

# TONBRIDGE & MALLING BOROUGH COUNCIL

## STANDARDS COMMITTEE

19 JUNE 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 At the previous meeting of this Committee on 5 March 2012 I reported on the changes to the system for regulation of standards of conduct for elected and co-opted councillors.
- 1.1.2 This report updates Members on developments since the previous meeting.
- 1.1.3 A supplementary report will be supplied to Members following the workshop with Town/ Parish Councils on 14 June.

##### **1.2 Composition of Standards Committee**

- 1.2.1 At the March meeting of the Committee, Members considered 2 possible options for the future composition of the Committee –
  - (a) A joint standards committee is established with all Town/ Parish Councils within the Borough, with 13 Borough Members and 3 voting Town/ Parish representatives; or
  - (b) A standards committee is established as a committee of the Borough Council, with 13 Borough Members and 3 co-opted (but non-voting) Town/ Parish representatives.

The preferred option of the Committee was (a) above. In the event that it is was not possible to secure the agreement of all Town and Parish Councils to the preferred option, the Committee resolved to confirm the Standards and Training Committee as the appropriate committee to discharge the responsibilities of the Borough Council for ethical standards in accordance with option (b).

- 1.2.2 I therefore wrote to the Clerks of all Town and Parish Councils within the Borough to advise them of the preferred option, and invite each Council to consider whether they were agreeable to the proposal to establish a joint standards committee.

1.2.3 At the time of preparing this report, I have received confirmation from 1 Parish Council (Plaxtol) that they would be agreeable to the establishment of a joint committee.

1.2.4 The supplementary report will update Members on any discussion of this proposal at the workshop.

### 1.3 Disclosable Pecuniary Interests

1.3.1 Section 30 of the Localism Act provides that a member or co-opted member of a local authority (and certain other authorities), on taking office, must notify the Monitoring Officer of any disclosable pecuniary interest which that person has at the time of notification.

1.3.2 Draft regulations have now been published to specify what constitutes a pecuniary interest, and the circumstances in which such an interest is disclosable. A list of the specified interests contained within the draft regulations is attached as **Annex 1**. These regulations have not yet been laid before Parliament, but it is intended that they shall come into force on 1 July 2012.

1.3.3 Members will note that the obligation to disclose a pecuniary interest applies not only to an interest of the member or co-opted member in question, but also to those of their spouse, civil partner or a person with whom they are living as husband/ wife, or as if they were civil partners *where the member is aware that the other person has the interest*. This marks a departure from the current obligation to register personal interests with the Monitoring Officer, which does not extend to persons other than the Member.

1.3.4 Provision must be made within the draft Code of Conduct (see further at 1.4 below) for the registration and disclosure of pecuniary interests.

### 1.4 Code of Conduct

1.4.1 I reported on 5 March that the current ten General Principles and Model Code of Conduct are to be repealed. There will no longer be a centrally determined model code; instead councils (both Borough and Parish) are free to decide whether they want to amend or replace their existing code of conduct.

1.4.2 The Act requires that the code is consistent with the following 7 principles,

- Selflessness
- Integrity
- Objectivity
- Accountability

- Openness
- Honesty
- Leadership

The Code must also include appropriate requirements for the registration and disclosure of pecuniary and other interests. The term 'other interests' is not defined in the Act, leaving authorities free to decide what interests they require to be disclosed in addition to the specified list of pecuniary interests. Similarly, the Act does not limit what may be included in an authority's code

- 1.4.3 Parish Councils may comply with the requirement to adopt a code by adopting that of their principal authority e.g. the District/ Borough Council for the area. Those that choose to do this may assume that the principal authority has complied with the requirements of the Localism Act set out at 1.4.2 above.
- 1.4.4 The Department for Communities and Local Government (DCLG) has produced an 'illustrative text' of what a code might look like. The Local Government Association has also produced a 'template' for authorities to consider when preparing their code. Both are attached as **Annex 2**.
- 1.4.5 Importantly, there are a number of 'dual-hatted' Members within the Borough, holding positions in authorities at other tiers of local government. It would therefore be of some considerable benefit if authorities across Kent were able to consider the adoption of a single code. In addition to facilitating consistency of approach, this would also provide certainty to Members at all levels as to their obligations in relation to standards.
- 1.4.6 Members of Kent Secretaries (which comprises the Chief Legal Officers/ Monitoring Officers from all Borough/ District Councils in Kent, plus those from Medway and Kent County Council) are in the process of developing a draft code for consideration by Members. A further meeting of the Kent Secretaries is due to take place on 12 June to discuss the draft code, and I expect to be in a position to circulate this for consideration by Members prior to the meeting of this Committee.

## **1.5 Arrangements for the investigation of complaints**

- 1.5.1 At the previous meeting of this Committee Members resolved that I prepare and submit to Council for approval 'arrangements' under which allegations may be investigated, and decisions on allegations can be made. The details of the proposed 'arrangements' are set out in the minutes of the previous meeting (minute ref ST 12/003).
- 1.5.2 Members will recall that the initial decision as to whether a complaint merits formal investigation will rest with the Monitoring Officer, in consultation with the Independent Person and Chairman and Vice-Chairmen of the [joint] Standards and Training Committee.

1.5.3 In order to provide some consistency as to how any such decision will be made, it is sensible to consider the adoption of criteria for the initial assessment of complaints. Model criteria are being developed by the Kent Secretaries alongside the draft code, and I will circulate these for consideration by Members as soon as they are in final form.

## **1.6 Independent Persons**

1.6.1 Members will recall from my previous report that the new 'arrangements' to be adopted by the Borough Council must include provision for the appointment of at least one independent person.

1.6.2 Unfortunately, the Localism Act prevents both our existing independent members (David Ashton and John Gledhill) from being appointed as independent persons under the new regime, as the Act provides that a person shall not be considered as 'independent' if he/ she is, or has been within the last 5 years, an elected or co-opted member of the Borough Council.

1.6.3 In order that the skills and experience of our existing independent members could be retained, the Committee resolved to invite both Mr Ashton and Mr Gledhill to serve as co-opted Members of the new [joint] Standards and Training Committee.

1.6.4 Since the previous meeting of the Committee, the DCLG has published draft transitional provisions which propose to allow authorities to appoint a person as an independent person if that person is not a member or co-opted member of a standards committee of the authority on 1 July 2012 but has held such a post within the last 5 years. The transitional provision will only apply to such appointments made before 1 July 2013.

1.6.5 Subject to confirmation of the transitional provisions, the Borough Council could now appoint both Mr Ashton and Mr Gledhill as independent persons (subject to both resigning from their current positions on the Standards Committee prior to 1 July 2012).

1.6.6 The appointment of the independent person(s) is subject to certain statutory requirements, so it is necessary to advertise the vacancy and invite the submission of applications from persons wishing to be appointed.

1.6.7 Any appointment of an independent person must be approved by a majority of the members of the Council. It is therefore proposed to submit a report on this matter to the meeting of Council on 10 July 2012.

## **1.7 Timetable for implementation of new regime**

1.7.1 It is intended that a number of elements of the new regime will shortly come into effect. At the time of preparing this report the proposed commencement order has not been made by the Secretary of State (although a draft has been published),

but it is expected that this will have taken place prior to the meeting of the Committee. The order will allow relevant authorities to -

- (a) Adopt a Code of Conduct (to take effect on or after 1 July 2012)
- (b) Make arrangements under which allegations may be investigated on or after 1 July 2012
- (c) Prepare a register of interests (to take effect on or after 1 July 2012)

1.7.2 It is expected that the vast majority of other provisions relating to the new regime will come into effect on 1 July 2012.

## 1.8 Financial and Value for Money Considerations

1.8.1 None arising from this report.

## 1.9 Risk Assessment

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

## 1.10 Equality Impact Assessment

1.10.1 See 'Screening for equality impacts' table at end of report.

<b>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
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>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
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:

Localism Act 2011

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