



Report – Standards Committee

Standards Regime under the Localism Act 2011

*To be presented on Thursday 21st June 2012
To the Right Honourable The Lord Mayor, Aldermen and Commons
of the City of London in Common Council assembled.*

Summary

1. This report seeks the approval of the Court for the transitional arrangements in respect of the City of London Corporation's standards arrangements, following the introduction of The Localism Act 2011 ("the Act") which will, once fully brought into force, replace the current standards regime set up under the Local Government Act 2000.
2. A report was taken to this Committee on 28 February 2012 seeking comments on the various options available under the new standards arrangements following the introduction of the Act. At that time there were a number of areas that had not been clarified by the Department for Communities and Local Government (DCLG), to enable detailed proposals to be worked up and, to some extent, this is still the case.
3. As a code of conduct must be adopted by 1 July 2012, in order to comply with statutory requirements, it is proposed that the City's existing code of conduct (Appendix 1) be re-adopted for the time being, until such time as the regulations defining disclosable pecuniary interests have been made, and a new code of conduct reflecting these provisions can be brought to this Committee and to the Court for consideration and approval. The new code of conduct does not have to be in any prescribed form, but must include such provision as the City considers appropriate in respect of the registration and disclosure of pecuniary interests and other interests. When viewed as a whole the code must also be consistent with the seven 'Nolan' principles: selflessness; integrity; objectivity; accountability; openness; honesty; and leadership. It is also recommended that a revised constitution and terms of reference for your Standards Committee (Appendix 2 or Appendix 3) be adopted from the point that section 28 of the Localism Act 2011 comes into force; and that the appointment of three independent persons from the point that section 28 of the Localism Act 2011 comes into force.

4. We recommend that:
- (ii) the City's existing code of conduct (Appendix 1) be adopted for the time being as the code of conduct to be effective once section 27 of the Localism Act 2011 comes into force;
 - (iii) the options for the revised constitution and terms of reference for the Standards Committee (Appendix 2 and Appendix 3) be considered and a revised constitution approved;
 - (iv) a revised constitution be adopted from the point that section 28 of the Localism Act 2011 comes into force; and
 - (v) three independent persons be appointed from the point that section 28 of the Localism Act 2011 comes into force.

Main Report

Background

- 5. The Localism Act 2011 ("the Act") will, once fully brought into force, abolish the current standards regime under the Local Government Act 2000, which provides for a mandatory model code of conduct for members and a statutory Standards Committee.
- 6. The Standards Board for England, the regulatory body which accepted referrals from local standards committees and conducted investigations in certain circumstances, was abolished on 31 March 2012.
- 7. The Department for Communities and Local Government ("DCLG") has confirmed that the remaining local elements of the current regime will be abolished on 1 July 2012. At the same time new standards arrangements provided for in the Act will come into force.
- 8. A report was brought to us on 28 February 2012 seeking comments on the various options available under the new arrangements. At that time there were a number of areas that had not been clarified by DCLG, to enable detailed proposals to be worked up and, to some extent, this is still the case.

Application

- 9. The new standards arrangements apply to the Common Council of the City of London in its capacity as a local authority or police authority. However, it is proposed that, as previously, these arrangements be extended to all of the Common Council's functions.
- 10. The new standards arrangements apply to elected Members and co-opted members (in this report referred to collectively as "members"). Non-members of the Court with voting rights on City committees are co-opted members for these purposes.

Duty to promote and maintain high standards of conduct

- 11. The City will be under a duty to promote and maintain high standards of conduct by members.

Code of conduct

12. The City's existing mandatory model code of conduct was adopted in accordance with section 51 of the Local Government Act 2000 ("the 2000 Act"). Once the provisions of the Act are fully brought into force, this section will no longer apply to the City. Instead the City will have to adopt a code of conduct under section 27 of the Act. There is no six month grace period for adoption as there was under the 2000 Act.
13. Therefore, if the Act comes into force as anticipated, the City must adopt and publicise a code by 1 July 2012 dealing with the conduct that is expected of members when they are acting in that capacity. The new code of conduct does not have to be in any prescribed form, but must include such provision as the City considers appropriate in respect of the registration and disclosure of pecuniary interests and other interests. When viewed as a whole the code must also be consistent with the seven 'Nolan' principles: selflessness; integrity; objectivity; accountability; openness; honesty; and leadership.
14. At this stage, a new code of conduct cannot be finalised as any code adopted must include such provision as the City considers appropriate in respect of the registration and disclosure of pecuniary interests and other interests. What constitutes a disclosable pecuniary interest will be defined in regulations, although those regulations have not yet been made, are not available in draft form, and the DCLG is unable to provide a date when they will come into force. Until it is known what interests are classed as disclosable pecuniary interests, members will not be able to consider what other interests should also be registered and disclosed, and in what manner. The City's future code will, following further consideration in due course, take into account Members comments about alternative provisions such as those set out in the DCLG's "illustrative text" for a code of conduct and the Local Government Association's ("LGA") "template" code of conduct.
15. As a code of conduct must be adopted by 1 July 2012, in order to comply with statutory requirements, it is recommended that the City's existing code of conduct (Appendix 1) be re-adopted for the time being, until such time as the regulations defining disclosable pecuniary interests have been made, and a new code of conduct reflecting these provisions can be brought to this Court for consideration and approval.

Interests

16. Although new provisions regarding disclosable pecuniary interests are expected to come into force on 1 July 2012, these cannot be implemented until the regulations defining such interests have been made. The City will in addition be under a duty to determine what other interests should be registered and disclosed, and in what manner. For the time being it is recommended that the existing arrangements for the registration and disclosure of interests contained in the current code of conduct are re-adopted. These will operate in the same way as at present, although the consequences of a breach will be different.

Independent persons

17. Under section 28 of the Act the City must appoint at least one independent person whose views:
- must be sought, and taken into account, by the City before it makes its decision on an allegation that it has decided to investigate;
 - may be sought by the City in relation to an allegation in other circumstances;
 - may be sought by a member against whom an allegation has been made.
18. Given the contrasting roles that an independent person may be asked to perform and taking into account scheduling considerations, it is recommended that three independent persons be appointed.
19. The recommendations in respect of appointments to the post of independent person are addressed in a separate item on the Court agenda.

Arrangements for investigation and decision-making

20. The City must by 1 July 2012 have in place arrangements under which written allegations of a breach of the code can be investigated and decisions on those allegations taken. A failure to comply with the code of conduct must not be dealt with otherwise than in accordance with these arrangements.
21. The arrangements do not have to take any prescribed form, and the existing statutory duty to have a Standards Committee and prescribed sub-committees will disappear. However a Standards Committee can be retained, under section 101 of the Local Government Act 1972, and this is recommended. The proposed constitution and terms of reference for the revised Standards Committee are set out at Appendix 2.
22. A decision will have to be taken on a case by case basis whether to investigate an allegation and it is recommended that the initial assessment of allegations, and the decision whether to investigate, be delegated to the revised Standards Committee, thus mirroring existing arrangements.
23. Although it is not obligatory for a committee to examine the evidence of an investigation, hear from the parties concerned and make a decision on culpability and any sanction, it is recommended that these functions be delegated to the revised Standards Committee.
24. As the views of an independent person will have to be sought, and taken into account, before any decision is taken at this stage, it is recommended that an independent person be a party to any hearing and deliberation. Again, this has been reflected in the proposed terms of reference of the revised Standards Committee.
25. Under the Act there is no power to require access to documents or to require members or officers to attend interviews or a hearing. Any committee hearing would also be subject to the same provisions regarding public access to information as any other committee.
26. Under the outgoing standards regime, an appeal against a decision of the statutory Standards Committee could be made to the First-tier Tribunal (Local Government Standards in England). This appeals process will no longer be in place and, although the sanctions available under the new standards regime are

not so severe, it is thought to be desirable to establish an internal appeals process for members against whom sanctions are imposed, also delegated to the revised Standards Committee.

27. This will require the revised Standards Committee to appoint sub-committees consisting of three members for the separate assessment, hearing and appeals stages. Again, this broadly mirrors current arrangements. It is anticipated that the same three members would sit for the assessment and hearing stages, but that three different members would hear any appeal. On this basis it was recommended that the revised Standards Committee consist of eight members, including one Alderman as this was considered sufficient to form two sub-committees of three people to deal with assessment/hearing and any appeal, with some slack to cover absence or conflicts of interest. This has been reflected in the appended constitution.
28. At its meeting on 7th June 2012, your Standards Committee queried why a decrease in the composition of a future Standards Committee had been proposed and some concern was expressed regarding the need to maintain impartiality, particularly if complaints were to be heard and adjudicated solely by elected Members. Following a discussion about the importance of maintaining a level of independent membership on the Committee to preserve the Nolan principles, there was a consensus amongst those present that the proposed composition should be increased to 5 Commoners, 1 Alderman and 4 Co-opted Members (drawn from external representatives), in addition to the three Independent Persons who would fulfil the statutory requirements. Appendix 3 sets out the proposed terms of reference as recommended by your Standards Committee.
29. The Comptroller & City Solicitor has since confirmed that any co-opted "independent" representatives on the revised Standards Committee would not have any voting rights. This proposal would also be a workable arrangement provided that the quorum of voting members was fixed at two or alternatively, the number of Commoners increased by two.
30. Your Policy & Resources Committee, following consideration of the proposed arrangements at its meeting on 7th June 2012, and taking into account your Standards Committee's views, recommended the composition, as follows and as set out at Appendix 2:

A Non-Ward Committee consisting of one Aldermen appointed by the Court of Aldermen and seven Members elected by the Court of Common Council, at least one of whom shall have fewer than five years' service on the Court at the time of their appointment.
31. This Court is therefore asked to consider the composition of the revised Standards Committee taking into account those views expressed by your Standards Committee and your Policy & Resources Committee (Appendix 2 and Appendix 3).

Sanctions

32. The Act does not give any statutory powers to take action in respect of a breach of the code of conduct. In particular, under the new arrangements there will be no statutory power to suspend or disqualify a member. However it is considered that under existing powers the following sanctions will be lawfully available,

subject to the particular facts and circumstances and lawful and proportionate manner of application: formal censure; withdrawal of City hospitality for a specified period; and removal from a particular committee or committees.

33. The option of removal from a particular committee or committees would include sub-committees. The revised Standards Committee would make a recommendation to the relevant appointing body in each case. This is reflected in the appended terms of reference.
34. There is no power to impose alternative sanctions, such as training or an apology, although the willingness of a member to undergo further training, or to provide an apology, could have a bearing on any sanction that is imposed.

Training

35. All members will be offered guidance and training on the new standards regime once the regulations defining disclosable pecuniary interests have been made and a replacement code of conduct has been adopted.

Conclusion

36. Whilst there are still a number of areas that are yet to be clarified by the Department for Communities and Local Government (DCLG) to enable detailed proposals to be formulated in respect of the standards arrangements, a code of conduct must be adopted by 1 July 2012, in order to comply with statutory requirements. It is therefore proposed that the City's existing code of conduct (Appendix 1) be re-adopted for the time being, until such time as the regulations defining disclosable pecuniary interests have been made, and a new code of conduct reflecting these provisions can be brought to Committee and the Court for consideration and approval.
37. A revised constitution and terms of reference for the Standards Committee (Appendix 2) will be adopted from the point that section 28 of the Localism Act 2011 comes into force; and the appointment of three independent persons from the point that section 28 of the Localism Act 2011 comes into force.

All which we submit to the judgement of this Honourable Court

DATED this 7th Day of June 2012

SIGNED on behalf of the Committee

Dr Colin Kolbert
Chairman of the Standards Committee