

	<p style="text-align: center;">Constitution Ethics and Probity Committee</p> <p style="text-align: center;">30 June 2015</p>
<p style="text-align: right;">Title</p>	<p>The Standards Regime</p>
<p style="text-align: right;">Report of</p>	<p>Monitoring Officer</p>
<p style="text-align: right;">Wards</p>	<p>All</p>
<p style="text-align: right;">Status</p>	<p>Public</p>
<p style="text-align: right;">Enclosures</p>	<p>None</p>
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<h3>Summary</h3>
<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>

<h3>Recommendations</h3>
<p>That the Committee consider the options set out in Section 2 of the report and decide whether to recommend one of the options to the Council.</p>

1. WHY THIS REPORT IS NEEDED

1.1 Background

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.

- 1.2 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.
- 1.3 The Council at its meeting on 16 December 2014 received a report from this Committee making recommendations with respect to the constitution. Councillor Alison Moore moved a motion proposing amendments to the recommendations made by the Committee which would have had the effect (inter alia) of replacing the Group Leaders Panel with a Standards Committee “with an independent Chair and on which Independent Persons form the majority, with one representative from each of the three political groups”. That motion was defeated, and Councillor Moore then advised Council that the Labour Group would be withdrawing from the Group Leaders Panel. The Labour Group has subsequently not nominated members to fill its allocated places on the Panel.
- 1.4 Of course, no single political party has the right to veto the arrangements made by the Council for dealing with complaints relating to Member conduct. However, it is the view of the Monitoring Officer that it is extremely desirable that any such arrangements have cross party support, if possible. 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.

1.5 **The position with respect to Independent Members**

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.

1.6 The Localism Act 2011 introduced a number of radical changes to the ethical standards regime as it existed prior to that Act.

1.7 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.

1.8 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).
- 1.11 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.
- 1.12 At its meeting on 25 November 2014, the Committee received a report which included information about arrangements made by some other London authorities for discharging the general duty to promote high standards of member conduct, and to deal with complaints. As set out in that report, some authorities do have Standards Committees which include independent members. However, in such cases either the role of the Committee is to advise the Council on ethical governance issues, rather than to deal with complaints, or the independent member is non-voting.

1.13 **Options for change**

If the Committee considers that there is a case for changing the existing arrangements, the following options could be considered:

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 further option would be to appoint more than one independent member. It would be for the Panel to determine whether the independent member took the chair, and the chairman of the Panel would not necessarily need to be the same person all the time.

If this option is agreed, it will be necessary to make arrangements to appoint an independent person(s), and it is suggested that authority to make such

arrangements and make an appointment be delegated to the Director of Assurance, in consultation with the Chairman of the Constitution, Ethics and Probity Committee.

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.

Option 3. Combine Options 1 and 2.

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

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, following the decision by the Labour Group to withdraw from the Group Leaders Panel.

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 on 28 July 2015 for final approval.

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, there will 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 Co-optees' 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 Council, 16 December 2014, Report from Constitution, Ethics and Probity Committee – Constitution Review:

<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=162&MId=7816&Ver=4>