

<b>Committee</b>	<b>STANDARDS COMMITTEE</b>	<b>Item No</b>	<b>5</b>
<b>Report Title</b>	<b>REVIEW OF ETHICAL ARRANGEMENTS</b>		
<b>Ward</b>			
<b>Contributors</b>	<b>HEAD OF LAW</b>		
<b>Class</b>	<b>Open</b>	<b>Date</b>	<b>9 November 2016</b>

## 1. Summary

The report sets out the current Member Code of Conduct, contains details of ethical governance arrangements in Lewisham and other authorities and addresses questions raised by members about practice in Lewisham.

## 2. Purpose

The purpose of this report is to review the ethical arrangements in Lewisham and to address specific questions asked by members about its implementation. Members are asked to consider whether they wish to make any recommendations to Council about amendments to the arrangements.

## 3. Recommendations

- 3.1 To note the content of this report
- 3.2 To decide whether to make recommendations to amend the Lewisham Member Code of conduct and if so in what respect.

## 4 Background

- 4.1. Prior to 2011, there was a detailed statutory Member Code of Conduct which Lewisham adopted in its entirety.
- 4.2. The law relating to the local government ethical framework changed by virtue of the Localism Act 2011 (the Act). Part 7 of the Act introduced a new framework which gives Councils more freedom in relation to the Member Code of Conduct it adopts so long as it reflects the Nolan principles and deals with interests in accordance with Part 7.
- 4.3. Part 7 of the Act appears at Appendix 1 and the key elements can be summarised as follows:
  - A duty to promote and maintain high standards of conduct by members and co-opted members

- The requirement to adopt a Code of Conduct which is consistent with the Nolan principles and deals with the registration and disclosure of pecuniary and other interests. Councils were given a discretion to include provisions other than those set out in Part 7 of the Act in their code, so long as it still complies with those provisions.
- The requirement for arrangements to be in place to investigate complaints of breach of the Code which must include the appointment of an Independent Person whose views must be sought and taken into account before a Council makes a decision on an allegation of breach it has decided to investigate.
- The Monitoring Officer is under a statutory duty to maintain a Register of Members' Interests and make it available and publish it on the Council's website. Members and co-opted members are bound within 28 days of taking office to notify the MO of any disclosable pecuniary interest of themselves, their spouse, civil partner or person with whom they live as such, and this then appears in the register. There is no requirement to comply with this requirement on re-election except to the extent that the interest has not already been included in the register. Except on election/re-election, there is no requirement to keep the Register up to date.
- A requirement that members do not take part in consideration of a matter where they have a disclosable pecuniary interest (DPI) but there is no requirement for declaration of interests at the meeting where it is under consideration. If the interest is not already registered, there is provision for it to be so at that point.
- There are provisions relating to sensitive interests – where disclosure is likely to lead to the member concerned being subject to violence or intimidation

4.4 Lewisham's Code complies in all respects with Part 7 of the Act.

## **5 DCLG illustrative text**

In 2012, the DCLG published a very brief suggested Code of Conduct. This appears at Appendix 2.

## **6 The Lewisham Code of Conduct**

- 6.1. The Standards Committee received a report on 6<sup>th</sup> June 2012 about the adoption of a new Member Code of Conduct. The officer proposal on that occasion sought to balance the continuing need for public confidence in the Council's commitment to the highest standards in public life with the desire to retain a suitable degree of flexibility for Members, by keeping some of the safeguards which had been included in the earlier statutory Code whilst reducing the complexity of the previous regime. There was lively debate about

the proposed new Code and the recommendations to Council were agreed subject to amendment (for example the omission of a proposed requirement that members should not at any time bring the Council or their office into disrepute).

- 6.2 The Council agreed the current Code of Conduct on 28<sup>th</sup> June 2012. It appears at Appendix 3. So that members could be aware of those elements which are statutory and those where there is an element of discretion, those where the Council has discretion are included in text boxes.
- 6.3 It is noteworthy that Lewisham has a reputation as a “quiet authority” in the sense that there are few allegations of breach of the member Code of Conduct and that when allegations have been made, very few have been founded, with only one resulting in a requirement that a member undergo training before being allowed to resume participation in the Licensing Committee. It is against this backdrop that this review is conducted.
- 6.4 Part 7 of the Act and the DCLG indicative text give a flavour of the minimum requirements for a member code of conduct. However, provided those minima are complied with, there is a great deal of freedom for authorities to include such other requirements as they deem appropriate. The current Code distinguishes the statutory from the discretionary to make this distinction apparent. It is particularly relevant in the context of members’ interests.

## **7. Members’ interests**

- 7.1 The Act requires that a Council’s Member Code of Conduct must contain provisions relating to the registration and disclosure of pecuniary and other interests. In the Lewisham Code, there are three types of interest. Definitions follow, as does an explanation of the impact of having such an interest.

### *Disclosable pecuniary interests (DPIs)*

- 7.2 These are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 which can be found at [http://www.legislation.gov.uk/ukxi/2012/1464/pdfs/ukxi\\_20121464\\_en.pdf](http://www.legislation.gov.uk/ukxi/2012/1464/pdfs/ukxi_20121464_en.pdf) The wording in paras 4.2 and 4.3 of the Lewisham Member Code of Conduct reflects these regulations. These interests are those which arise from employment, office, trade, profession, vocation, sponsorship, contracts, land, licences, corporate tenancies or securities. To qualify as a DPI, an interest must be that of the member, spouse or civil partner (or person with whom the member lives as such). They must be entered in the Register of Members’ Interests. For example, a member employed by an organisation must enter that employment in the Register and would have a DPI in consideration of an application by that organisation for a Council grant.
- 7.3 The member may then not take any part in consideration of a matter in which s/he has a DPI and under the Lewisham code must declare the interest and withdraw from any consideration of it. Participation is a criminal offence, carrying a fine of up to £5000 on conviction.

### *Other registerable interests*

- 7.4 By using the discretion provided in the Act, the Council defines the other interests which must be registered at para 4.4 of its Member Code of Conduct. These are interests which arise from membership of, or a position of management in, certain outside bodies, namely those to which the member is appointed by the Council, charities and other organisations exercising functions of a public nature. What amounts to an organisation exercising functions of a public nature is also set out in para 4.4 of the Member Code of Conduct and reflects earlier Government requirements. For example, it may be that a councillor is appointed as the Council's representative on the management committee of a voluntary charitable organisation which provides refuges for people who have suffered domestic violence. Even if the councillor is not in receipt of any pay for that position, it would be a registerable interest.
- 7.5 At a meeting where such an interest arises, under the Lewisham Code, the member must declare, but may participate (SAY and STAY) unless the interest is so significant that a member of the public in possession of all the facts would reasonably believe the interest to be s significant that it would be likely to affect the member' judgement of the public interest. In such a case the member must not participate and should leave the room and not seek to influence the decision (WASH and GO).
- 7.6 In the example in this section of the report, were the voluntary organisation to apply for planning permission and if the member were on the Planning Committee making the decision, they may well take the view that the interest debarred them from participating.

### *Other (non registerable) interests*

- 7.7 Where the councillor has an interest which does not need to appear in the Members' Register of Interests, (for example where their child attends a school which the Council is considering closing) the member might be said to have a non-registerable interest. In this case, the same principles apply as in the preceding paragraph. The member may SAY and STAY, unless a reasonable member of the public would think the interest so significant as to be likely to affect the member's judgement of the public interest. In such a case, under the Lewisham Code the member must WASH and GO.
- 7.8 In respect of this third category of interest, there is no hard and fast definition of what constitutes an interest. The category is defined to promote high standards by requiring that the member address their mind as to whether such an interest exists. It is included in the interests of transparency and to promote public confidence.

### *Who makes the decision as to whether a member has an interest?*

- 7.9 The decision in relation to all matters pertaining to their own interests is always a matter for the individual member. This is explicit in all advice given to members by the Monitoring officer, and is set out in the advice on members' interests in the agenda for every meeting of all Council bodies. If the Monitoring Officer is asked for advice it will be given to the best of her professional ability, but the decision is always a matter of judgement for the individual member.

*What are the consequences if a member participates notwithstanding an interest?*

- 7.10 If a member participates in a matter in which they have a DPI, they may be prosecuted. If the member participates notwithstanding an interest which falls short of a DPI, an aggrieved party may make a complaint of breach of the Member Code which may be referred to the Standards Committee. If the complaint is found to have substance, the Standards Committee may impose sanctions from the limited range available to it such as training, censure, publicity.
- 7.11 If a member participates in a matter in which they have an interest that ought to have disqualified them from participation, then there may also be adverse implications for the Council. For example, if the decision were narrowly carried (including the member's vote), or if the member was influential in reaching the decision, then the decision itself may be challengeable and tainted.

## **8 Dispensations**

- 8.1 Members have asked whether dispensations may be more readily used than currently and whether the process for granting them might be streamlined.
- 8.2 A dispensation may be granted allowing a member with a DPI to participate in consideration of a matter notwithstanding the existence of the interest. Section 33 of the Act, by reference back to Section 31, provides that dispensations are only allowed in relation to DPIs. It is legally dubious whether dispensations may be granted under the Act in respect of other interests.
- 8.3 In all applications for a dispensation there must be a written request and in Lewisham, as in most authorities, it is for the Standards Committee to decide whether such a dispensation ought to be granted.
- 8.4 The statutory criteria for granting dispensations in respect of DPIs was broadened by the Act. They are that having regard to all relevant circumstances, the Council:-
- (a) considers that, without the dispensation, the number prohibited from participation would be so great as to impede the transaction of the business;  
or

(b) considers that, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the likely outcome of any vote; or

(c) considers that granting the dispensation is in the interests of persons living in the area; or

(d) that where the Council operates executive arrangements (as in Lewisham) without the dispensation each member of the Council's executive would be prohibited from participation in any particular business of the Executive; or

(e) considers it otherwise appropriate to grant a dispensation.

8.5 Applications for a dispensation would need to be assessed on a case by case basis with a written application for each dispensation setting out reasons why it ought to be granted. The Committee would then have to weigh all the relevant circumstances. This is the procedure which the Council has employed to date.

8.6 There has been only one example of an application for a dispensation (under previous law) in the past where members, most of whom were liable to parking charges, were asked to consider changes to those provisions. The majority of members therefore had a pecuniary interest. The Standards Committee considered the applications from all members who sought a dispensation and decided not to grant it, preferring alternative decision mechanisms instead.

## **9. Other discretionary elements of the Member Code**

9.1 There are a number of features of the Lewisham Member Code of Conduct which are not prescribed in law. They are provisions relating to:-

- Access to information
- Gifts and hospitality
- The undertaking to comply (which is no longer a statutory requirement)
- The inclusion of protocols to assist with interpretation
- The inclusion of 3 principles additional to Nolan (stewardship, respect and independent judgement)

9.2 These elements were not the subject of member enquiry and (with the exception of the three additional principles) are broadly used in a number of other authorities. If necessary, further information will be provided at the meeting

## **10. Practice elsewhere**

As requested by members, enquiries have been made of several other London authorities as to the contents of their Member Code of Conduct and the composition of their Standards Committee. The results are set out briefly below.

*Lewisham* – the composition of the Standards committee is 10 councillors and 6 non-voting co-optees. The key features of the Code of Conduct are set out in this report.

*Council A* - has a Standards Advisory Committee with the composition of 4 councillors and 5 voting independent co-optees. It is only possible to have independent voting co-optees because the Committee operates as an advisory committee only, making recommendations back to the Council. It cannot make final decisions itself. There are 15 protocols. Failure to comply with any of them is a breach. The Code contains similar provisions to Lewisham about interests which are not DPIs. There are explicit provisions on gifts and hospitality.

*Council B* – The Standards Committee consists of 9 councillors and 6 independent non-voting co-optees. There is a requirement for members to sign an undertaking to comply, as in Lewisham. There are 4 protocols. Many elements seem to be exactly lifted from the previous statutory code. There is a requirement to disclose non pecuniary interests (membership of external bodies – not defined) and not to participate in consideration and leave the room if the non-pecuniary interest relates to a contractual or financial issue, consent, permission or licence. Participation in consideration of such matters if the member has actively engaged in supporting an individual or organization is prohibited. Dispensations are only allowed in relation to a DPI.

*Council C*- The Standards Committee consists of 4 councillors and 3 independent non-voting co-optees. The Code contains non-statutory elements similar to Lewisham. (For example provisions relation to respect, no bullying, no intimidation, access to information issues as in Lewisham.) It also contains a provision not to bring the Council into disrepute. DPIs do not need to be declared at meetings, only entered in the Members Register of Interests. The procedure for dispensations is by referral to Chief Executive. Conflicts other than DPI conflicts must be declared at meetings and unless there is a dispensation from the Chief Executive, there must be no participation in a matter if it affects the member's financial position or that of family, any body where the member has a position of control or management, or if the matter is a planning or regulatory matter.

*Council D* – The Standards Committee consists of 9 councillors. The Code contains very similar provisions as in Lewisham on non pecuniary interests, namely there must not be participation if the interest is so significant that the member's judgement of the public interest is likely to be effected. There is no need to put non- pecuniary interests in the Members' Register of Interests but the decision whether to do so is left to the discretion of the member. The code is very similar to LBL on interests. There are 5 protocols and the same general obligations.

*Council E* – takes a minimalist approach. Only DPIs are dealt with in Code, not other interests. No numbers are set out as a fixed composition for the

Standards Committee. No independent co-optees are required.

*Council F* - takes a minimalist approach. Only DPIs are dealt with in Code, not other interests. No numbers are set out as a fixed composition for the Standards Committee. No independent co-optees are required.

*Council G* – Standards Committee has independent Chair – which is not allowed under present legislation. The current ethical regime appears not to be reflected in current arrangements.

## **11. Possible amendments**

If the Committee is keen to change the Code of Conduct in Lewisham, they may want to consider:-

- (1) whether to remove the three principles of stewardship, independent judgement and respect, and the paragraphs that relate to them, if they are of the view that they are adequately covered elsewhere in the Code. They are not mentioned by any of the other authorities referred to in this report.
- (2) whether the scope of registerable non-pecuniary interests should be narrowed perhaps along the lines used by Council B above. This would provide some clarity for members but limit their discretion to make a decision as to the significance of their interest in such matters.
- (3) whether the Standards Committee ought to be established as an advisory committee allowing independent co-optees to vote, but with the committee having only the power to make recommendations.

## **12 Legal considerations**

These are set out in the body of the report

## **13 Financial considerations**

There are no specific considerations

## **14 Crime and disorder implications**

The Member Code of Conduct is designed to promote high standards of behaviour and adherence to it will reduce the potential for criminal and/or other abuse.

## **15. In conclusion**

- 15.1 There is an element of discretion for members to change the Code of Conduct should they so wish. In particular, only DPIs by law prevent participation in consideration of a matter in which a member has an interest. Officers are of

the view however that to limit disqualifying interests in this way would serve to undermine confidence in public governance.

- 15.2 Members must bear in mind that there is a legal requirement for a Code of Conduct to contain provisions for the registration of pecuniary and other interests. The discretion lies in the decision about which other interests must be registered and which other interests must be declared and prevent participation in consideration of a matter in which an interest exists. The Government does not provide any guidance on this, save for the indicative text appended to this report.
- 15.3 The Council has sought in its current Member Code of Conduct to provide clarity about which other interests need to be registered by being explicit on this point in the existing Code. It has also sought to provide flexibility for members to make a judgment for themselves about whether an interest that is less than a DPI prevents participation by asking themselves what a member of the public would think of their interest and the impact it is likely to have. If the member believes that a member of the public would think the interest too significant, that member should withdraw. Otherwise there is no need to. Though the Monitoring Officer will provide advice to the best of her ability if asked, by definition, the assessment of how the public might view an interest and its impact cannot be an exact science. In the end, whatever the advice of the Monitoring officer, it is for the member to decide.
- 15.4 Members are also reminded that the aim of the Lewisham Code in this respect is not only to avoid impropriety but to avoid the semblance of it, to foster not only compliance but a ready openness and transparency. As well as offering the flexibility members seek, adherence to the Code should provide members with protection from allegations that they are participating in their own interest. It is in balancing these matters that members are advised to exercise the discretion they have when considering this matter.

For further information about this report please contact Kath Nicholson, Head of Law on 020 8314 7648.