

# Report of the City Solicitor to the meeting of Standards Committee to be held on 16 January 2013

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**Subject:**

**Implementation of New Standards Regime – Progress Report**

**Summary Statement:**

The purpose of this report is to provide Members of the Standards Committee with a report on the further progress made in implementing the new Standards Regime in Bradford

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**Improvement Area:**



## 1. Summary

The purpose of this report is to provide Members of the Standards Committee with a report on the further progress made in implementing the new Standards Regime in Bradford

## 2. Background

- 2.1 On 10 July 2012 Council approved a new Code of Conduct for Elected Members and a procedure for dealing with complaints.

In addition, the Standards Committee's role was retained to have responsibility for overseeing the operation of the Code of Conduct and for promoting high standards of conduct.

- 2.2 The Standards Committee also has role in dealing with complaints made under the new procedure and determining culpability where complaints cannot be resolved informally.

## 3. Implementation of Code of Conduct and Procedure for Dealing with Complaints

### Training of Members

- 3.1 Three training sessions for Members of Council and Members of Town and Parish Councils have been undertaken to provide an opportunity for Members to be briefed on the requirements of the Code and the procedure for dealing with complaints. These events were not well attended and further sessions have been scheduled for the following dates:

Thursday, 31 January 2013: 4.30 pm-6.30 pm

Wednesday, 6 February 2013: 4 pm-6 pm

Wednesday, 27 February 2013: 4 pm-6.00 pm

Standards Committee may wish to consider whether they would prefer to have a separate training session as the Standards Committee to discuss the Code of Conduct and the procedure for dealing with complaints in their particular role in dealing with both matters referred to stage 3 of the procedure.

### New Complaints Procedure

- 3.2 The training sessions which took place in October and November generated an interesting debate around the new Code of Conduct, disclosable pecuniary interests and the procedure for dealing with complaints. In particular, Members expressed concern that an allegation that a Member had failed to make an appropriate declaration in relation to a disclosable pecuniary interest could only be dealt with by the Police.

- 3.3 A discussion has been undertaken regarding the likelihood of the Police to instigate such allegations, especially in the context of the requirement to establish the criminal burden of proof. The criminal burden of proof will require a court to be satisfied 'beyond reasonable doubt' that a Member is culpable. Indications are that if the Police are not satisfied that this level of proof can be evidenced, they are unlikely to proceed with a prosecution. Complaints made through the Bradford Council complaints procedure will need to establish culpability 'on the balance of probabilities'. This is the civil burden of proof and is a lesser requirement.
- 3.4 Members have expressed concerns that it is therefore possible for a Member to be in breach of the Code in relation to a failure to declare a disclosable pecuniary interest, but that no action is taken because it is not possible to establish on the criminal burden of proof ('beyond reasonable doubt') that culpability. In these circumstances under the present procedure, there is no finding of culpability. It has therefore been suggested that if the Police are not prepared to pursue a prosecution, the Council and the complainant should be afforded the opportunity to consider whether the complaint should be referred to the Council's internal complaints procedure for a determination of culpability where it is appropriate to do so.
- 3.5 The Monitoring Officer has therefore reviewed the complaints procedure and has made a suggested amendment at Appendix 1 to this report. This amendment allows a complaint that is not the subject of a criminal prosecution to be referred back to the Monitoring Officer and Chair of Standards to consider if it is appropriate for the matter to be dealt with through the Council's complaints procedure.
- 3.6 It is anticipated that the circumstances where it will be considered appropriate to deal with a complaint under the Council's complaints procedure will be limited to those where there is evidence of a potential breach but where the police are not prepared to prosecute. If the police have investigated the complaint and have not found evidence to substantiate the allegations then it is very unlikely that it would be considered appropriate to consider the matter further.
- 3.6 Members of Standards Committee are asked to consider the proposed amendment and if approved, to recommend that the Monitoring Officer use her delegated authority under Article 14.5 of the Constitution to make the necessary amendments to the documentation.

#### **4. Financial and Resource Appraisal**

The issues raised in this report have no direct financial implications.

#### **5. Legal Appraisal**

The provisions set out in this report are to ensure that the Council meets the legislative requirements of the Localism Act 2011 and the regulations made thereunder.

**6. Other implications**

There are no trade union, equal rights, sustainability, community safety, Human Rights Act implications arising from this report.

**7. Not for publication documents**

None.

**8. Recommendations**

It is recommended that:

- 8.1 The proposed amendment to the procedure for considering complaints alleging failure to comply with the Members' Code of Conduct at Appendix 1 are approved.
- 8.2 That the City Solicitor/Monitoring Officer make the necessary amendments to the documentation under her delegated powers in Article 14.5 of the Council's Constitution.

**9. Reason for the Recommendations**

To ensure that the Council has a robust ethical framework within which Members can operate and is compliant with the requirements of the Localism Act 2011.

**10. Appendices**

Appendix 1 – Procedure for Considering Complaints