<td></td>
<td>• Commission those services that make most sense to be commissioned at a national level</td>
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<tr>
<td>Public Health England</td>
<td>• Provide the national lead on public health</td>
<td>NIA — new executive agency within the Department of Health</td>
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<td></td>
<td>• Support the development of the public health workforce</td>
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<td></td>
<td>• Deliver public health services most appropriately commissioned at a national level</td>
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<tr>
<td>Health and Wellbeing Boards</td>
<td>• Act as the independent consumer champion for health and social care services</td>
<td>NIA — new committee within the Care Quality Commission</td>
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<td></td>
<td>• Support local Health and Wellbeing Boards</td>
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<tr>
<td>Monitor</td>
<td>• Promote provision of healthcare which is economic, efficient and effective</td>
<td>Independent Regulator of NHS Foundation Trusts</td>
</tr>
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<td></td>
<td>• Promote anti-competitive behaviour in the provision of healthcare services</td>
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<tr>
<td>Clinical Commissioning Groups</td>
<td>• Commission the majority of NHS services for their local populations</td>
<td>Primary Care Trusts</td>
</tr>
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<td></td>
<td>• Encourage integration between Health and Social Care services</td>
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<tr>
<td>Local Health and Wellbeing Boards</td>
<td>• Provide community intelligence to influence commissioning and the delivery of health and care services.</td>
<td>Local Involvement Networks</td>
</tr>
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<td></td>
<td>• Support people to make choices about the health and social care services they receive</td>
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<tr>
<td>Health and Wellbeing Boards</td>
<td>• Produce the Joint Strategic Needs Assessment and the joint Health and Wellbeing Strategy to address the identified local needs</td>
<td>NIA — new statutory committee of the Local Authority</td>
</tr>
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<td></td>
<td>• Encourage integration between health and social care services</td>
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</table>
Clinical Commissioning Groups (CCGs) will sit at the heart of the new NHS configuration. They bring together GPs and other clinicians to determine and direct which health services will be commissioned.

**Clinical Commissioning Group**
- Hospital and Acute Services
- Joint Commissioning
- Unscheduled Care
- Planned Care
- Mental Health
- Community Services

**Primary Care Trust**

**NHS Commissioning Board**
- Specialist Services
- Dentistry
- Primary Care

**CGCs will be responsible for almost all the services previously commissioned by Primary Care Trusts. Services more appropriately commissioned at a national level will be the responsibility of the NHS Commissioning Board.**

**Opportunities**
CGCs will be required to have a governing body, which will meet in public, as well as a published constitution. In addition to local GPs, and in order to obtain appropriate clinical advice, CGCs will need to involve representatives of hospital clinicians, nurses and other health and social care professionals.

**Relationship with the Council and the community**
Each Commissioning group must prepare a plan setting out how it proposes to exercise its functions, in consultation with the Health and Wellbeing Board.
Commissioning group must involve patients in the planning and development of commissioning proposals.
Commissioning group must prepare an annual report which will need to review how they have contributed to the delivery of the Health and Wellbeing Strategy.
The CCG will have a duty to involve the Health and Wellbeing Board in preparing their plans.
The CCG will have a legal duty to encourage integrated working between health and social care services.
As of April 2012, Lewisham's Clinical Commissioning Group took on delegated responsibility for all relevant commissioned health services in Lewisham.

Lewisham's Clinical Commissioning Group is currently a sub-committee of the PCT (Lewisham Clinical Commissioning Committee)

- Dr Helen Tait (Chair) – Chair of Lewisham GP Federation
- Dr David Abraham – Deputy Chair, Lewisham GP Federation
- Dr Fank Majid – Deputy Chair, Lewisham GP Federation
- Dr Asad Ghani – Clinical Executive, Lewisham GP Federation
- Dr Marc Rowland – Clinical Executive, Lewisham GP Federation
- Dr Judy Chen – Clinical Executive, Lewisham GP Federation
- Dr Henry Estrella – Clinical Executive, Lewisham GP Federation
- Dr Alan Thompson – Chair of Lewisham Local Medical Committee
- Dr Gary Razi – Director of Public Health
- David Whiting – Vice Chair (Lewisham), NHS South East London
- Rosa Nicholson – Non-Executive Director (Lewisham), NHS South East London
- Martin Wilkinson – Managing Director, Lewisham Business Support Unit
- Alison Buckley – Executive Director for Community Services, London Borough of Lewisham
- Jan Gilard – Lay representative, Lewisham Local Involvement Network
- June Cook – Lay representative

- Over the course of 2012/13 all CCGs will seek authorisation from the Department of Health.
- Lewisham's CCG will be part of the second wave of authorisation, with a stakeholder assessment conducted in July and written evidence submitted in September.
- Following authorisation, the LCCG will become a formal CCG with some changes to membership.

The Act requires local authorities to establish Health and Wellbeing Boards which will bring together elected members and strategic partners to identify local health challenges and lead on the activity necessary to address them.

Responsibilities

- The Health and Wellbeing Board will be responsible for:
  - Preparing an assessment of relevant needs (the Joint Strategic Needs Assessment).
  - Preparing and publishing a strategy to meet the needs identified in the JSNA.
  - Encouraging integrated working between health and social care services.

Membership

- The Act states that the Board's membership must include:
  - At least one councillor of the local authority
  - The Director of Adult Services
  - The Director of Children's Services
  - The Director of Public Health
  - A representative from the Healthwatch organisation
  - A representative of each relevant clinical commissioning consortium

Relationship with other organisations

- It is the responsibility of the local authority and its partner Clinical Commissioning Group(s) to involve local Healthwatch and local citizens in the preparation of the Health and Wellbeing Strategy.
- Clinical Commissioning Groups have a duty to involve the Health and Wellbeing Board in preparing their plans.

UNCLASSIFIED
Lewisham has established a Shadow Health and Wellbeing Board to manage the transitional arrangement in advance of the Board becoming a statutory committee.

| Sir Steve Bullock (Chair) – Mayor of Lewisham |
| Helen Talbotfield (Vice-Chair) – Chair of Lewisham Clinical Commissioning Group |
| Cllr Chris Busi – Cabinet Member for Community Services |
| Qaaid Ahmed – Deputy Chair of Lewisham Clinical Commissioning Group |
| Arlene Buckton – Executive Director for Community Services |
| Fazillian Hunt – Executive Director for Children and Young People |
| Danny Rafe – Director of Public Health |
| Martin Wilkinson – Managing Director, Lewisham Business Support Unit |
| Simon Potts – Representative, Lewisham Local Medical Committee |
| Tim Higginson – Chief Executive, Lewisham Healthcare Trust |
| Steve Davidson – Service Director, South London and Maudsley NHS Trust |
| Martin Holmes – Director, Voluntary Action Lewisham |
| Val Fidler – Chair, Lewisham Local Involvement Network |
| Geo Carlos – Head of Joint Commissioning - Adults, London Borough of Lewisham |
| Warrick Tsewwali – Head of Joint Commissioning – Children, London Borough of Lewisham |

**Responsibilities during 2013/14:**

- Lead on the development of Lewisham Joint Strategic Needs Assessment
- Lead on the development of Lewisham’s Health and Wellbeing Strategy
- Support the development and authorisation of Lewisham’s Clinical Commissioning Group
- Support the development of an effective local HealthWatch
- Oversee the transition of public health functions, funding and responsibilities to the local authority

Healthwatch England and Local Healthwatch organisations will act as independent consumer champions for people accessing and receiving health and social care services.

Local authorities will fund and commission an organisation to carry out specific statutory functions of a local Healthwatch. A local Healthwatch’s remit will cover both adult and children’s health and care services.

### Local Involvement Networks

**Local Healthwatch will have the same powers as those disposed in Local Involvement Networks.**

- Obtaining the views of people about their need for and experience of local care services and making these views known to commissioners
- Promoting and supporting the involvement of people in the commissioning, provision and scrutiny of local care services and in monitoring the quality of provision
- Making relevant issues and views known to Healthwatch England and supporting Healthwatch England so that it can carry out its functions efficiently, effectively and economically
- Providing advice and information about access to local care services and about choices that may be made with respect to those services
- Enter and view all publicly funded health and social care services either as unannounced spot checks or at agreed monitoring visits
- Request information and receive a response in a specified timescale
- Make reports and recommendations and receive a response in a specified timescale
- Refer matters to a Health and Social Care overview and scrutiny committees and receive a response

These functions must be carried out by a body corporate which operates as a social enterprise.

Over the course of 2012/13, Lewisham Council will develop a clear specification so that a Lewisham HealthWatch can effectively represent citizens and support improved health outcomes.

UNCLASSIFIED
The Act creates a new public health system and devolves the majority of the existing public functions, funding and resources to local authorities.

**Public Health England**
- At a national level Public Health England (as an executive agency of the Department of Health) will have a new法定 health function and will support local action through funding and the provision of evidence, data and professional leadership. Its main functions will be to:
  - Deliver services to national and local government, the NHS and the public
  - Lead for public health
  - Support the development of the specialist and wider public health workforce

**National communications and interventions**
- Publish information on national and local health and wellbeing outcomes
- Deliver an information and intelligence service to support effective action nationally

**Local Authorities**
- Local Government will have a new statutory duty to take steps as it considers appropriate to improving the health of people in its area. It will also carry out duties under the Public Health (Control of Exotic Disease) Act 1984. Responsibility and (significantly) resources for commissioning public health services have been devolved to local government.

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Tobacco control and smoking cessation services
Alcohol and drug misuse services
Public health services for children and young people aged 5-19 (and in the longer term of public health services for children and young people)
The National Child Measurement Programme
Interventions to tackle obesity such as community lifestyle and weight management services
Locally-led nutrition initiatives
Increasing levels of physical activity in the local population
NHS Health Check assessments
Public mental health services
Dental public health services
Accidental injury prevention
Local initiatives on workplace health
Local initiatives to reduce excess deaths as a result of seasonal mortality
Population level interventions to reduce and prevent birth defects
Behavioural and lifestyle campaigns to prevent cancer and long-term conditions

Supporting, reviewing and challenging delivery of key public health funded and NHS delivered services such as immunisation and screening programmes
Comprehensive sexual health services (including testing and treatment for sexually transmitted infections, contraception outside of the GP contract and sexual health promotion and disease prevention)
Dialoging with health protection incidents, outbreaks and emergencies
Public health aspects of promotion of community safety, violence prevention and response
Public health aspects of local initiatives to tackle social exclusion
Local initiatives that reduce public health impacts of environmental risks
A programme of transition activity is underway so that as of 1 April 2013 all the staff, resources, operating model and information are in place to enable Lewisham Council to fulfill its new public health responsibilities.

- Operating Model
  - To determine the organizational and operating model that needs to be in place to enable the Council to deliver its public health responsibilities with the relevant governance and constitutional arrangements in place.
- Finance
  - To identify and agree the budget required to deliver the Council’s core public health functions and its allocation for the year ahead and subsequent years. To agree the budget accountability and monitoring arrangements during transition and post-transfer.
- Commissioning
  - To produce a ‘merged register’ and agree commissioning and procurement arrangements during transition and post-transfer.
- Information & Intelligence
  - To establish robust systems and data management to support public health commissioning and delivery and to satisfy information governance requirements.
- Human Resources
  - To ensure correct and legal transfer of staff on required terms and conditions.
- Accommodation
  - To provide suitable accommodation and infrastructure to enable staff to carry out public health functions.
- Communications & Engagement
  - To inform and engage all relevant stakeholders (including staff) of the transition process, the public health functions and their roles and responsibilities.
- Governance & Assurance
  - To ensure that all public health functions follow the required governance process and achieve the necessary level of quality assurance.

Lewisham’s public health team is already located within the Council complex and there is a long history of joint-working between the Council and Public Health, most notably in the production of the Joint Strategic Needs Assessment and the development of Lewisham’s Shadow Health and Wellbeing Board.

The majority of the Act’s key changes come into effect in April 2013. There remain key activities and decisions that will need to be made over the course of 2012/13.

<table>
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<tr>
<th>Reform</th>
<th>Activity in 2012/13</th>
<th>Governance</th>
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<tbody>
<tr>
<td>Local Health and Wellbeing</td>
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<tr>
<td>Public Health</td>
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<td>Shadow Health and Wellbeing Board</td>
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<td>Joint Health and Wellbeing Strategy</td>
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<td>Lewisham CCG</td>
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- Lewisham Council along with its health partners are working to develop a specification for a local Healthwatch organisation. This will involve consultation with the community, particularly some of the harder to reach groups.
- Transition process currently underway. Final Public Health budget to be confirmed in December 2012.
- Over the course of 2012/13 the Shadow Health and Wellbeing Board will be established.
- Over the course of 2012/13 the Shadow Health and Wellbeing Board will build on the production of Lewisham’s Health and Wellbeing Strategy and Joint Strategic Needs Assessment.
- Complete authorisation process.

- Secretary of the Health and Wellbeing Communities and CYP Select Committees
- Constitutional Wayfinding Party
- Public Accounts Committee
- Decisions to be made by Mayor and Cabinet or Full Council
- Decision on authorization made by Department of Health
APPENDIX 3

Public Services (Social Value) Act 2012 Briefing Note

The Public Services (Social Value) Act 2012 has received Royal Assent

The Act is intended to bring the concept of social value into the commissioning and procurement of services by public authorities. Local authorities are already required to award contracts/framework agreements using the principles of ‘Best Value’ which include social, economic and environmental value. The idea behind the Act is to ensure that public authorities consider the collective benefit of the procurement (the social value) when evaluating tenders and it is anticipated that this will increase the number of community organisations, charities and social enterprises delivering public service contracts.

The Act applies to all contracts or framework agreements entered into by public authorities, where the Public Contracts Regulations 2006 (“the Regulations”) would apply. The Regulations only apply to services contracts or framework agreements where the value is above £173,934.

It places a requirement on the procuring authority to consider how the service being procured might improve the economic, social and environmental wellbeing of the area and how, through the procurement process, the authority might act to secure that improvement. The idea is to change the way that contracts are awarded and to shift focus from factors such as cost, to other considerations which may benefit a local area, such as a commitment to using local labour, creating jobs for locally disadvantaged groups or reducing landfill waste or carbon emissions.

The Council is obliged to consider only matters which are relevant to the service which is being procured and in taking them into account, must consider them only to the extent to which it is proportionate to do so.

A public authority must also consider whether to undertake any consultation of the matters which should be considered by the authority in determining how the service being procured might improve the economic, social and environmental wellbeing of the area.

Prior to the Act, local authorities are unable to take into account non-commercial considerations when entering into public service contracts (section 17 LGA 1998). This Act allows the Council to consider a non-commercial matter to the extent that the authority considers it necessary or expedient to do so to enable or facilitate compliance with the Act. This broadens the ability of the Council to determine which matters to take into account when procuring a contract.
When Does the Act Apply

The Act will apply to all service contracts and framework agreements entered into by the Council above the EU threshold. This includes contracts which solely relate to the provision of services as well as contracts for the provision of services together with the purchase/hire of goods or the carrying out of works.

The Act includes an exemption which means that if there is an urgent need to arrange the procurement in question which makes it impractical to comply with the requirements outlined above, then the Council may disregard the requirements to the extent that it is not practical to comply with them. No guidance has yet been published in relation to the Act and therefore it is unclear if this exemption will be interpreted widely or not.

The Act is clear that failure to comply with it does not affect the validity of anything done in order to comply with the Regulations. However in circumstances where a local authority fails to comply with the legislation, they may leave themselves open to challenge by way of judicial review.

Impact on the Council

Any commissioning procurement exercise for services undertaken by the Council which is in excess of £173,934 will fall under this Act. The Council will need to consider how the service being procured might improve the economic, social and environmental wellbeing of Lewisham and how we might act to secure this improvement. This may mean a change in how the Council procures its services contracts and will require that all participants in the tender process ensure that social value is considered at all stages, but particularly prior to commencement of the procurement.

Consideration may need to be given to the criteria used in the evaluation of tenders and any specific social, economic or environmental requirements should be outlined in the contract documentation. The weighting to be attached to any specific criteria should be balanced so as to determine the most advantageous tender.

The Council needs to ensure that any social requirements are drafted and defined in such a way that bidders from the EU are not discriminated against, as this could give rise to challenge.

Consideration may need to be given to holding consultation with the public and suppliers when looking to procure services such as early years centres, libraries etc, to find out what residents deem to be matters which might improve the economic, social and environmental wellbeing of Lewisham. These can then be reflected in the procurement process and will ensure that the maximum social value is realised from the winning bid.
Although this Act applies to contracts above the threshold, it would be good practice for the Council to adopt social value considerations in all procurements, to ensure maximum community benefits.

Summary

This Bill is intended to supplement existing legislation and it is likely that the Council is already undertaking procurements in accordance with this new law. The Act is intended to focus consideration by public authorities on all aspect of value for money when awarding its contracts. It is likely that procuring for social value will help support the strategic aims of the Council in seeking to improve the economic and social wellbeing of the borough for our residents.
1. **Summary**

This report proposes a new Member Code of Conduct for the Council to comply with the requirements of the Localism Act 2011 as well a procedure for dealing with complaints of breach of that Code. Finally the report proposes that the Council retain a Standards Committee and suggests terms of reference for it.

2. **Purpose**

The purpose of the report is to seek the comments of the Standards Committee and Constitution Working Party (CWP) respectively to provisions designed to implement the provisions relating to Standards in the Localism Act 2011.

3. **Recommendations**

It is recommended that the Constitution Working Party:-

3.1 approve the draft Member Code of Conduct attached at Appendix 1 for referral to full Council at its June 2012 meeting;

3.2 approve the draft procedure for handling complaints of breach of the Code of Conduct attached at Appendix 2, again for referral to full Council;

3.3 refer a proposal to full Council that the Council retain a Standards Committee with the composition and terms of reference attached at Appendix 3; and
3.4 note that an advertisement has been placed on the Council’s website seeking the services of an Independent Person who must be consulted prior to any decision being made following investigation of a complaint under the procedure for handling allegations of breach of the Member Code of Conduct

4 Background

4.1 Under the Local Government Act 2000 an ethical framework for local authorities is in place until 30th June 2012. That framework includes, amongst other things,

(a) a statutory Code of Conduct

(b) a legal requirement for authorities to have standards committees to promote high standards of ethical behaviour and to investigate complaints of breach of the Code of Conduct

(c) a statutory basis for membership of and voting by independent members of the Standards Committee

(d) a statutory process for investigation of allegations of breach of the Member Code of Conduct.

(e) the ability of local Standards Committees to impose sanctions for proven cases of breach of the Member Code

4.2 Until the beginning of this year there was a statutory role for the independent body, Standards for England in promoting ethical standards, monitoring local authority performance in this area and investigating the most serious allegations of breach.

4.3 The Localism Act 2011 abolishes the old regime totally from 30th June 2012 and requires authorities to put in place new provisions with effect from 1st July 2012.

4.4 The differences between the old and new provisions were most recently the subject of a full briefing to the Standards Committee on 1st March 2012, but the key features of the new legal requirements can be summarised as follows:-

(a) the abolition of the national Member Code of Conduct and the introduction of statutory elements which must be incorporated in a local Code of Conduct. Those statutory elements relate to the Nolan principles which must be followed and the declaration of interests

(b) discretion locally to build on the statutory elements which must be reflected in the Code of Conduct should the local authority see fit to do so
(c) the abolition of the requirement for all members to undertake in writing to comply with the Member Code of Conduct

(d) there is no longer a statutory requirement for a Standards Committee, and if one is appointed there are no special legal provisions enabling independent members to vote or chair meetings

(e) The only sanctions which can be imposed on members breaching the Code are criminal sanctions for breach of the provisions relating to the declaration of interests and withdrawal from consideration of matters in which members have disclosable interests.

(f) the abolition of the legal requirement to declare the member’s interests at meetings if the member has already disclosed the interest in the Register of Members’ Interests

(g) the procedure for investigation of allegations of complaints of breach of the Code of Conduct is a matter for local discretion. However, before making any decision in relation to a breach of the Code of Conduct, an Independent Person must first express their views on the matter. The member concerned may also refer to the Independent Person.

4.5 On 7th December 2011, the Standards Committee agreed that the Council keep the existing Member Code of Conduct unless there is good reason for departure from it and adopt an investigations procedure that promotes confidence and embodies flexibility and that officers bring a further report back on this at the appropriate time.

4.6 On 15 November 2011, the Constitution Working Party resolved to recommend to the Council that it retain a Standards Committee with support for independent membership when it adopts new ethical framework arrangements.

5. **A draft Member Code of Conduct**

5.1 Attached at Appendix 1 is a draft Member Code of Conduct, highlights those elements which are statutory and those which are recommended for adoption locally. Officers are of the view that the inclusion of the local elements shown in text boxes strikes a balance between a code that is on the one hand clear and robust and on the other not overly onerous on members. Officers believe that the adoption of the code attached at Appendix 1 should still inspire public confidence as well as being realistic and not overly complicated or bureaucratic.

5.2 Members will note that the draft Code is not explicit on what is a disclosable pecuniary interest and what is not, that is because the
regulations have not yet been received, though CLG have confirmed that they are expected any day and the implementation date is still to be 1st July. If they are not received prior to the CWP meeting, officers propose that the definition of disclosable pecuniary interests be inserted as set out in the regulations when published, and that those other interests to be disclosed in the Register of Members’ Interests be those which would now be disclosable under our existing Code. If that is agreed, the Monitoring Officer would propose that authority be delegated to her to amend the draft Code to give that effect prior to the Council meeting.

6. **A draft procedure for the investigation of complaints of breach of the Code**

A draft procedure is now attached at Appendix 2. It is a much simpler procedure than that which has been previously in place as a matter of law which was widely recognised as lengthy, rather complicated, costly and could not be adapted to the particular circumstances of the allegation. The new draft procedure has as its key elements:-

(a) that complaints be referred to the Monitoring Officer in writing.

(b) that where the Monitoring Officer thinks it appropriate, she may try to resolve the matter informally by discussion with both the complainant and the member concerned or otherwise.

(c) where this cannot be achieved or where the Monitoring Officer thinks it appropriate that a formal investigation take place, the Monitoring Officer may investigate the complaint personally or appoint another person to do so on her behalf.

(d) the Monitoring Officer or the person appointed by her to investigate the complaint will produce a report of their investigation.

(e) Once the Monitoring Officer or the person appointed by her to investigate the complaint has completed their investigation whether or not they are of the view that a breach of the Member Code of Conduct has occurred, they will send a copy of their report and all supporting documentation to the Independent Person.

(f) the Independent Person will review the documentation sent by the Monitoring Officer and any further documentation received from the member concerned and produce a report for the Standards Committee.

(g) A sub committee of the Standards Committee will consider the Monitoring Officer report, the report of the Independent Person
and any written representations made by the member concerned.

(h) At their own discretion the sub committee of the Standards Committee may call the member concerned, the Monitoring Officer and/or the person appointed by her to investigate the complaint, and the Independent Person and any other person they deem necessary to answer their questions should they choose to do so.

(i) The sub committee of the Standards Committee will make a decision as to whether the Code of Conduct has been breached and if so what action to take in respect of that breach.

(j) If the allegation is proven, the member will have a right of appeal to another sub committee of the Standards Committee. Their decision will be final.

(k) if the allegation appears to relate to failure to register or declare disclosable pecuniary interests, or to participation in the consideration of a matter where the member's interest precludes such participation, such breaches may result in prosecution. In appropriate circumstances such matters may be referred to the police at any time, at which point the Council's investigation may cease until the police investigation is complete.

7. A Standards Committee

7.1 The proposed composition and terms of reference of a Standards Committee are set out at Appendix 3. In accordance with the express wishes of the CWP, it is proposed that the Standards Committee continue and still consist of 6 councillors and 6 independent members. However it is noteworthy that with the abolition of the special legislative provisions allowing the independent members to vote, it will not be possible for the Committee to be independently chaired and only those members who are elected members of the Council will be allowed to vote on matters before it. The independent members will not have voting rights.

7.2 Officers suggest that the terms of reference of the existing Standards Committee be amended only to the extent that they reflect the new legislation and this is incorporated in the proposals in Appendix 3. Officers recommend that these terms of reference and the proposed composition of the Standards Committee are referred to full Council for approval.
8. **An independent person**

An advertisement calling for applications for the post of Independent Person to be involved in the procedure for handling allegations of breach of the Member Code of Conduct has been placed on the Council’s website. Interviews are to take place in June and the outcome reported to the full Council with a recommendation for appointment at the next Council meeting.

9. **Legal implications**

9.1 The changes to the law are broadly reflected in the body of the report. However there are a number of points to highlight.

a) The Localism Act abolishes the old regime and a Commencement Order is to be laid imminently which will create a statutory duty under part 1 Chapter 7 Localism Act 2011 to have the new arrangements in place by 1st July 2012.

b) Second, though the Localism Act 2011 requires that a person who has been a member or officer of the authority within the last 5 years will be precluded from being the Independent Person, DCLG have confirmed that there are to be transitional provisions for one year that those who have been members of the Standards Committee within that period may be so appointed provided that they are not members of the Standards Committee and Independent person at the same time. It is also DCLG’s intention to make this transitional arrangement a permanent one. These measures are to be introduced by regulation yet to be seen. The advert has been placed on the assumption that the changes will be made to the law, but no appointment may be made of anyone who has acted in the role of member or officer in the last 5 years unless that regulation is forthcoming.

c) It is noteworthy that for breaches of the Code of Conduct which do not relate to those for which prosecution is the sanction, there are no special sanctions available to the Council or its Standards Committee. They will be limited to censure, publicity, and in very limited circumstances certain other actions.

10. **Human Rights Implications**

Article 6 of the European Convention on Human Rights incorporated into national law by the Human Rights Act 1998 enshrines the right to a fair hearing. Officers advise that this requirement is met by the proposed procedure for handling allegations of breach which also fulfils the requirement for any hearing to comply with the rules of natural justice.
11 **Financial implications**

There are no specific financial implications arising from this report.

12 **Equalities implications**

Members are reminded of their duty under the public sector equality duty set out in Section 149 of the Equality Act 2010 to have regard to the need to eliminate discrimination and promote good relations between those with protected characteristics and those without such characteristics. Officers have not identified any specific equalities implications arising from this report.

13 **Crime and Disorder Implications**

13.1 There are no specific crime and disorder implications, save to note that the new legislation renders it a criminal offence not to declare disclosable interests in the Register of Members’ Interests. Participation in consideration of a matter in which a member has a disclosable interest is also liable to prosecution.

13.2 The entire Code is designed to promote ethical behaviour of the highest standard to promote public confidence and reduce the prospect of improper behaviour.

14. **Environmental implications**

There are no specific implications arising.

**Background Papers**

None reported

If you would like more information on this report please contact Kath Nicholson: Head of Law on 0208 314 7648
Appendix 1

Proposed LBL Member Code of Conduct

1. Introduction

1.1 This Code sets out the principles and standards of behaviour for all members of the London Borough of Lewisham, both elected and co-opted members. It is designed to demonstrate the Council’s commitment to the highest standards of ethical behaviour. Certain minimum requirements are set out in law and these are all included in this Code. However, the Council has put in place some elements of this Code by exercising its own local discretion to do so. Those elements which the Council has included under this discretionary power are contained within text boxes below.

1.2 For the avoidance of doubt, when the term “members” is used in this Code, or any appendices or protocols under it, it means elected and co-opted members.

2 Principles

2.1 Members are required to comply with the following principles in their capacity as a member:-

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership
- Independent Judgement
- Respect
- Stewardship

2.2 Accordingly the following requirements apply:-

1) Members must act solely in the public interest. They must never improperly confer an advantage or disadvantage on any person nor seek to do so. They must not act to gain financial or other benefit for themselves, their family, friends or close associates.

2) Members must not place themselves under a financial or other obligation to any individual or organisation that might seek to influence the performance of their duties as a member.
LBL requires that members must not act to place themselves in a position where their integrity might be questioned and should on all occasions avoid situations which may create the impression of improper behaviour.

3) Members should make decisions on merit, including when awarding contracts, making appointments, or recommending individuals for rewards or benefits.

4) Members are accountable to the public for their actions and the manner in which they carry out their responsibilities and should co-operate fully and honestly with any scrutiny appropriate to their office.

5) Members should be as open as possible about their decisions and actions and those of the Council. They should be prepared to give reasons for those decisions and have regard to the advice of the Council’s statutory officers before making any decision.

6) Members must act to ensure Council resources are used prudently. When using or authorising the use by others of Council resources, members must ensure that they are used only for legitimate Council purposes and not for any other purpose. In particular they must not be used improperly for political purposes (including party political purposes). Members must have regard to any applicable Local Authority Code on Publicity under the Local Government Act 1986.

7) Members must take account of the views of others, including their political groups, but must reach their own conclusions and act in accordance with those conclusions.

8) Members should promote equality and not discriminate unlawfully against any person, and treat all people with respect. Whilst it is acknowledged that political debate may at times be robust and forthright, and that the right of freedom of expression is essential to vibrant political discourse, members should ensure that their comments and behaviour do not overstep the line of acceptability. They should not bully any person. They should respect the impartiality and integrity of the Council’s officers.

9) Members should promote and support high standards of conduct in particular as characterised by the above requirements by leadership and example.

3 When does this Code apply?

3.1 This Code applies at all times when members act in their capacity as member or claim to do so.

3.2 In addition LB Lewisham has agreed that members must not act at any time in a way that could reasonably be regarded as likely to bring the Council or their office into disrepute.
4 Personal interests

4.1 There are three categories of personal interest.

- Disclosable pecuniary interest
- Other registerable interest
- Non registerable interest

Disclosable pecuniary interest

4.2 The definition of disclosable pecuniary interest is set out in regulation. It is XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (regs awaited)

4.3 Members must within 28 days of taking office as a member, notify the Monitoring Officer of any disclosable pecuniary interest where the pecuniary interest is the interest of themselves, their spouse or civil partner (or is the interest of someone with whom the member lives as spouse or civil partner) for inclusion in the Register of Members’ Interests.

Other registerable interest

4.4 Members must also within 28 days of taking office as a member, notify the Monitoring Officer of such further interests as LB Lewisham has decided should be included in the register.

5 Declaration of interests

Disclosable pecuniary interest

5.1 By law, Members with a disclosable pecuniary interest may not participate in any discussion of, vote on, or discharge any function relating to any matter in which the member has such an interest, unless a dispensation has been granted under Section 33 Localism Act 2011.
5.2 In Lewisham decisions relating to dispensation may only be taken by the Standards Committee which will decide each case on its merits.

5.3 The law requires that if a member has a disclosable pecuniary interest which is not entered on the Register of Members’ Interests, then the member must disclose the interest to any meeting of the Council at which they are present where they have a disclosable interest in any matter being considered at that meeting. However this shall not apply if the interest is a ‘sensitive interest’ (see para 5.4 below.) Following any such disclosure the law requires that members update their entry in the Register of Members’ Interests within 28 days of the date of disclosure. In this context the law defines a meeting as a meeting of the Council, or any committee, sub-committee or joint committee of it.

5.4 A ‘sensitive interest’ is an interest the disclosure of which the member and Monitoring Officer have agreed could lead to the member or a person connected with them being subject to violence or intimidation.

Other registerable interests

5.5 Members must also comply with such other provisions as the Council may require in relation to declarations of interest. The provisions which the Council has decided to include in this Code in relation to the declaration of interests are set out in paragraphs 5.6 to 5.11 below.

5.6 LBL requires that whenever a member has a registerable interest (pecuniary or otherwise) in any matter and they are present at a meeting at which that matter is to be discussed, they must declare the nature of the interest at the earliest opportunity and in any event before the matter is considered. The declaration will be recorded in the minutes of the meeting. If the matter is a disclosable pecuniary interest the member must take no part in consideration of the matter and withdraw from the room before it is considered. They must not improperly seek to influence the decision in any way.

5.7 Where the member has a registerable interest which falls short of a disclosable pecuniary interest, the member must still declare the nature of that interest to the meeting at the earliest opportunity and in any event before the matter is considered, but unless paragraph 5.8 below applies, provided the member does so, they may stay in the room and participate in consideration of the matter and vote on it.

5.8 Where a member has an interest which under this Code would not be a disclosable pecuniary interest but would be registerable (and therefore would not generally by law prevent participation in consideration of a matter in which the member has that interest,) the member must consider whether a reasonable member of the public in possession of all the facts would think that their interest is so significant that it would be likely to impair the member’s judgement of the public interest. If so, the member must withdraw and take no part in consideration of the matter nor seek to influence the outcome improperly.
Non-registerable interests

5.9 Occasions may arise where a matter under consideration would, or would be likely to, affect the wellbeing of the member, their family, friend or close associate(s) more than it would affect those in the local area generally, but which is not required to be included in the Register of Members’ Interests (for example, a decision in relation to a school closure, where a member has a child at the school). In such matters, members must comply with paragraph 5 in its entirety as if the interest were a registerable one.

5.10 Decisions in relation to the declaration of interests are for the member’s personal judgement. However members must consider not only whether they have an actual interest in a matter under discussion but should at all times seek to avoid the impression being created that their judgement of the public interest is or is likely to be impaired by their personal interests.

5.11 The provisions of this paragraph 5 apply not only to meetings but to circumstances where a member makes a decision alone.

6. ACCESS TO INFORMATION

6.1 Members must not disclose confidential information given to them in the course of their duties without the consent of the person entitled to give it unless:

   (a) there is a legal requirement to disclose the information, or
   (b) the disclosure is to a third person for the purpose of obtaining professional advice and the third party agrees not to disclose it, or
   (c) the disclosure is reasonable, in the public interest, made in good faith and made in accordance with the Council’s reasonable requirements.

6.2 Conversely, members must not prevent access to information to which another is entitled by law.

7. GIFTS AND HOSPITALITY

The Council maintains a Register of Gifts and Hospitality in which all members must register gifts and hospitality received from any party to the value of £25. Members must also register the identity of the party whom they believe to be the source of the hospitality or gift. Members must also record in this register any gift or hospitality offered to them but not accepted if it exceeds £25. This register will be publicly available on the Council’s website.
8 PROTOCOLS

From time to time, the Council may put in place protocols which clarify this Code of Conduct and will be used to interpret it. Members must comply with any such protocols in place from time to time. There are attached to this Code 5 such protocols:

(1) Member and Officer relations
(2) Member Use of IT
(3) Planning and Lobbying
(4) Local Authority Code on Publicity
(5) Guidance Code for Members on Outside Bodies

9 UNDERTAKING TO COMPLY

LBL requires that all members sign an undertaking within two months of being elected to abide by this Code of Conduct. Failure to do so will itself amount to a breach.

10 SANCTIONS

Members are reminded that breach of any of the statutory requirements relating to the registration and declaration of interests may result in prosecution. Breach of the provisions introduced locally by the Council will be dealt with in accordance with the Council’s procedure for handling allegations of breach of this Code.

Members in need of advice about the application of this Code should contact the Head of Law and Monitoring Officer, Kath Nicholson on extension 47648
Introduction

1) This booklet describes the procedure that the London Borough of Lewisham will use to deal with complaints of breach of its Member Code of Conduct.

Making a complaint

2) Complaints should be made in writing (including by fax or email) to the Monitoring Officer, LB Lewisham, Town Hall, Catford, London SE6 4RU (fax no 0209 314 3107); email monitoring.officer@lewisham.gov.uk. Complaints may be made using the Ethics Complaint Form available on the Council’s website [insert link] and from the Monitoring Officer. If a complainant finds it hard to put their complaint in writing, Council staff will help them to do so. The Council will make reasonable adjustments to help a disabled complainant.

Notice of complaint

3) The Monitoring Officer will normally write to the complainant to acknowledge their complaint and write to the member concerned to tell them that an allegation has been received. The Monitoring Officer may decide that it is not appropriate to inform the member if s/he thinks it is not appropriate to do so, for example if by doing so any investigation would be affected, or there might be a risk that evidence could be destroyed.

4) Unless the Monitoring Officer decides that it would not be appropriate to inform the member of the complaint, s/he will also tell the member the paragraphs of the Member Code of Conduct that may have been breached.

5) The Monitoring Officer will normally tell the member concerned the name of the complainant, unless the Monitoring Officer thinks in all the circumstances it is appropriate not to do so.

Informal resolution

6) In some circumstances it may be possible to resolve the complaint informally without considering whether it is necessary to proceed to investigation. If the complainant and the member concerned agree to this and it appears to the Monitoring Officer that informal resolution is appropriate, s/he will seek to achieve an informal resolution at that stage. It may be for example, in less serious allegations that an apology or a meeting between the parties may resolve the issue. However informal resolution is unlikely to be appropriate if the allegation is serious or the parties do not agree.
Initial assessment

7) If informal resolution is not appropriate or possible, the Monitoring Officer will make initial enquiries so that s/he may reach a decision about whether the matter should be investigated in detail. If the Monitoring Officer is not satisfied that:

- the complaint is against a member of the Council,
- the member was in office at the time of the alleged complaint, and
- the complaint, if proven would amount to a breach of the Member Code of Conduct in place at the time of the alleged breach

then the complaint cannot be investigated.

8) In making an initial assessment, the Monitoring Officer will apply assessment criteria in deciding whether to investigate further. These assessment criteria are designed to promote confidence that complaints will be taken seriously and dealt with properly. They also reflect the fact that any decision to investigate a complaint will cost public money and both officer and member time. The criteria are designed to balance the need to promote confidence in local governance and to make sure that public resources are applied appropriately.

Public interest – The Monitoring Officer must be satisfied that an investigation would be in the public interest, taking into account the time and cost involve. If the Monitoring Officer is not so satisfied s/he will decide not to investigate.

Sufficient information – The complainant must provide sufficient information to warrant an investigation. If not the Monitoring Officer will take no further action unless additional information is provided by the complainant.

Previous action – If there has already been an investigation or some other action under the Code of Conduct or by another regulatory body, in relation to the complaint, the Monitoring Officer will not normally decide to investigate, though s/he may do so if circumstances dictate (e.g. if a criminal charge was dropped)

Repeated complaints –If the complaint is the same or substantially the same as one previously dealt with, the Monitoring Officer will normally decide not to investigate.

Timing – If there has been a significant delay between the incident complained of and the submission of the complaint, the matter will not normally be investigated.

Trivial matters – If the Monitoring Officer takes the view that the matter is not sufficiently serious to warrant further action, no further action will be taken, unless there are compelling reasons to do so.
Ulterior motive – No further action will be taken if it appears to the Monitoring Officer that the complaint is motivated by malice or retaliation unless it involves a serious allegation.

Special circumstances – There may be circumstances where the Monitoring Officer takes the view that an investigation should occur even though the application of these criteria would suggest otherwise. For example, were a very serious allegation to be made after a long delay, it may be appropriate to investigate notwithstanding the delay.

These criteria are for general guidance, but they have to be applied in the light of any particular circumstances of each case.

Police involvement

9) If it appears to the Monitoring Officer at any time that if proven the breach might amount to a breach of the criminal law and a referral to the police is appropriate, s/he may, if appropriate, defer any decision about investigation until the police investigation is complete.

Investigation

10) If the Monitoring Officer decides that an investigation is appropriate, s/he will investigate the complaint or appoint another person to do so on her behalf. The investigation will be conducted thoroughly and both members and staff are required to co-operate with such investigation. Once the investigation is complete the Monitoring Officer, or person appointed to investigate on her/his behalf, will prepare a report for a sub committee of the Standards Committee. A copy of that report will be sent to the member concerned at least 4 weeks before the meeting of the sub committee. The member concerned will be entitled to make a written submission to the Standards Committee, but if s/he does so it must be delivered to the Monitoring Officer at least 2 weeks before the Sub Committee meeting.

Independent Person

11) The Council [has appointed] an Independent Person whose views are to be sought prior to the Standards Sub Committee making any decision on an allegation that has been investigated. The Monitoring Officer will therefore send her/his report to the Independent Person at the same time as s/he sends it to the member concerned. Should the member make any written representations in response, the member may also send these to the Independent Person, but should they fail to do so, the Monitoring Officer will do so.

12) The comments of the Independent Person will be made in writing and presented to the Standards Sub Committee for consideration.
13) The member concerned is also entitled to approach the Independent Person directly for their views.

**Standards Sub Committee meeting**

14) The Standards Sub Committee will meet to consider the report of the Monitoring Officer and any written representations made by the member concerned as well as any views received from the Independent Person. The member will be entitled to attend the meeting, which will normally be held in public unless the Sub Committee takes the view that there are compelling reasons to the contrary. The Sub Committee will not normally take oral evidence at the meeting (but may decide to do so in appropriate cases). However it may require the member concerned, the Monitoring Officer (and/or person appointed on her/his behalf to investigate), the Independent Person and/or any other person to attend to answer their questions. The conduct of the meeting will be a matter for the Chair so long as the process used accords with the principles of fairness and natural justice. Legal advice will be available to the meeting.

**Findings**

15) The Standards Sub Committee will decide whether there has been a breach of the Member Code of Conduct. Both the complainant and the member concerned will be notified in writing of the decision.

**Appeal**

16) If there is a finding of breach, the Member concerned may appeal to a different sub committee of the Standards Committee within 21 days of the date of notification. The decision of that sub-committee will be final.

**Sanctions**

17) If there is a finding of breach of the Member Code of Conduct, the Standards Sub Committee will decide whether it is appropriate to require action to be taken in respect of it. That may be a sanction, such as censure or in certain circumstances the withdrawal of access to Council facilities provided that is proportionate and does not interfere unduly with the members’ ability to carry out their duties as a member. It may also report any finding of breach to the full Council and/or publicise them on the website and/or in a local newspaper. It may also recommend that a member in breach undergo training, or that Council processes be amended.
Appendix 3

TERMS OF REFERENCE FOR STANDARDS COMMITTEE

To deal with all matters relating to the ethical framework affecting members of the Council under Part I Chapter 7 Localism Act 2011 as amended and all other relevant legislation including regulations, directions and guidance. This shall include but not be limited to:-

1) the promotion of the highest standards of behaviour by members of the Council, including the Mayor, councillors, independent members and co-optees.

2) advising the Council on the introduction and operation of the Member Code of Conduct, making recommendations for change as the Committee sees fit.

3) Training all members in the operation of the Member Code of Conduct and ensuring that it is well publicised both within and outside the Council.

4) The introduction, implementation and maintenance of a procedure for dealing with allegations of breach of the Member Code of Conduct; including monitoring and review and amending it from time to time as the Committee sees fit.

5) Dealing with allegations of breach of the Member Code of Conduct, referred to them by the Monitoring Officer and the imposition of sanctions as appropriate in accordance with the law, the Council’s Constitution and relevant procedures adopted by the Council.

6) Monitoring and review of the Council’s whistleblowing procedures and cases referred to the whistleblowing officer under it, making recommendations to the Council as the Committee considers appropriate.

7) Consideration of applications for dispensation to allow members to participate in consideration of matters in which they would, but for a dispensation, not be able to participate, in circumstances permitted by law.

8) Annual monitoring and review of the Council’s Code of Corporate Governance, including an assessment of the degree of compliance, submitting a report in this respect to full Council on an annual basis.

9) To consider applications for exemption from political restrictions as defined by the Local Government and Housing Act 1989 as amended and any amendment thereto from time to time.
10) To adjudicate on any dispute relating to the payment of Members’ Allowances or expenses under the Members’ Allowances scheme in force from time to time.

11) To review the Council’s use of the powers available to it under the Regulation of Investigatory Powers Act 2000.

12) All things necessary or in the opinion of the Committee appropriate to fulfill the role and remit of a Standards Committee as defined by law or the Council’s constitution.

Composition

6 elected members of the Council and 6 co-opted members