

	<p>Constitution, Ethics and Probity Committee</p> <p>16 November 2015</p>
<p>Title</p>	<p>The Standards Regime</p>
<p>Report of</p>	<p>Monitoring Officer</p>
<p>Wards</p>	<p>None</p>
<p>Status</p>	<p>Public</p>
<p>Enclosures</p>	<p>Appendix A: Protocol – Complaints against Members</p>
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<p>Summary</p>
<p>This report asks the Committee to consider the current arrangements in place for the investigation of and decisions on allegations of breaches of the Code of Conduct for Members, and whether to recommend any change to those arrangements to the Council.</p>

<p>Recommendations</p>
<ol style="list-style-type: none"> 1. That the Committee consider the options relating to the Group Leaders Panel set out in Section 2 of the report and decide whether to recommend one of the options to the Council. 2. That the Committee consider the “Protocol – Complaints against Members” attached as Appendix A, and recommend to full Council that it be approved as the Council’s arrangements for the investigation of complaints that a Member has breached the Code of Conduct and for taking decisions on such complaints, as required by Section 28 of the Localism Act 2011

1. WHY THIS REPORT IS NEEDED

Introduction

- 1.1 At its last meeting on 30th June, the Committee received a report setting out options for changes to the Council's existing arrangements for dealing at Member level with allegations that a Member has breached the Members' Code of Conduct. The report considered the options of including a co-opted Independent Member on the Group Leaders Panel, and/or changing the membership of the Panel, whilst respecting the rules on political proportionality. The Committee resolved to defer consideration of the item until this meeting of the Committee, with further discussions to take place between the Groups, and further examination of options by the new Director of Assurance.
- 1.2 This report accordingly asks the Committee to consider the issue again.
- 1.3 In addition, the report recommends changes to the arrangements for dealing with complaints at officer (Monitoring Officer) level, to ensure that any complaints are dealt with in an appropriate, proportionate and fair way.

Background

- 1.4 As set out in the previous report to the Committee, Section 27 of the Localism Act 2011 imposes a duty on the Council to "promote and maintain high standards of conduct by members and co-opted members" of the Council. The Council is required to adopt a code dealing with the conduct that is expected of Members and co-opted Members of the Council when they are acting in that capacity, and must have in place arrangements under which allegations that a member has failed to comply with the code of conduct can be investigated, and arrangements under which decisions on allegations can be made. Those arrangements must include the appointment of at least one "independent person", whose views must be sought, and taken into account, before any decision on an allegation which has been investigated is taken.
- 1.5 It is for the Council to decide what the arrangements for investigating and taking decisions on allegations should be. The Council has delegated to this Committee the general function of promoting and maintaining high standards of conduct by Members, and the functions of considering and making recommendations to the Council on the contents of the Code of Conduct for Members, and on ethical standards in general across the authority. It has delegated to the Group Leaders Panel the function of investigating and determining any allegations of a breach of the Code of Conduct by individual members. The Group Leaders Panel comprises five members and, by convention, the membership includes the Leaders of the political groups. The Panel is required to take into account the views of an Independent Person when reaching its decision, but an Independent Person is not a member of the Panel.

- 1.6 It is desirable that any arrangements in place have cross party support, if possible, which they do not have at present. The duty to promote and maintain high standards of Member conduct carries with it the obligation to ensure that the system for dealing with complaints should be fair, effective, and one that has the confidence of all those potentially affected, and the public.

The position with respect to Independent Members

- 1.7 There are limitations upon the extent to which it is legally possible to meet an aspiration for the Group Leaders Panel, or a new Standards Committee, to have an independent Chair, and/or a majority of Independent Persons, or to operate outside the rules requiring political proportionality on Committees. The Localism Act 2011 introduced a number of radical changes to the ethical standards regime as it existed prior to that Act.
- 1.8 Prior to 2012, when the 2011 Act came into force, authorities were obligated by law to appoint a Standards Committee, containing a number of independent members.

In enacting the 2011 Act, the Department for Communities and Local Government said:

“Councillors play a crucial role in local life. The people who elect them have the right to expect the highest standards of behaviour. The Government thinks it is important to have safeguards to prevent the abuse of power and misuse of public money. Currently, all local authorities must, by law, adopt a national code of conduct and a standards committee to oversee the behaviour of their councillors and receive complaints. A central body, the Standards Board for England, regulates each of these committees.

In practice, however, this system of safeguards is ineffective. It is too easy for people to put forward ill-founded complaints about councillors’ conduct. Lengthy debates about petty complaints or deliberately harmful accusations can undermine people’s faith in local democracy and put them off standing for public office.

Through the Localism Act, the Government has abolished the Standards Board regime. Instead, local authorities will draw up their own codes and it will become a criminal offence for councillors to deliberately withhold or misrepresent a financial interest. This means that councils will not have to spend time and money investigating trivial complaints, while councillors involved in corruption and misconduct will face appropriately serious sanctions. This provides a more effective safeguard against unacceptable behaviour.”

- 1.9 The Localism Act put in place criminal sanctions for serious misconduct relating to disclosable pecuniary interests, but intended to leave less serious matters to the discretion of local authorities, removing all the prescriptive elements of the previous regime. Consistently with that approach, the Act removed the obligation to appoint a Standards Committee, and the obligation (and indeed the ability, as explained below) to appoint voting, independent

members (replacing that with the introduction of an “independent person”, whose views are to be sought before any decision is taken but who is not as such a member of any committee). Accordingly, any Committee or Panel appointed by the Council is now subject to the ordinary law as it affects local authority committees.

- 1.10 The general legal position is that when appointing a committee, the Council may appoint to the committee persons who are not elected members (section 102(3) of the Local Government Act 1972). However, subject to certain exceptions, such a person must “for all purposes be treated as a non-voting member of that committee” (Section 13(1) of the Local Government and Housing Act 1989). One of the exceptions to that rule is that a non-elected member may be a voting member of an advisory committee (and there are other exceptions in the fields of, for example, superannuation and education). Therefore it is possible to appoint an Independent member of the Group Leaders Panel, or a Standards Committee. But such a member cannot, as a matter of law, have voting rights. The reason for this rule is that otherwise the position with respect to political proportionality could be upset. An independent member can have voting rights on a committee in this context only if the committee is advisory – that is, if it cannot take decisions.
- 1.11 The Group Leaders Panel, or any replacement for it, must be constituted in accordance with the rules relating to political proportionality. Those rules provide (inter alia) that the party with a majority of seats on the Council shall have a majority of seats on each committee.
- 1.12 The rules relating to political proportionality may be waived in the case of a particular committee only in the event that a decision to that effect is taken by the full Council without any member voting against (Section 17(1)(b) of the Local Government and Housing Act 1989). This issue is discussed further in paragraph 1.16 below

Options for change in relation to the Group Leaders Panel

- 1.13 If the Committee considers that there is a case for changing the existing arrangements, the following options could be considered, as set out in the previous report:
- 1.14 **Option 1.** Include a co-opted Independent Member on the Group Leaders Panel.

The Group Leaders Panel is not an advisory Committee, so as set out in some detail above, such an independent member could not, formally speaking, be a voting member. However such a member could otherwise take a full part in the decision-making process, and indicate their views. From the point of view of public perception the Panel may appear fairer, and an independent member may indeed act as a brake, making it difficult for the Panel to take politically-partisan decisions contrary to the independent member’s views, at least in the absence of a compelling reason. It would remain necessary for the Panel to also have regard to the views of an independent person as at present, as that is a legal requirement.

A modification of this Option would involve co-opting one of the existing Independent Persons onto the Panel, or treating the Independent Person as a de facto member of the Panel. The Independent Person would attend the meeting and be treated for all practical purposes as a member of the Panel. Such an arrangement would be likely in practice to have the same effect, from the point of view of public perception and avoiding politically partisan decisions, as the co-option onto the Panel of a new independent member.

1.15 **Option 2.** Change the membership of the Group Leaders Panel.

At present, as set out above, the Panel comprises five members, by convention (as the name of the Committee suggests) including the Group Leaders.

Whilst it is necessary for membership of the Panel to respect the rules on political proportionality, one view may be that operating with a Panel comprising, or including, Group Leaders, creates a public perception that the Panel's decisions may be influenced by party political considerations rather than the merits of the individual case being considered. Such an impression may be heightened where, as in Barnet, the political balance is extremely close, even though the Panel has no power to suspend or disqualify members, or to remove them from any Committee.

Such perceptions may be unfair, but if they exist they could be addressed by adjusting the composition of the Committee, by replacing the Group Leaders with senior backbenchers from either party. It would also be possible to increase the number of members on the Panel.

1.16 **Option 3.** Combine Options 1 and 2.

A further option would be to combine Options 1 and 2, to create a Panel or Committee including an independent member or an Independent Person and with a changed and/or expanded membership.

For example, it would be possible to:

- (i) Reconstitute the Group Leaders Panel, so that it comprised a committee consisting of four members plus an Independent Person
- (ii) Re-name the new Committee the Standards Committee
- (iii) Recommend to the Council that the rules in relation to political proportionality be waived in relation to the new Standards Committee, so that the four elected members of the Committee be comprised of two members for each of the two main political Groups

Whilst the identity of the two members from each Group would necessarily be a matter for the Groups, if those members were senior and experienced "backbenchers" rather than the Group Leaders, that would obviously assist in

addressing the public perception issue identified above. It would be for the Committee itself to determine who its Chairman should be.

The Independent Person sitting on the committee would need to be independent in the sense of not having previously advised the Monitoring Officer, or the members of the committee or the Member the subject of the complaint, of his views on the complaint or how it should be dealt with. However, as the Council has more than one Independent Person, this would be possible to achieve whilst still providing access to an Independent Person for advice for the Monitoring Officer (and others) as necessary

It is the view of the Monitoring Officer that if this Option 3 were to be agreed by all members of the Council (as set out above, if the rules relating to political proportionality are to be dispensed with it requires that no member of the Council votes against) and if it were combined with the arrangements for investigating and reporting on complaints set out below, the Council would have in place arrangements which are fair, effective, and which should have the confidence of all those potentially affected, and the public.

The process for investigating complaints and reporting to the Group Leaders Panel

- 1.17 Under Section 28 of the Localism Act 2011, the Council must have in place arrangements for dealing with complaints that a Member has breached the Code of Conduct, including arrangements for the conduct of investigations, and arrangements for taking decisions.
- 1.18 The current arrangements are contained in an Appendix to the Code of Conduct. They provide for the Monitoring Officer to report on any allegation which is not frivolous or vexatious to the Group Leaders Panel, without a recommendation. That is what has happened in practice, so in the past the Monitoring Officer has had little or no input into the process beyond reporting factually that a complaint has been received. To some extent, that approach has not taken advantage of the new freedom under the Localism Act, which allows a local authority much more discretion about how complaints which do not relate to the criminal offence of not disclosing a disclosable pecuniary interest should be dealt with, and which is much less prescriptive than the previous regime – so that, for example, complaints which are trivial or malicious no longer need generate a report to committee.
- 1.19 In practice, in the past, when complaints have been referred to the Group Leaders Panel, the Panel has often referred them on to the relevant political Group to deal with. This risks creating the impression that the Council itself has not dealt with the complaint
- 1.20 The Monitoring Officer recommends changes to these arrangements, designed to

- Give effect to previous decisions of the Committee relating to legal representation at hearings, and access to the Independent Person
- Allow more discretion to the Monitoring Officer, so that complaints may be resolved informally where the conduct complained of is minor or trivial, or where investigation and reporting formally on the complaint would be disproportionate
- Ensure that when complaints are reported to the Panel, they are accompanied by an Investigation report which sets out the Monitoring Officer's conclusions and recommendations in the light of the investigation which has been carried out
- Provides for a hearing to consider the matter where necessary, and for the member the subject of the complaint to have a fair opportunity to make his/her case
- Emphasise the range of options open to the Panel when an allegation is found proved, so that not all decisions are simply referred to the relevant political group to address

1.21 The recommended new arrangements are set out in the "Protocol – Complaints about Members" which is **Appendix A**, and which would replace the existing Appendix to the Code of Conduct. The Committee is requested to approve the Protocol and to recommend the new arrangements to Council.

2. REASONS FOR RECOMMENDATIONS

2.1 The Constitution, Ethics and Probity Committee is responsible for promoting and maintaining high standards of member conduct. This report puts forward various options for changing the arrangements in place for dealing with allegations that a member has breached the Code of Conduct for Members.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

3.1 The reasons for the options considered are set out in Section 2 above

4. POST DECISION IMPLEMENTATION

4.1 If the Committee agrees to recommend one of the Options set out in Section 2, the Committee's recommendations will be reported to Full Council

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 The Council has a statutory duty under the Localism Act 2011 to promote and maintain high standards of conduct by members and co-opted members of the Council.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 If the council adopts option 1, then depending on the version of Option 1 chosen there may be a requirement to recruit and train an independent member or members. Independent members will receive an allowance in accordance with section 6 (Independent Members and Coopteers' Allowances) of the Members Allowance Scheme in the Constitution. Any costs arising would be met from the existing Members Allowances budget.

5.3 Legal and Constitutional References

5.3.1 Council's Constitution, Responsibilities for Functions, Annex A – the Constitution, Ethics and Probity Committee terms of reference includes responsibility for promoting and maintaining high standards of conduct by members, and the functions of considering and making recommendations to the Council on the contents of the Code of Conduct for Members, and on ethical standards in general across the authority.

5.4 Risk Management

5.4.1 The proposals set out in this report are designed to reduce the risk of reputational damage to the Council and to individual members arising from any perception that the Council's arrangements for dealing with complaints about member conduct are not fair or not effective

5.5 Equalities and Diversity

5.5.1 The decision making processes of the Council, as enshrined within the Constitution, need to be transparent and accessible to all sectors of the community.

5.6 Consultation and Engagement

5.6.1 None

6. BACKGROUND PAPERS

6.1 None