

STANDARDS COMMITTEE		
Report Title	LOCALISM ACT 2011	
Key Decision		Item: 5
Ward	All	
Contributors	Head of Law	
Class	Open	Date: 7 December 2011

1. Summary

This report outlines the provisions relating to the ethical framework in Chapter 7 of the Localism Act 2011. It highlights the key changes to the existing regime and some of the decisions which the Council will have to make to give effect to the new regime, when it is in force.

2. Purpose

The purpose of the report is to update the Standards Committee on the changing state of the law and to seek the Committee's preliminary views on the future of standards in Lewisham.

3. Recommendations

That the Committee :

- 3.1 note the report;
- 3.2 make any comments to bring to the attention of the Council at this stage;
- 3.3 ask officers to bring a more detailed report on proposals for a new Code of Conduct at the appropriate time; and
- 3.4 ask officers to bring a more detailed report on proposals for the arrangements for the investigation of complaints at the appropriate time.

4. Policy Context

The Council is committed to the highest standards of ethical conduct in public life. It seeks to promote confidence in the good governance of Lewisham, both in the Council and across the public sector. This report

informs the committee of imminent changes to the ethical framework imposed by the Localism Act 2011 and aspires to respond to those changes in a way that maintains and builds upon the Council's commitment to good governance.

5. Background

- 5.1 The Local Government Act 2000 introduced a new ethical framework for local government, with the deletion of the previous regime, and the introduction of Standards Committees, a national regulatory body - Standards for England, a national Code of Conduct, and a national framework for the investigation of complaints, with a range of sanctions available to either the local Standards Committee or Standards for England in the most serious cases.
- 5.2 Shortly after the General Election, the Coalition Government stated its intention to abolish the Standards Board regime, but to provide a safety net. As a result, the law has now been changed by the Localism Act 2011 which abolishes the existing regime completely. It is the stated intention of the Coalition Government that Chapter 7 of the Act, which introduces the new provisions, will be effective from April 2012. If that ambitious implementation date is met, (regulations are awaited) then from that point, Standards for England, Standards Committees and the national Code of local government conduct will be abolished.
- 5.3 However last minute amendments in the House of Lords rather hurriedly changed the size and shape of the safety net that was proposed, so that some of the Act's provisions differ from those originally set out in the Bill. The key features of Chapter 7 are set out below.

6 The new ethical framework

A general duty

- 6.1 The Act places a general obligation on relevant authorities (of whom Lewisham is one) to promote and maintain high standards of conduct by members and voting co-opted members of the Council including elected mayors.

Code of Conduct

A duty to adopt

- 6.2 In discharging the general obligation, Councils must adopt a code which deals with the conduct expected of members and co-opted members of the Council when acting in that capacity. This is a decision for full Council.

- 6.3 Comment – This represents a fundamental change. Whereas now, the Code of Conduct is nationally prescribed, in future, there may well be different codes adopted by different authorities.
- 6.4 Comment – The application of the Code will be narrower than under the existing system, which could in certain circumstances apply to behaviour of members in some other capacity if there was sufficient connection between the behaviour of the member and the office of councillor. However, the full scope of “acting in that capacity” remains to be determined. There are tricky areas. Examples include a councillor using council facilities for some disreputable private purpose, or disclosing confidential information to friends, or those who use their status as councillor to gain private advantage.
- 6.5 Comment – the limitation to voting members and co-optees means that those non-voting members of scrutiny committees will not be covered by the Code. Though a Council could ask them to be bound by the Code (and perhaps not appoint them if they do not so undertake) it would be a non-statutory process.
- 6.6 Comment – the requirement for councillors to undertake to abide by the Code of Conduct on acceptance of office is revoked. The Council may want to introduce the undertaking voluntarily.

Statutory principles

- 6.7 The Member Code of Conduct adopted must be consistent with the statutory principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. These replace the existing “general principles” which are set down in statutory instrument.
- 6.8 Comment - The principles of personal judgement, duty to uphold the law, stewardship and respect for others, which currently rank among the existing statutory general principles, are no longer to be part of the new list of general principles with which the Code must be consistent. The duty to ensure consistency with the new list of general principles does not mean that the Council could not voluntarily adopt a Code of Conduct that embodies those principles now to be excluded from the statutory list. It simply means it is a matter of choice for the Council and not a matter of law. Officers commend this voluntary approach and suggest that the local Code should retain provisions relating to bullying and disrespect, intimidation, misuse of position and resources, and breach of confidentiality.

Pecuniary interests

- 6.9 The Code must also make such provision as the Council thinks appropriate in respect of the registration of interests and the disclosure of “pecuniary interests” and in respect of interests other than pecuniary interests. The phrase “pecuniary interest” is one which was familiar to

the local government ethical regime before the 2000 Act was introduced. Regulations are to follow as to what is a disclosable pecuniary interest, though, as before, the underlying principle appears to be that an interest is a pecuniary one if the member stands to gain or lose in a financial or material way.

- 6.10 Comment – Though there is specific provision in the Act about disclosable pecuniary interests, it is clear that the devil will be in the detail of the regulations which are yet to be published, even in draft.
- 6.11 Comment – It is probably necessary to make some other provision in the Code to be drafted locally about other interests (e.g. membership of a pressure group) but the wording of the requirement to introduce “such provision as the authority considers appropriate” means that this will be a matter for local discretion.

7 Register of members’ interests

- 7.1 The Act provides that the Monitoring Officer must establish and maintain a register of members’ interests and it is to be for the Council to decide what is included in that register. No entries may remain in the register if the interest no longer exists. The register must be available for inspection by the public and on the Council’s website.
- 7.2 Members are under a duty to inform the Monitoring Officer, within 28 days of being appointed, of any “disclosable pecuniary interest” held at the time of notification. Though regulations will define a disclosable pecuniary interest, it will include the interest of the member, their spouse, civil partner or any person living with them as their spouse or civil partner.
- 7.3 Comment – This application is narrower than the current Code
- 7.4 Comment – Currently there is a duty on the member to ensure that their entry in the register is kept up to date. There is no such provision in the new legislation. Any new interest arising on or after the 29th day after appointment need not appear in the register until the next election, though it would be possible to require this in the local Code. The sanctions for failure to register (see later) would only apply to the statutory provision and not any locally determined additional requirement to register.
- 7.5 If there would be a risk of violence or intimidation to the member or someone connected with the member arising out of entry of an interest in the register, then there are exemptions which require the agreement of the Monitoring Officer to apply. These provisions are very similar to those in force now.

8 Disclosing an interest at meetings

- 8.1 If a member has a disclosable pecuniary interest in any matter considered at a meeting at which the member is present, and the interest is not disclosed in the register of members' interests, and the member is aware of the interest, then the member must disclose it to the meeting.
- 8.2 Comment - The requirement seems to indicate that if the register already shows the member's interest, then it need not be declared again at the meeting, though a local Code could require this. This may seem a sensible approach given that the member would in any event be precluded from participation in the debate and vote.
- 8.3 Though if the member has disclosed an interest, he or she must not participate in the discussion or the vote, there is no statutory requirement for them to leave the room, though the Council may impose such a requirement should it choose to do so.
- 8.4 Comment – Despite the absence of a requirement to leave the room, the Courts have taken a dim view of cases they have adjudicated on where a member with an interest has not left the room. Though the statutory provision will not require this, the Courts may persist in this view nonetheless. Further recent amendments to the existing national Code of Conduct allow members to address meetings notwithstanding a personal prejudicial interest provided members of the public are allowed to do so. It may be sensible to carry forward this provision into the new Code of Conduct, as it reflects case law.
- 8.5 If a member discloses an interest at a meeting they must notify the Monitoring Officer of the interest so that it thereafter appears in the register of interests.

9 Offences

- 9.1 The Act provides that it will be an offence if a person without reasonable excuse:
- fails to notify the Monitoring Officer of a disclosable pecuniary interest within the time period;
 - participates in any discussion or vote at a meeting where he/she has such an interest;
 - takes any steps or further steps in relation to the matter in which he/she has such an interest, where he/she would otherwise have taken the decision personally.

It will also be an offence to give false or misleading information to the Monitoring Officer about an interest, or to be reckless as to whether the information is true or misleading.

- 9.2 Prosecution is by the Director of Public Prosecutions and conviction carries a fine of up to £5000, and possibly disqualification for up to 5 years. Proceedings must be brought within 12 months of the date on which the prosecutor has sufficient evidence in his/her opinion to warrant proceedings, but in any event within 3 years of the offence.

10 Dispensations

- 10.1 The Council may grant a dispensation to a member with a disclosable pecuniary interest allowing them to participate in the discussion and/or vote if, having regard to all the relevant circumstances, the authority considers that:-

- without the dispensation, the number of persons prohibited from participation would be so great a proportion of the body transacting the business as to impede the transaction of the business;
- without the dispensation, the political balance would be so upset as to alter the likely outcome of any vote;
- granting the dispensation is in the interests of the persons living in the area;
- where there are executive arrangements, without the dispensation, each member of the executive would be unable to participate; or
- it is otherwise appropriate to grant the dispensation

- 10.2 Comment – the circumstances in which a dispensation may be granted are wider than at present.

11 Arrangements for dealing with allegations and investigations

- 11.1 The Council must have arrangements for investigation of allegations of breach of the Member Code of Conduct. They must include the appointment of at least one independent person (IP) whose views must be sought and taken into account before the authority may make a decision on an allegation it has decided to investigate. The member concerned may also seek the IP's views.

- 11.2 The IP may not be a member, co-opted member or officer of the authority, a relative or close friend of any of those people, nor can the

IP have been a member, co-opted member or officer of the authority in the last 5 years.

- 11.3 The IP is appointed by full Council following public advertisement, and can be paid (including expenses)
- 11.4 If the Council finds that there has been a breach of the Code it may have regard to the failure in deciding what action to take.
- 11.5 Comment – It is difficult to see that the Council would have very wide scope to take action as there are no provisions for sanction by the Council. It would be possible for a censure motion to be passed, and for the breach to be made public. Also, case law has held that in certain circumstances, depending on the circumstances of the breach, it is possible for Council facilities to be withdrawn. However, the Council will not be able to remove members from positions to which they were elected or appointed by political groups.

12 Constitutional issues

Membership of a new committee?

- 12.1 As now, conduct matters are to remain non-executive functions, and so will be decided by full Council or by a committee appointed by the Council. The terms of reference of any such committee will be for the Council to decide, as the statutory requirements relating to the terms of reference of the existing Standards Committees will disappear. Any Committee appointed will have to be politically balanced.
- 12.2 The current requirements for independent membership on the Standards Committee will disappear, though it will be possible for the Council to co-opt independent members on to the committee. However, co-optees do not have voting rights on the committee, unless the committee were established as an advisory committee without decision making powers. Further in the absence of legislative provision (as exists now, but will disappear under the Localism Act) an independent member cannot chair a committee because of their inability to exercise a casting vote if necessary.

Arrangements for investigation of allegations of breach

- 12.3 These are left to the authority to establish, and though the formal procedures put in place by previous legislation will disappear, this gives rise to a number of questions about what the new process should be. The Council will still have to make decisions somehow about whether complaints warrant investigation, and if so by whom and how, bearing in mind that the investigator will have no power to require people to attend interviews, or to access documents. Should there be a hearing process or is a written exchange sufficient? Who will decide what action should be taken, if any, if an allegation is found to be

substantiated? How does the IP fit in to this process? Should the investigation process be delegated to an officer, with only the final decision about action to be taken reserved to members?

- 12.4 The existing provisions particular to meetings of Standards Committees which allow private meetings in certain circumstances and dispense with access to information requirements relating to notice of meetings for example, will disappear. Meetings of any new committee will be subject to the access to information requirements applying to all Council meetings, and meetings will be public unless one of the exemptions under the Local Government Act 1972 can be made out. There are to be no special provisions for any new committee.

13 Some matters to address

- 13.1 *What kind of Code does the Council want?* The Association of County Solicitors and Secretaries (ACSES) are producing a model Code of Conduct and officers propose that this may be an appropriate starting point for Lewisham with any amendments thought necessary to reflect local circumstances. A further report on the proposed Lewisham Code will be brought back at the earliest opportunity. Officers suggest that the Standards Committee consider the contents of a draft new Code and that it be referred to full Council with the comments of the Standards Committee for agreement in due course.
- 13.2 *How will the register of members' interest be recast?* This will only be known once the regulations defining pecuniary interests are to hand. Again this will be dealt with in a further report as soon as possible.
- 13.3 *The Constitution will need to be amended to reflect the new requirements relating to the disclosure and recording of interests* This will be addressed through the Constitution Working Party and referral to full Council
- 13.4 *What kind of member body will discharge functions relating to ethical standards?* How will members discharge the general duty of promotion, informing and training? The Constitution Working Party expressed its commitment at a meeting in November 2011 to the continuation of a dedicated Standards Committee in some form. Will there be co-options to this committee?
- 13.5 *What will be the arrangements for investigation of complaints?* What role would any standards committee have in such matters? What will be delegated to officers? What will be reserved to members?
- 13.6 *Who will deal with applications for dispensation?* Is it to be a retained Standards Committee or some other arrangement?

- 13.7 *Will the Council appoint one or several independent persons?*
Protocols will need to be drafted about how they fit into “arrangements” for the handling of complaints.

14 Financial implications

There are no specific financial implications arising from this report at this stage.

15 Legal implications

- 15.1 Unless and until the provisions in the Localism Act 2011 come into force, the current standards regime as set out in the LGA 2000 and regulations thereunder will continue. There are to be transitional arrangements for cases in progress.
- 15.2 In establishing arrangements under the 2011 Act, particularly in relation to the investigation of complaints, the Council will need to be mindful of the requirements of natural justice and the provisions of Article 6 of the European Convention on Human Rights which relate to the right to a fair hearing.
- 15.3 Changes to the Code of Conduct and to the Constitution are a matter for full Council.
- 15.4 There are no specific equalities or environmental implications. There are crime and disorder implications in that the Localism Act creates new offences as set out in the report.

16 Conclusion

The Localism Act will fundamentally change the statutory ethical framework for local government, with much left to local discretion. The Standards Committee is urged to support the retention of a Code of Conduct which maintains the Council’s commitment to the highest standards of ethical behaviour, by going beyond the statutory requirements. The Committee is also urged to support the principle of adopting arrangements for the investigation of complaints which both increase the flexibility of the current system but still inspire confidence that complaints made are taken seriously and properly investigated. The new provisions are extremely young, and this report represents the start of a process to shift from one regime to another. Officers will therefore bring further reports on options for particular aspects of the new regime as they develop and as regulations, particularly in relation to disclosable pecuniary interests, develop.