

# TONBRIDGE & MALLING BOROUGH COUNCIL

## STANDARDS COMMITTEE

5 MARCH 2012

### Report of the Chief Solicitor & Monitoring Officer

#### Part 1- Public

#### **1 LOCALISM ACT 2011 – THE NEW STANDARDS REGIME**

##### **1.1 Introduction**

1.1.1 The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors.

1.1.2 This report describes the changes and recommends the actions required for the Council to implement the new regime. For the assistance of Members, I have set out the key changes in turn, together with recommendations as to the proposed way forward for each.

1.1.3 I would like to acknowledge the assistance of Peter Keith-Lucas of Bevan Brittan Solicitors, for kindly sharing with me his model report on the Localism Act.

##### **1.2 Duty to promote and maintain high standards of conduct**

1.2.1 The authority will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members.

##### **1.3 Standards Committee**

1.3.1 The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. There will therefore be no statutory requirement for a Standards Committee. However, there will still be a need to deal with standards issues and case-work as part of our duty to promote and maintain high standards of conduct, so it will remain convenient to have a Standards Committee. It will be a normal Committee of Council, without the unique features which were conferred by the previous legislation. As a result:

- The composition of the Committee will be governed by political proportionality.
- The present restriction to only one member of the Cabinet on the Standards Committee will cease to apply;

- The current co-opted independent members (of which there are 2) will cease to hold office. The Act establishes for a new category of Independent Persons (see below) who must be consulted at various stages, but provides that the existing co-opted independent members cannot serve as Independent Persons for 5 years. The new Independent Persons may be invited to attend meetings of the Standards Committee, but would have no voting rights;

- 1.3.2 Presently, the Standards Committee comprises 13 members of the Borough Council (1 of whom is also a member of the Cabinet), 2 independent members and 2 parish representatives (appointed on a pool basis from the 12 members of the Town and Parish Council Standards Sub-Committee). Standards complaints are dealt with by the Standards Assessment Sub-Committee, Standards Review Sub-Committee and Standards Hearings Sub-Committee (each of these consisting of 5 members of the Standards Committee, those members being the Independent Chairman, 3 Conservative Borough Councillors and 1 Liberal Democrat Borough Councillor together with 1 Town or Parish Councillor where the complaint relates to a Town or Parish Councillor).
- 1.3.3 At the Council meeting on 17 May 2011 it was resolved that the Standards Committee be renamed Standards & Training Committee upon abolition of the national framework for ethical standards. In the meantime a Training Committee was established as an interim measure comprising those Borough Councillors sitting on the Standards Committee.
- 1.3.4 Whilst the Borough Council will continue to have responsibility for dealing with standards complaints against elected and appointed members of Parish Councils, the current Parish/ Town Council representatives on the Standards Committee (and the Town and Parish Council Standards Sub-Committee) will cease to hold office. The Borough Council can choose whether it wishes to continue to involve Parish/ Town Council representatives and, if so, how many Parish/ Town Council representatives are required. The choice is between establishing a Standards Committee as a Committee of the Borough Council, with co-opted but non-voting Parish/ Town Council representatives (which could then only make recommendations in respect of Parish Council members) (**Option 1**), or establishing a Standards Committee as a Joint Committee with the Parish/ Town Councils within the Borough and having a set number of representatives as voting members of the Committee (which could then take operative decisions in respect of members of Parish/ Town Councils, where the Parish/ Town Council had delegated such powers to such a Joint Standards Committee) (**Option 2**).
- 1.3.5 In respect of Option 1, the Localism Act gives the Standards Committee no power to do any more in respect of a member of a Parish or Town Council than to make a recommendation to the Town or Parish Council in question on the action to be taken in respect of the Member. The Parish or Town Council would be under no obligation to accept any such recommendation.

- 1.3.6 In order to be both effective and easily understood by the public, Option 2 would need the agreement of all Town and Parish Councils within the Borough. Otherwise, there would in effect be 2 systems in operation at the same time – one where the Joint Committee took decisions on behalf of the Parish/ Town Council (and could ensure implementation of their decision) and one where the Committee recommended that the Parish/ Town Council took specified action (with no ability to ensure that such recommendations were implemented). There is an inherent danger that public confidence in such a system would soon be eroded. However, if full agreement could be secured, then this would represent an effective system for the promotion of high standards of conduct within the Borough.
- 1.3.7 In light of the above, it is suggested that Option 2 be pursued as a preferred option. It is proposed that I write to the clerks of all Town and Parish Councils within the Borough to inform them of the preferred option, and invite them to indicate whether their Council would be agreeable to the Standards and Training Committee being established as a joint committee.
- 1.3.8 It would unfortunately not be feasible for each Town or Parish Council to have a permanent representative on any joint committee, as the numbers involved (27 Town/ Parish Councillors plus Borough Council Members) would render any such committee unworkable. However, in order to ensure that any joint committee could benefit from the input of all Town/ Parish Councils, it is envisaged that each Parish Council would nominate 1 Member to serve on the Committee, with 3 Town/ Parish Council representatives being drawn from the 'pool' of nominated representatives for each meeting of the Committee.
- 1.3.9 In the event that it was not possible to secure the agreement of all Town & Parish Councils to the establishment of a joint committee, it is recommended that similar arrangements to those set out in paragraph 1.3.8 above are put in place to ensure the input of co-opted Town & Parish Councillors on a Borough Council Standards Committee i.e. 3 co-opted representatives to be drawn from a pool of nominated representatives.

### **Recommendation 1**

- a. That the Monitoring Officer writes to the Clerks of all Town and Parish Councils within the Borough to invite them to indicate whether their Council would be agreeable to the establishment of a joint Standards Committee as set out in 1.3.4 to 1.3.8 above.**
- b. In the event that it is not possible to secure the agreement of all Town and Parish Councils to the preferred option -**
- (i) the Standards and Training Committee be confirmed as the appropriate Committee to discharge the responsibilities of the Borough Council for ethical standards under the Localism Act 2011. The Committee shall comprise 13 elected members of the**

**Borough Council whose appointment shall be governed by political proportionality;**

- (ii) the Town and Parish Councils be invited to nominate a maximum of 3 representatives to be co-opted as non-voting members of the Standards and Training Committee. The 3 representatives shall be drawn from the pool of nominated representatives for each meeting of the Committee.**

## **1.4 The Code of Conduct**

1.4.1 The current ten General Principles and Model Code of Conduct will be repealed, and members will no longer have to give an undertaking to comply with the Code of Conduct. However, the Council will be required to adopt a new Code of Conduct governing elected and co-opted member's conduct when acting in that capacity. The Council's new Code of Conduct must, viewed as a whole, be consistent with the following seven principles:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

1.4.2 These principles will be familiar to Members, as all are contained in the General Principles of Public Life set out in the existing Code of Conduct. Interestingly, 4 of the existing general principles are not retained – personal judgement, respect for others, duty to uphold the law and stewardship.

1.4.3 The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles. However, regulations to be made under the Act will require the registration and disclosure of "Disclosable Pecuniary Interests" (DPIs), broadly equating to the current prejudicial interests. The provisions of the Act also require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests. The result is that it is not possible yet to draft Code provisions which reflect the definition of DPIs which will appear in regulations, but it is possible to give an indicative view of what the Council might consider that it might be appropriate to include in the Code in respect of the totality of all interests, including DPIs, other pecuniary interests and non-pecuniary interests.

- 1.4.4 Accordingly, it might be sensible at this stage for me to prepare a draft Code which requires registration and disclosure for those interests which would today amount to personal and/or prejudicial interests, but only require withdrawal as required by the Act for DPIs. It is anticipated that a model code will be published shortly by the Local Government Association.
- 1.4.5 The Act prohibits members with a DPI from participating in authority business, and the Council can adopt a Standing Order requiring members to withdraw from the meeting room while any discussion or vote takes place.
- 1.4.6 In summary, the Council's new Code of Conduct will have to deal with the following matters –
- General conduct rules, to give effect to the seven principles. This corresponds broadly with Paragraphs 3 to 7 of the current Code of Conduct. In practice, the easiest course of action would be simply to re-adopt Paragraphs 3 to 7 of the existing Code of Conduct. The Council can amend its Code of Conduct subsequently if the need arises; and
  - Registration and disclosure of interests other than DPIs – effectively, replacing the current personal interests provisions. The Act requires that the Code contains “appropriate” provisions for this purpose, but, until the regulations are published, defining DPIs, it is difficult to suggest what additional disclosure would be appropriate.

## **Recommendation 2**

- a. That the Monitoring Officer prepares and presents to the next meeting of this Committee a draft Code of Conduct. That draft Code should –**
- i. equate to Paragraphs 3 to 7 of the current Code of Conduct applied to member conduct in the capacity of an elected or co-opted member of the Council or its Committees and Sub-Committees; and**
  - ii. require registration and disclosure of interests which would today constitute personal and/or prejudicial interests, but only require withdrawal as required by the Act in relation to Disclosable Pecuniary Interests.**
- b. That, when the Disclosable Pecuniary Interests Regulations are published, the Monitoring Officer, after consultation with the Chairman & Vice-Chairman of the [joint] Standards & Training Committee, add to that draft Code provisions which he considers to be appropriate for the registration and disclosure of interests other than DPIs.**

## **1.5 Dealing with misconduct complaints**

- 1.5.1 The Act requires that the Council adopt “arrangements” for dealing with complaints of breach of Code of Conduct both by Borough Council members and by Parish/ Town Council members and such complaints can only be dealt with in accordance with such “arrangements”. So the “arrangements” must set out in some detail the process for dealing with complaints of misconduct and the actions which may be taken against a member who is found to have failed to comply with the relevant Code of Conduct.
- 1.5.2 The advantage is that the Act repeals the requirements for separate Assessment, Review and Hearings Sub-Committees, and enables the Council to establish its own process, which can include delegation of decisions on complaints. Indeed, as the statutory provisions no longer give the Standards Committee or Monitoring Officer special powers to deal with complaints, it is necessary for Council to delegate appropriate powers to the Standards & Training Committee and to the Monitoring Officer.

## **1.6 Decision whether to investigate a complaint**

- 1.6.1 In practice, the Standards for England guidance on initial assessment of complaints provided a reasonably robust basis for filtering out trivial and tit-for-tat complaints. It is sensible to take advantage of the new flexibility to delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation, subject to consultation with the Independent Person & Chairman & Vice-Chairman of the Standards & Training Committee, and the ability to refer particular complaints to the Standards & Training Committee where he feels that it would be inappropriate for him to take a decision on it, for example where he has previously advised the member on the matter or the complaint is particularly sensitive. These arrangements would also offer the opportunity for the Monitoring Officer to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation. If this function is delegated to the Monitoring Officer, it is right that he should be accountable for its discharge. For this purpose, it would be appropriate that he make a quarterly report to Standards & Training Committee, which would enable him to report on the number and nature of complaints received and draw to the Committee’s attention areas where training or other action might avoid further complaints, and keep the Committee advised of progress on investigations and costs.

## **1.7 “No Breach of Code” finding on investigation**

- 1.7.1 Where a formal investigation finds no evidence of failure to comply with the Code of Conduct, the current requirement is that this is reported to the Standards Hearing Sub-Committee and the Sub-Committee take the decision to take no further action. In practice, it may be appropriate to delegate this decision to the Monitoring Officer (after consultation with the Independent Person & Chairman & Vice-Chairman of the Standards & Training Committee), but with the power to

refer a matter to the Standards & Training Committee if he feels appropriate. It would be sensible if copies of all investigation reports were provided to the Independent Person, Chairman and Vice-Chairman of the Standards & Training Committee to enable them to get an overview of current issues and pressures, and that the Monitoring Officer provide a summary report of each such investigation to Standards & Training Committee for information.

## **1.8 “Breach of Code” finding on investigation**

1.8.1 Where a formal investigation finds prima facie evidence of failure to comply with the Code of Conduct, there may yet be an opportunity for local resolution, avoiding the necessity of a hearing. Sometimes the investigation report can cause a member to recognise that his/her conduct was at least capable of giving offence, or identify other appropriate remedial action, and the complainant may be satisfied by recognition of fault and an apology or other remedial action. However, it is suggested that at this stage it would only be appropriate for the Monitoring Officer to agree a local resolution after consultation with the Independent Person & Chairman & Vice-Chairman of the Standards & Training Committee and where the complainant is satisfied with the outcome, subject to a summary report for information to the Standards & Training Committee.

1.8.2 In all other cases, where the formal investigation finds prima facie evidence of a failure to comply with the Code of Conduct, it would be necessary for the Standards & Training Committee (in practice a Hearings Panel constituted as a Sub-Committee of the Standards & Training Committee) to hold a hearing at which the member against whom the complaint has been made can respond to the investigation report, and the Hearings Panel can determine whether the member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.

## **1.9 Action in response to a Hearing finding of failure to comply with Code**

1.9.1 Unlike the existing regime, the Localism Act does not give the Council or its Standards Committee any specific powers to impose sanctions such as suspension or requirements for training or an apology on members. So, where a failure to comply with the Code of Conduct is found, the range of actions which the authority can take in respect of the member is limited and must be directed to securing the continuing ability of the authority to continue to discharge its functions effectively, although it will invariably also result in the “punishment” of the member concerned. It will not be possible to disqualify or suspend a member from office, as an express statutory power is required for this purpose.

In practice, the range of possible sanctions might include the following:

- Reporting its findings to Council [*or to the Parish/ Town Council*] for information;

- Formally censuring a member
- Publishing a decision that a member has breached the code of conduct
- Recommending to the member's Group Leader (or in the case of ungrouped members, recommending to Council) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- Recommending to the Council Leader that he/ she be removed as Chairman or Vice-Chairman of any or all Committees of the Council;
- Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Instructing the Monitoring Officer to *[or recommending that the Parish/ Town Council]* arrange training for the member;
- Removing *[or recommending to the Parish/ Town Council that the member be removed]* from all outside appointments to which he/she has been appointed or nominated by the authority *[or by the Parish/Town Council]*;
- Withdrawing *[or recommending to the Parish/ Town Council that it withdraws]* facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- Excluding *[or recommending that the Parish/ Town Council exclude]* the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

## 1.10 Appeals

1.10.1 There is no requirement to put in place any appeals mechanism against such decisions. The decision would be open to judicial review by the High Court if it was patently unreasonable, or if it were taken improperly, or if it sought to impose a sanction which the authority had no power to impose.

### Recommendation 3

**That the Monitoring Officer prepares and submits to Council for approval "arrangements" as follows:**

- a. **That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;**
- b. **That the Monitoring Officer be given delegated power, after consultation with the Independent Person and the Chairman and Vice-Chairman of the [joint] Standards and Training Committee, to**



determine whether a complaint merits formal investigation and to arrange such investigation.

- c. That the Monitoring Officer, in consultation with the Independent Person and Chairman & Vice-Chairman of the [joint] Standards and Training Committee, be instructed to seek resolution of complaints without formal investigation wherever practicable, and that he be given discretion to refer decisions on investigation to the [joint] Standards & Training Committee where he feels that it is inappropriate for him to take the decision,
- d. That the Monitoring Officer be instructed to report quarterly to the [joint] Standards & Training Committee on the discharge of his functions set out in b and c above;
- e. Where the investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person, Chairman and Vice-Chairman of the [joint] Standards and Training Committee, be instructed to close the matter, supplying a copy of the report and findings of the investigation to the complainant and to the member concerned and reporting the findings to the [joint] Standards & Training Committee for information;
- f. Where the investigation finds prima facie evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person and Chairman and Vice-Chairman of the [joint] Standards & Training Committee be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to the [joint] Standards & Training Committee. Where such local resolution is not appropriate or not possible, he is to report the investigation findings to a Hearings Panel of the [joint] Standards & Training Committee for hearing;
- g. That a Hearings Panel be established (constituted as a Sub-Committee of the [joint] Standards & Training Committee). The Panel shall comprise 5 Borough Council members of the Standards & Training Committee, to be drawn from amongst the Members of the Committee on a pool basis. Where the complaint relates to a Town or Parish Councillor, the Panel shall also include at least one of the Town or Parish Councillor, to be drawn from the 3 [co-opted] Town/ Parish Members on the [joint] Standards and Training Committee (provided that the Town/ Parish representatives shall not be from the same Town or Parish Council as the Member to whom the complaint relates;

- h. That Council delegate to Hearings Panels such of its powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include –**
- § **Reporting its findings to Council *[or to the Parish/ Town Council]* for information;**
  - § **Recommending to the member's Group Leader (or in the case of un-grouped members, recommending to Council) that he/she be removed from any or all Committees or Sub-Committees of the Council;**
  - § **Recommending to the Council Leader that he/ she be removed as Chairman or Vice-Chairman of any Committees of the Council;**
  - § **Formally censuring the member;**
  - § **Publishing a decision that the member has breached the code of conduct;**
  - § **Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;**
  - § **Instructing the Monitoring Officer to *[or recommending that the Parish/ Town Council]* arrange training for the member;**
  - § **Removing *[or recommending to the Parish/ Town Council that the member be removed]* from all outside appointments to which he/she has been appointed or nominated by the authority *[or by the Parish Council]*;**
  - § **Withdrawing *[or recommending to the Parish/ Town Council that it withdraws]* facilities provided to the member by the Council, such as a computer, website and/or email and Internet access;**
  - § **Excluding *[or recommending that the Parish/ Town Council exclude]* the member from the Council's offices *[or Parish/ Town Council offices]* or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.**

#### **Recommendation 4**

**That a meeting be arranged between the Chairman & Vice-Chairman of the Standards Committee, the Group Leaders for the Borough Council, the**

**Independent Members and representatives of Parish/ Town Councils to discuss how the new system can best operate.**

**2. INDEPENDENT PERSON(S)**

2.1.1 The “arrangements” adopted by Council must include provision for the appointment by Council of at least one Independent Person.

2.1.2 The Independent Person must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of all members of the Borough Council (not just of those present and voting). A person is considered not to be “independent” if;

- (i) he is, or has been within the last 5 years, an elected or co-opted member or an officer of the Borough Council or of any of the Parish Councils within its area (*I shall set out the implications of this point for our existing Independent Members below at 2.1.4*);
- (ii) he is a relative or close friend of a current elected or co-opted member or officer of the Borough Council or any Parish Council within its area, or of any elected or cop-opted member of any Committee or Sub-Committee of such Council. For this purpose, “relative” comprises:
  - (a) the candidate’s spouse or civil partner;
  - (b) any person with whom the candidate is living as if they are spouses or civil partners;
  - (c) the candidate’s grandparent;
  - (d) any person who is a lineal descendent of the candidate’s grandparent;
  - (e) a parent, brother, sister or child of anyone in paragraphs (a) or (b);
  - (f) the spouse or civil partner of anyone within paragraphs (c), (d) or (e); or
  - (g) any person living with a person within paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

2.1.3 The functions of the Independent Person(s) are –

- (i) They *must* be consulted by the authority (and their views taken into account) before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that member (this means on a decision to take no action where the investigation finds no evidence of breach or, where

the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);

- (ii) They *may* be consulted by the authority in respect of a standards complaint at any other stage; and
- (iii) They *may* be consulted by a member or co-opted member of the Borough Council or of a Parish Council against whom a complaint has been made.

This causes some problems, as it would be inappropriate for an Independent Person who has been consulted by the member against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint.

- 2.1.4 On the face of it, the disqualification set out at 2.1.2 (i) prevents both our existing independent members from (presently) being appointed as an 'Independent Person' under the Localism Act 2011, as both are co-opted members of a committee of the Council for the purposes of the Local Government Act 2000. This bar will continue to exist for a period of 5 years after they cease to be co-opted members. It is most unfortunate (and perhaps an unintended consequence) that Parliament appears to have debarred those very persons with the specific experience necessary to discharge this important role. This is particularly regrettable for Tonbridge and Malling as we have been very well served by our existing Independent Members, David Ashton and John Gledhill. However, given the wording of the relevant provisions within the Localism Act, the regrettable consequence is that the Council must now consider the appointment of new 'Independent Persons'.
- 2.1.5 Whilst we are not legally able to consider appointing our existing Independent Members as 'Independent Persons' under the new Act, I have considered whether there are alternative ways to retain the skills and experience of Mr Ashton and Mr Gledhill. It would, for example, be lawful for the Standards and Training Committee to co-opt both Mr Ashton and Mr Gledhill as members of the Committee under section 102(3) of the Local Government Act 1972. Whilst this would unfortunately mean that they were unable to vote, the Council would continue to benefit from their valuable participation in the standards regime.
- 2.1.6 The Act gives discretion to appoint one or more Independent Persons, but provides that *each* Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing more than two Independent Persons.
- 2.1.7 As the Independent Person is not a member of the authority or of its Committees or Sub-Committees, the remuneration of the Independent Person no longer comes

within the scheme of members' allowances, and can therefore be determined without reference to the Independent Remuneration Panel.

- 2.1.8 In comparison to the current Chairman of Standards Committee, the role of Independent Person is likely to be less onerous. He/she is likely to be invited to attend all meetings of the Standards & Training Committee and Hearings Panels, but not to be a formal member of the Committee or Panel (he/she could be co-opted as a non-voting member but cannot chair as the Chairman must exercise a second or casting vote). He/she will need to be available to be consulted by members against whom a complaint has been made, although it is unclear what assistance he/she could offer. Where he/she has been so consulted, he/she would be unable to be involved in the determination of that complaint. This report suggests that the Independent Person also be involved in the local resolution of complaints and in the grant of dispensations. However, it would be appropriate to undertake a proper review of the function before setting the remuneration.

### **Recommendation 5**

- a. **That the Monitoring Officer, in consultation with the Chairman of Standards and Training Committee, and with the advice of the Personnel & Customer Services Manager, be authorised to set the initial allowances and expenses for the Independent Person(s), and this function subsequently be delegated to the [joint] Standards & Training Committee**
  - b. **That the Monitoring Officer advertises a vacancy of the appointment of an Independent Person**
  - c. **That a Committee comprising the Chairman and Vice-Chairman of [joint] Standards & Training Committee together with the Group Leaders be set up to short-list and interview candidates, and to make a recommendation to Council for appointment.**
  - d. **That the existing Independent Members, David Ashton and John Gledhill, be invited to serve as co-opted Members of the [joint] Standards and Training Committee**
  - e. **That the Monitoring Officer writes to the Secretary of State for Communities and Local Government to urge that the government reconsider the prohibition within the Localism Act 2011 on existing Independent Members being appointed as 'Independent Persons' for the purposes of the Act**
- 3. The Register of Members' Interests**
- 3.1.1 The Localism Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define "Disclosable Pecuniary Interests" (DPIs). The Monitoring Officer is required to maintain a register of interests, which must be

available for inspection and available on the Council's website. The Monitoring Officer is also responsible for maintaining the register for Parish Councils, which also have to be open for inspection at the Borough Council offices and on the Borough Council's website.

- 3.1.2 At present we do not know what Disclosable Pecuniary Interests will comprise, but they are likely to be broadly equivalent to the current prejudicial interests. The intention was to simplify the registration requirement, but in fact the Act extends the requirement for registration to cover not just the member's own interests, but also those of the member's spouse or civil partner, or someone living with the member in a similar capacity, where the member is aware that the other person has the interest.
- 3.1.3 The provisions of the Act in respect of the Code of Conduct require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.
- 3.1.4 The Monitoring Officer is required by the Act to set up and maintain registers of interest for each Parish Council, available for inspection at the Borough Council offices and on the Borough Council's website and, where the Parish Council has a website, provide the Parish Council with the information required to enable the Parish Council to put the current register on its own website.
- 3.1.5 Each elected or co-opted member must register all DPIs within 28 days of becoming a member. Failure to register is made a criminal offence, but would not prevent the member from acting as a member.
- 3.1.6 The adopted Code of Conduct may also provide for the registration of other interests i.e. those that are not DPIs. Failure to register these interests would not be a criminal offence, but would be a breach of the Code of Conduct.
- 3.1.7 There is no continuing requirement for a member to keep the register up to date, except on re-election or re-appointment. However, it is likely that members will register new interests from time to time, as this will avoid the need for disclosure in meetings. When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the register.
- 3.1.8 The preparation and operation of the register, not just for the Borough Council but also for each Parish Council, is likely to be a considerable administrative task, especially where different Parish Councils adopt different Code requirements for registration and disclosure in respect of interests other than DPIs. There is no provision for the Borough Council to recover any costs from Parish Councils.

## **Recommendation 6**

- a. That the Monitoring Officer prepare and maintain a new register of members interests to comply with the requirements of the Act and of**

**the Council's Code of Conduct, once adopted, and ensure that it is available for inspection as required by the Act;**

- b. That the Monitoring Officer arranges training to inform all members of their duty to register interests;**
- c. That the Monitoring Officer prepare and maintain new registers of members' interests for each Parish/ Town Council to comply with the Act and any Code of Conduct adopted by each Parish/ Town Council and ensure that it is available for inspection as required by the Act; and**
- d. That the Monitoring Officer arrange to inform and train Parish/ Town Clerks on the new registration arrangements.**

#### **4. Disclosure of interests and withdrawal from meetings**

- 4.1.1 As set out above, DPIs are broadly equivalent to prejudicial interests, but with important differences.
- 4.1.2 The duty to disclose and withdraw arises whenever a member attends any meeting of Council, a committee or sub-committee, or of Cabinet or a Cabinet committee, and is aware that he/she has a DPI in any matter being considered at the meeting. So it applies even if the member would be absent from that part of the meeting where the matter in question is under consideration.
- 4.1.3 Where these conditions are met, the member must disclose the interest to the meeting (i.e. declare the existence and nature of the interest). However, in a change from the current requirements, the member does not have to make such a disclosure if he/she has already registered the DPI, or at least sent off a request to the Monitoring Officer to register it (a "pending notification"). Whilst this in theory means that members of the public attending the meeting will in future need to read the register of members' interests (as registered interests will no longer be disclosed at the meeting) in practice it is likely that members will (voluntarily) explain the nature of their DPI at the meeting so the public know why they will not be participating.
- 4.1.4 Where the member does make a disclosure of a DPI at a meeting he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the register of interests.
- 4.1.5 If a member has a DPI in any matter, he/she must not –
  - (i) Participate in any discussion of the matter at the meeting. The Act does not define "discussion", but this would appear to preclude making representations as currently permitted under paragraph 12(2) of the model Code of Conduct; or

- (ii) Participate in any vote on the matter, unless he/she has obtained a dispensation allowing him/her to speak and/or vote.
- 4.1.6 Failure to comply with the requirements (paragraphs 4.1.2, 4.1.3 or 4.1.4) becomes a criminal offence, rather than leading to sanctions.
- 4.1.7 The Council's Code of Conduct must make "appropriate" provisions for disclosure and withdrawal for interests other than DPIs, but failure to comply with these requirements would be a breach of Code of Conduct but not a criminal offence.
- 4.1.8 Procedure Rules may provide for the exclusion of a member/ co-opted member from a meeting whilst any discussion or vote takes place in which the member or co-opted member, as a result of their DPI, may not participate. This would apply not just to Council, Committees and Sub-Committees, but can apply also to Cabinet and Cabinet Committee/ Advisory Board meetings, so that failure to comply would be neither a criminal offence nor a breach of Code of Conduct, although the meeting could vote to exclude the member.

### **Recommendation 7**

**The Monitoring Officer recommend to Council a Procedure Rule which equates to the current Code of conduct requirement that a member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a DPI, except where he is permitted to remain as a result of the grant of a dispensation.**

### **5. Disclosure and Withdrawal in respect of matters to be determined by a Single Member**

- 5.1.1 In Tonbridge and Malling, matters can be decided by a single member acting alone where the member is a Cabinet Member acting on the recommendation of an Advisory Board, Area Planning Committee or Community Enhancement Fund Panel.
- 5.1.2 The Act provides that, when a member becomes aware that he/she will have to deal with a matter and that he/she has a DPI in that matter –
- (i) Unless the DPI is already entered in the register of members' interests or is subject to a "pending notification", he/she has 28 days to notify the Monitoring Officer that he/she has such a DPI; and
  - (ii) He/she must take no action in respect of that matter other than to refer it another person or body to take the decision.
- 5.1.3 Procedure Rules can then provide for the exclusion of the member from any meeting while any discussion or vote takes place on the matter.



5.1.4 Note that the Act here effectively removes the rights of a member with a prejudicial interest to make representations, answer questions or give evidence at the meeting in which the business is discussed (provided the public are allowed to attend the meeting for the same purpose) under Paragraph 12.2 of the current Code of Conduct

## **6. Sensitive Interests**

6.1.1 The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests.

6.1.2 So, where a member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which he/she would be required to disclose) at a meeting or on the register of members' interests would lead to the member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest".

6.1.3 If the Monitoring Officer agrees, the member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the register of members' interests.

## **7. Dispensations**

7.1.1 The provisions on dispensations are significantly changed by the Localism Act.

7.1.2 At present, a member who has a prejudicial interest may apply to Standards Committee for a dispensation on two grounds:

- (i) That at least half of the members of a decision-making body have prejudicial interests (this ground is of little use as it is normally only at the meeting that it is realised how many members have prejudicial interests in the matter, by which time it is too late to convene a meeting of Standards Committee); and
- (ii) That so many members of one political party have prejudicial interests in the matter that it will upset the result of the vote on the matter (this ground would require that the members concerned were entirely predetermined, in which case the grant of a dispensation to allow them to vote would be inappropriate).

7.1.3 In future, a dispensation will be able to be granted on written request to the Proper Officer, in the following circumstances –

- (i) That so many members of the decision-making body have DPIs in a matter that it would "impede the transaction of the business". In practice this means that the decision-making body would be inquorate as a result;

- (ii) That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. This assumes that members are predetermined to vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate;
- (iii) That the authority considers that the dispensation is in the interests of persons living in the authority's area;
- (iv) That, without a dispensation, no member of the Cabinet would be able to participate on this matter (so, the assumption is that, where the Cabinet would be inquorate as a result, the matter can then be dealt with by an individual Cabinet Member. It will be necessary to make provision in the scheme of delegations from the Leader to cover this, admittedly unlikely, eventuality); or
- (v) That the authority considers that it is otherwise appropriate to grant a dispensation. This will inevitably be fact specific.

7.1.4 Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.

7.1.5 The next significant change is that, where the Local Government Act 2000 required that dispensations be granted by Standards Committee, the Localism Act gives discretion for this power to be delegated to the Standards Committee or a Sub-Committee, or to the Monitoring Officer. Grounds 7.1.3(i) and (iv) are pretty objective, so it may be appropriate to delegate dispensations on these grounds to the Monitoring Officer in consultation with the Independent Person and Chairman & Vice-Chairman of the Standards & Training Committee, with an appeal to the Standards & Training Committee, thus enabling dispensations to be granted "at the door of the meeting". Grounds 7.1.3 (ii), (iii) and (v) are rather more subjective and so it may be appropriate that the discretion to grant dispensations on these grounds remains with Standards & Training Committee, after consultation with the Independent Person. In cases of urgency e.g. where the next scheduled meeting of the Standards and Training Committee is not due to take place until after the meeting in respect of which a dispensation is sought, the power to grant dispensations on grounds (ii), (iii) and (v) could be delegated to the Monitoring Officer in consultation with the Independent Person and Chairman & Vice-Chairman of the Standards & Training Committee.

## **Recommendation 8**

### **That Council delegate the power to grant dispensations:**

- a. **on Grounds set out in Paragraphs 7.1.3 (i) and (iv) of this report to the Monitoring Officer in consultation with the Independent Person and Chairman and Vice-Chairman of the [joint] Standards & Training**

**Committee, with an appeal to [joint] Standards & Training Committee, and**

- b. on Grounds 7.1.3 (ii), (iii) and (v) to the [joint] Standards & Training Committee, after consultation with the Independent Person. In cases of urgency the power to grant dispensations on grounds (ii), (iii) and (v) shall be delegated to the Monitoring Officer in consultation with the Independent Person and Chairman & Vice-Chairman of the [joint] Standards & Training Committee**

## **8. Transitional Arrangements**

8.1.1 Regulations under the Localism Act will provide for:

- (a) transfer of Standards for England cases to local authorities following the abolition of Standards for England (estimated to be end of March 2012);
- (b) a transitional period for the determination of any outstanding complaints under the current Code of Conduct. The Government has stated that it will allow 2 months for such determination, but it is to be hoped that the final Regulations allow a little longer;
- (c) removal of the power of suspension from the start of the transitional period; and
- (d) removal of the right of appeal to the First Tier Tribunal from the start of the transitional period.

## **9. Financial and Value for Money Considerations**

9.1.1 In light of the proposal to retain a Standards Committee, there are likely to be no material financial considerations arising from this report.

## **10. Risk Assessment**

10.1 It is important that a robust system exists for promoting and maintaining high standards of conduct. The absence of such a framework will lower public confidence in the democratic process.

10.2 A key component in ensuring the success of the new arrangements will be the delivery of effective training, both at Borough and Town/ Parish level.

## 11. Equality Impact Assessment

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	The government has carried out an equality impact assessment of the changes contained in the Localism Act 2011, which has found that no unintended or disproportionate impact is likely.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

Background papers:

contact: Adrian Stanfield

Localism Act

Adrian Stanfield

Chief Solicitor & Monitoring Officer