

LONDON BOROUGH OF TOWER HAMLETS
EXTRAORDINARY COUNCIL MEETING – 18th JUNE 2012

AGENDA ITEM 3

LOCALISM ACT 2011 – THE AMENDED STANDARDS REGIME

**ADDENDUM REPORT OF THE
ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)**

1. SUMMARY

- 1.1 The Council agenda includes a report on the amended Standards regime introduced by the Localism Act 2011. The report sets out proposals for arrangements to be adopted in Tower Hamlets and incorporates comments and suggested amendments from the Standards Committee on 10th May and the Members' Seminar on 30th May 2012. Council's approval is sought to the establishment of a Standards Advisory Committee; the adoption of a new Code of Conduct and arrangements for dealing with any complaint of a breach of that code; and the recruitment of a statutory 'Independent Person' to advise on any such complaints.
- 1.2 Since the report was prepared, additional proposed amendments have arisen as follows:-
- (i) On 6th June 2012, two Statutory Instruments were made in connection with the 2011 Act. These give further direction on the detail of the new regime, particularly in relation to the definition of a 'Disclosable Pecuniary Interest' and make provision for transitional arrangements.
- (ii) On 12th June 2012, the Standards Committee met to give further consideration to the proposed new arrangements and the comments thereon submitted by the political groups and others.
- 1.3 This addendum report sets out the proposed further amendments and the attached appendices 1 – 3 have been revised accordingly and are presented to the Council for adoption. The Council is asked to consider the information in this addendum report alongside the main report circulated with the agenda.

2. REVISED RECOMMENDATIONS

- 2.1 The Council is recommended to agree, with effect from 1st July 2012:-
- (a) The establishment of a Standards Advisory Committee with revised terms of reference as set out in Appendix 1 to this addendum report.

- (b) The re-appointment of the current Independent Members of the Standards Committee, with the exception of the Independent Chair, as co-optees to the new Standards Advisory Committee.
 - (c) The adoption of the new Code of Member Conduct for the Council as set out in Appendix 3 to this addendum report.
 - (d) The revised arrangements for dealing with allegations of a breach of the Code of Conduct as set out in Appendix 2 to this addendum report.
- 2.2 That the Monitoring Officer be authorised to make arrangements to advertise for, and together with an Appointments Panel drawn from the Standards Advisory Committee in accordance with proportionality to take the necessary action to appoint, an Independent Person and a reserve Independent Person, whose appointments shall be confirmed by the Council.
- 2.3 That the existing Independent Chair of the Standards Committee, Mr Barry O'Connor, be appointed as the 'Independent Person' under the new arrangements, to serve until the completion of the recruitment process to that position.
- 2.4 That consequent on 2.3 above, the existing Chair of the Standards Committee be not appointed at this stage as a co-opted member of the new Standards Advisory Committee but that he be invited to attend meetings of that advisory committee as an observer.
- 2.5 That the Monitoring Officer have authority to convene a Dispensations Sub-Committee of the Standards Advisory Committee, to consider and advise on applications from the Mayor, any Member or co-opted member for dispensations from the restrictions on participation in any matter in which there is a Disclosable Pecuniary Interest.

3. STATUTORY INSTRUMENTS

- 3.1 At the time of publication of the Council agenda, regulations were awaited in relation to a number of issues. Two Statutory Instruments have now been made on these matters. Taken together these:-
- (i) Confirm the effective date of the new arrangements as 1st July 2012;
 - (ii) Make provision for transitional arrangements, including allowing the authority to appoint the existing independent chair or member of the Standards Committee as the 'Independent Person' under the new arrangements and measures to deal with any existing complaints not resolved by 1st July; and
 - (iii) Provide the definition of a 'Disclosable Pecuniary Interest' under the 2011 Act.
- 3.2 The Localism Act 2011 (Commencement No.6 and Transitional, Savings and Transitory Provisions) Order 2012 brings the new arrangements for the standards and conduct of members into force on 1st July 2012. To avoid the Commencement Order creating any uncertainty about authorities' powers to

prepare for the new arrangements, it partially commences certain provisions from 7th June, the day after the Order was made.

- 3.3 The Order provides for two transitional measures. First, it allows a local authority, if it so chooses, to appoint a person who is currently the Independent Chair or an Independent Member of the existing Standards Committee as its 'Independent Person', having the statutory role of giving views on any complaint about the conduct of a member of the authority.
- 3.4 Accordingly the Standards Committee recommends that to provide continuity, the Council should appoint the existing Chair, Barry O'Connor, as the Independent Person from 1st July for a temporary period until the recruitment process described in the report is complete. This would mean that initially at least Mr O'Connor would not be appointed as a co-opted member of the Standards Advisory Committee, but he could be invited to attend as an observer.
- 3.5 The Commencement Order also puts in place measures to ensure that any complaints about a Member's conduct not resolved by 1st July are taken forward to a conclusion. Until 1st July, any complaints arising in the authority will be dealt with by the local elements of the old regime, except that the Standards Committee will not have any power of suspension. If not resolved by 1st July the complaint will be resolved using the new arrangements. The possibility also remains until 1st July for a Standards Committee to refer a case to the First-tier Tribunal, and the Order preserves the right to appeal a decision of a Standards Committee after 1st July.
- 3.6 The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 come into force on 1st July 2012. A Member with a Disclosable Pecuniary Interest (DPI) must register and disclose it, and his/her involvement in any business of the authority connected with those interests is limited. Failure to comply with the arrangements on DPIs without reasonable excuse is a criminal offence, with a penalty of a fine of up to £5,000 and disqualification from office for up to five years. In summary, the new regulations specify DPIs as pecuniary interests covering:-
- A Member's employment, office, trade, profession or vocation;
 - Any sponsorship of the Member, including contributions towards their election expenses;
 - Any contracts between the Member and the authority;
 - Any land the Member has an interest in which lies within the area of the authority;
 - Any licences the Member holds to occupy land in the area;
 - Any corporate tenancies; and
 - Certain securities the Member may hold.

4. FURTHER RECOMMENDATIONS FROM THE STANDARDS COMMITTEE

- 4.1 The Standards Committee on 12th June 2012 gave further consideration to the proposed arrangements in the light of comments and suggested amendments

from the political groups, members and co-optees. The Committee agreed to recommend a number of revisions to the proposals, which are described below and highlighted in the attached appendices.

Closure of complaints

- 4.2 The Committee considered that the Standards Advisory Committee should retain oversight of all complaints including those not pursued, and that where the Monitoring Officer was of the view that a complaint should not be referred for investigation, this decision should be subject to the Committee's endorsement. In order to enable a final resolution to be reached without delay, this function would be delegated to the Investigation and Disciplinary Sub-Committee of three members and would not be subject to ratification by the full committee (but would be reported for information).

Publication of decisions

- 4.3 The proposed arrangements state that the recommendations of the Hearings Sub-Committee shall be published in the Public Notices section of a local newspaper and on the Council's website as well as in the minutes of the meeting. The Committee felt that there was a need to develop a protocol to govern the detail of this process – i.e. the size and detail of the notice, position in the newspaper/on the website etc, to ensure consistency and fairness in all cases. The Monitoring Officer undertook to draft such a protocol for discussion.
- 4.4 As an interim measure the Committee agreed to recommend (i) that a 'news' link to any such notice should remain on the front page of the Council's website for a period of one month from publication, or such other period or position as the Hearings Sub-Committee may recommend; and (ii) that the content of the notice to be published shall be subject to agreement by the Chair of the Hearings Sub-Committee.
- 4.5 The Committee also discussed whether or not there was a need to stipulate that the Council's own newspaper should not, in addition to carrying the decision notice, include editorial content on the case. However, the Monitoring Officer advised the Committee that this would not occur and any such provision was unnecessary.

Composition of the Standards Sub-Committees

- 4.6 The Committee discussed the size and representation of the political groups on the Investigation and Disciplinary and other sub-committees. The Committee did not feel it would be impossible for a Member impartially to hear a complaint against, or made by, a party colleague but they agreed that it was desirable for reasons of transparency and public confidence to avoid such a scenario. This was however difficult to achieve in every case especially with a small committee. There was also discussion of whether the rules should address a situation where two or more members or groups may form a political alliance falling short of a formal group or coalition. It was agreed that

this matter would be kept under review with a view to possible recommendations at a future stage.

Confidentiality of the process

- 4.7 The Committee discussed the desirability of transparency of process, balanced with the need for confidentiality particularly to avoid publicity being given to groundless or vexatious complaints. The Committee agreed with the recommendation from the Monitoring Officer that all parts of the process prior to the hearing stage should remain confidential.

Complainant's right to appeal

- 4.8 Officers did not recommend that a complainant should have a right of appeal against the outcome of their complaint, particularly because of concerns that such a process could lead to unsubstantiated complaints nevertheless becoming protracted. In the event that the complainant submits additional relevant information this would be considered by the Monitoring Officer and if necessary treated as a fresh Complaint.
- 4.9 The Standards Committee however recommended that a complainant should have the same right of appeal against the outcome, on the same grounds, as the Member who is the subject of the complaint. The appellant should be required to provide specific reasons and any supporting information for the appeal; and a complainant's appeal should be subject to the same timescales as an appeal by the subject Member.
- 4.10 The Committee further recommended that the decision of the Hearings Sub-Committee should not be published, nor any sanctions applied, until the period allowed for an appeal had expired.

Dispensations

- 4.11 Statute allows for a Member to be granted, in certain circumstances, a dispensation to participate in decision-making on a matter, notwithstanding that s/he has a Disclosable Pecuniary Interest in that matter.
- 4.12 The Committee considered that dispensation requests should be subject to Member oversight. However, such requests require a swift resolution and there is a need for consistency in their consideration.
- 4.13 The Committee therefore recommended that a Dispensations Sub-Committee comprising three members of the Standards Advisory Committee should be established to be convened urgently as required to consider any dispensation request(s) by the Mayor, any Councillor or co-opted member.

Sanctions/withdrawal of Council facilities

- 4.14 The withdrawal of Council facilities is one of the sanctions that will remain available under the new regime in the case of a Member who is found to have

breached the Code of Conduct. However, such sanctions may not be applied so as to prevent the Member from undertaking his/her duties as a ward councillor.

- 4.15 Any sanctions that are recommended by the Hearings Sub-Committee must be endorsed by the Council before they are implemented. The Committee recommended that where a subject member feels that a recommended sanction would cause him/her undue hardship or prevent him/her from undertaking ward duties, that Member may make representations to the Council meeting that will consider the Sub-Committee's representations.
- 4.16 The Committee also asked that the Monitoring Officer issue guidance in due course on the application of the various sanctions available under the new arrangements.

Confidential information

- 4.17 Finally, the Committee noted that the Code of Conduct places a duty on all Members not to disclose confidential information, and sought further guidance on this and a clear definition of 'confidential information'.
- 4.18 The Monitoring Officer undertook to circulate a summary of the various relevant provisions but pointed out that these were subject to a range of different considerations and it was therefore not possible to issue definitive guidance in all circumstances. There was also a 'public interest' test that could be applied where relevant and on which Members could seek advice if required.

5. OTHER MATTERS

Anonymous complaints

- 5.1 It is recommended that the new arrangements should retain the provision relating to anonymous complaints as included in the existing procedure. Complainants should be required to provide their name and postal address and anonymous complaints will not be considered unless in exceptional circumstances where the Monitoring Officer decides (after consultation with the Independent Person) that the complaint raises a serious issue affecting the public interest which is capable of investigation without the need to ascertain the complainant's identity.

Attendance at Investigation and Disciplinary Sub-Committee

- 5.2 The proposed new arrangements provide for a member who is the subject of a complaint to be advised of, and have the right to attend, any hearing of his/her case and this was supported by members during consultation. The Monitoring Officer advises that it would not be appropriate for a subject member (or a complainant) to attend the Investigation & Disciplinary meeting before that stage and no hearing will be held prior to a complaint being investigated. The Sub-Committee will be observed by the Independent

Person and its decisions reported back to the Standards Advisory Committee to ensure member oversight.

6. COMMENTS OF THE CHIEF FINANCIAL OFFICER

6.1 There are no financial implications arising from this addendum report.

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

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

8. ONE TOWER HAMLETS CONSIDERATIONS

8.1 Equalities considerations have been included in the proposed Code of Conduct.

9. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

9.1 There are no implications arising from this report.

10. RISK MANAGEMENT IMPLICATIONS

10.1 There are no implications arising from this report.

11. CRIME AND DISORDER REDUCTION IMPLICATIONS

11.1 There are no implications arising from this report.

12. APPENDICES ATTACHED

Appendix 1 – Draft terms of reference for the Standards Advisory Committee

Appendix 2 – Draft arrangements for dealing with complaints of breach of the Code of Conduct

Appendix 3 – Draft Code of Conduct

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

Brief description of “background papers”

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

Letter from Deputy Director, Department for Communities and Local Government to the Chief Executive, 8th June 2012.

John S. Williams, Tel: 020 7364 4204
1st floor, Town Hall, Mulberry Place, London, E14 2BG.

Standards Committee agenda, 12th June 2012.