

Committee(s):	Date:	Item no.
Police Committee Standards Committee Policy & Resources Committee	1st June 2012 7th June 2012 7th June 2012	4
Subject: Standards Regime under the Localism Act 2011		
Report of: Town Clerk and Comptroller & City Solicitor		
<p style="text-align: center;">Summary</p> <p>A report was taken to the Standards Committee on 28 February 2012 seeking comments on the various options available under the new standards arrangements following the introduction of The Localism Act 2011 (“the Act”) which will, once fully brought into force, abolish the current standards regime under the Local Government Act 2000. 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.</p> <p>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 Committee and the Court for consideration and approval. Members are also asked to approve a revised constitution and terms of reference for the Standards Committee (Appendix 2), 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.</p> <p>Recommendation:</p> <p>(i) to consider the options in respect of a replacement code of conduct;</p> <p>To recommend to the Court of Common Council that:</p> <p>(ii) the City’s existing code of conduct set out at 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;</p> <p>(iii) the revised constitution and terms of reference for the Standards Committee set out at Appendix 2 are adopted from the point that section 28 of the Localism Act 2011 comes into force; and</p> <p>(iv) three independent persons are appointed from the point that section 28 of the Localism Act 2011 comes into force.</p>		

Main Report

Background

1. 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.
2. 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.
3. 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 (as set out below).
4. A report was taken to the Standards Committee 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

5. 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 assumed that members will, as previously, wish to extend these arrangements to all of the Common Council’s functions.
6. 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

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

Code of conduct

8. 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.

9. 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 (see below). When viewed as a whole the code must also be consistent with the seven ‘Nolan’ principles: selflessness; integrity; objectivity; accountability; openness; honesty; and leadership.
10. Since the report to the Standards Committee in February 2012, DCLG have circulated an “illustrative text” for a code of conduct (Appendix 3). The Local Government Association (“LGA”) have likewise circulated a “template” code of conduct (Appendix 4). Members are asked to comment on the content of a new code of conduct for the City, based on either the DCLG or LGA draft or on alternative provisions.
11. However, in the view of officers, a new code of conduct cannot be finalised at this stage. This is because, as explained above, 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. Interests are discussed in more detail below, but what constitutes a disclosable pecuniary interest will be defined in regulations. At the time of writing this report 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 – although it will apparently be “very soon”. 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.
12. 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 (set out at 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.

Interests

13. 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 (see the section on sanctions below). Once the regulations defining disclosable pecuniary interests have

been made, the position will be as set out in the remaining paragraphs of this section.

14. The monitoring officer must maintain a register of members' interests which is available for inspection and published on the City's website. The register must contain disclosable pecuniary interests. It must also contain such other interests i.e. non-disclosable pecuniary interests and non-pecuniary interests, as the Court of Common Council may determine.
15. Members will be required to notify the monitoring officer of all current disclosable pecuniary interests within 28 days of being elected or co-opted, or re-elected or re-appointed. However there will be no continuing duty to update the register due to a change of circumstances, such as the acquisition of development land, until a relevant item of business arises at a meeting which the member attends. Failure to register disclosable pecuniary interests will be a criminal offence. The registration requirements for other types of interests will be as set out in the code of conduct, and any failure will be treated as a breach of the code.
16. Where disclosable pecuniary interests have been notified to the monitoring officer, there will be no requirement to disclose them at a meeting. Otherwise a member must disclose any disclosable pecuniary interest, of which he is aware, that relates to any matter to be considered, or being considered, at the meeting. He must also then register that interest within 28 days. The duty to disclose will arise on attendance at the meeting, rather than simply before the start of consideration of the matter. A member with a disclosable pecuniary interest will be barred from discussing or voting on the matter – the right to speak as a member of the public appears to have been lost. Failure to comply with these provisions will be a criminal offence. There will be no automatic requirement for a member with a disclosable pecuniary interest to withdraw from the room, although this may be dealt with in standing orders. The disclosure requirements for other types of interests will be as set out in the code of conduct, and any failure will be treated as a breach of the code.
17. Members found guilty of a criminal offence under the above provisions are liable to a fine not exceeding level 5 on the standard scale (currently £5,000) and may be disqualified as a member for up to 5 years.
18. As previously, special provision is made in respect of sensitive interests and dispensations.

Independent persons

19. 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.
20. Given the contrasting roles that an independent person may be asked to perform, it is anticipated that more than one will be required. For example, it is hard to see how an independent person could be consulted by a member against whom an allegation had been made, and by the City with respect to the same allegation, whilst remaining impartial. Scheduling considerations would also make it advisable to appoint several independent persons. It is therefore recommended that three independent persons be appointed.
 21. Vacancies must be advertised, candidates must submit an application and appointments must be approved by a majority of members of the Court of Common Council. A report was taken to the Policy and Resources Committee on 22 March 2012, and to the Court of Common Council under urgency provisions, to approve the selection procedure to be followed for the appointment of independent persons.
 22. Since the earlier report, the recruitment of independent persons has been progressed with a vacancy advertised in the City AM (hard copy), on the City of London website, the Guardian On-line and the public appointments section on the Cabinet Office website as of 1 May 2012. The deadline for receipt of applications was midday on Friday 18 May 2012.
 23. Upon the deadline for receipt of completed applications, 33 expressions of interest in the position had been received. Having circulated application packs to all those that had expressed an interest in the position, 12 completed application and rehabilitation forms have now been received.
 24. The Selection and Appointment Panel comprising of the Chief Commoner, the Chairman of the General Purposes Committee of Aldermen and the Chairman of the Policy and Resources Committee (or his/her representatives) will meet on 31 May 2012 to short-list and thereafter interviews will be held on 14 June 2012. The appointments will then be approved under urgency procedures (Standing Order 41 (a)) by the Policy and Resources Committee ahead of final approval by the Court of Common Council on 21 June 2012.
 25. Independent persons must not have been a member, co-opted member or officer of the authority in the last five years, nor be a relative or close friend of a member, co-opted member or officer.
 26. The Association of Council Secretaries and Solicitors has sought advice from Leading Counsel on whether independent members of standards committees will be able to serve as independent persons under the new arrangements. Counsel considers that the better reading of the legislation is that independent members are not permitted to serve as independent persons for the same authority within a period of five years from the end of their previous service. This is because on a literal reading of the legislation the independent members of the standards committee are co-opted members of the authority.

27. Since the last report to the Standards Committee, it is now understood that transitional provisions are to be introduced enabling independent members to serve as independent persons. Again, DCLG are unable to provide a draft of the necessary statutory instrument, or state when it will come into force. The current independent members of the Standards Committee were made aware that they may become eligible to apply, and advised to put in an application if they wished to do so, but in the event no applications have been received from current independent members.

Arrangements for investigation and decision-making

28. 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.
29. In the City the role of the Chief Commoner has traditionally included a concern for the welfare and conduct of Common Councilmen, and the Chairman of the Privileges Committee of Aldermen has performed a similar function in relation to Aldermen. It is acknowledged that they perform a valuable role in this respect. It is proposed that this role be highlighted in any published complaints procedure, and complainants encouraged to approach the Chief Commoner or the Chairman of the Privileges Committee of Aldermen with any grievance. However, under the Act, any written allegation of a breach of the code of conduct must be dealt with under the formal arrangements outlined in this report.
30. 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 as set out below this is recommended. The proposed constitution and terms of reference for the revised Standards Committee are set out at Appendix 2. Another option would be to subsume these functions within the terms of reference of an existing committee.
31. A decision will have to be taken on a case by case basis whether to investigate an allegation. Most authorities are choosing to delegate the initial assessment of allegations, and the decision whether to investigate, to their monitoring officer.
32. In recognition of City custom, it was suggested to the Standards Committee (in the February report) that an alternative option would be to delegate the initial assessment of allegations, and the decision whether to investigate, to the monitoring officer in consultation with the Chief Commoner or Chairman of the Privileges Committee of Aldermen as appropriate – as these functions cannot be delegated to a single member.
33. The feedback received was that decisions in relation to these matters should be solely a matter for members. It is therefore recommended that the initial

assessment of allegations, and the decision whether to investigate, should be delegated to the revised Standards Committee. This would mirror existing arrangements.

34. It is also necessary to decide who will examine the evidence of an investigation, hear from the parties concerned, and make a decision on culpability and any sanction. Although it is not obligatory for a committee to carry out these functions, there is not thought to be any realistic alternative. It is therefore recommended that these functions are delegated to the revised Standards Committee.
35. As previously stated, the views of an independent person will have to be sought, and taken into account, before any decision is taken at this stage – the simplest solution would be for an independent person to be a party to any hearing and deliberation. Again, this has been reflected in the proposed terms of reference of the revised Standards Committee.
36. 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.
37. 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 (see below) – 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.
38. 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 is recommended that the revised Standards Committee consist of eight members, including one Alderman. This has been reflected in the appended constitution.

Sanctions

39. 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.
40. 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.
 41. 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

42. All members will receive 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

43. When the earlier report was considered by the Standards Committee on 28 February 2012 seeking comments on the various options available under the new standards arrangements, 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 formulated. To some degree this is still the case, however 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 Committee and the Court for consideration and approval.
44. In respect of longer term amendments, members are asked to consider the options in respect of a replacement code of conduct.
45. 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.

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