

# TONBRIDGE & MALLING BOROUGH COUNCIL

## STANDARDS COMMITTEE

26 JUNE 2012

### Report of the Chief Solicitor & Monitoring Officer

#### Part 1- Public

#### Matters for recommendation to Council

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

##### **1.1 Introduction**

1.1.1 This report updates Members on a number of issues identified in my previous report to the Committee, originally scheduled to take place on 19 June.

##### **1.2 Workshop with Parish Councils**

1.2.1 The workshop took place on 14 June 2012, and was attended by representatives from 14 Parish Councils, together with a number of Borough Members.

1.2.2 A number of key elements of the new regime were discussed with the representatives present. These discussions are summarised below.

1.2.3 In relation to the Code of Conduct, the National Association of Local Councils (NALC) has prepared a template code for parish councils. The covering letter to the code states that the reasons for its production are twofold – firstly, NALC does not recommend that parish councils adopt the LGA template code of conduct; secondly parish councils may not want to draft or adopt their principal authority's code. It was said at the workshop that 94% of parish councils in Kent were members of NALC (and within Tonbridge and Malling, all but one of the parish councils were members of the Kent Association of Local Councils), and therefore a high proportion of these were likely to adopt the NALC template.

1.2.4 Discussion took place over the preferred option to create a joint standards committee. In particular, the parish representatives present were invited to put forward their views on the proposed composition of the joint committee and the hearing panels.

1.2.5 A number of the representatives present expressed the view that the committee and its hearing panels should be more balanced than currently proposed i.e. they

should contain a greater number of parish councillors, particularly where they are dealing with a complaint against a parish councillor. One suggestion put forward was that there should be 5 voting parish representatives on hearing panels considering complaints against a parish councillor, together with 4 borough members and the Independent Person. No proposals were advanced to change the proposed composition of the Hearing Panel when considering complaints against Borough members.

- 1.2.6 Those present at the workshop were advised of the new requirements relating to the registration of disclosable pecuniary interests. I shall shortly be writing to all clerks to explain the new registration requirements in further detail, so that steps can be taken to ensure that all members are able to comply with their obligations as soon as possible.

### **1.3 Disclosable Pecuniary Interests**

- 1.3.1 In paragraph 1.3.2 of my earlier report I indicated that draft regulations had been published to specify what constitutes a disclosable pecuniary interest (DPI) for the purposes of the Localism Act. These regulations have now been laid before Parliament and will come into force on 1 July 2012.

- 1.3.2 The regulations as laid before Parliament differ only slightly from those in draft form, and no changes have been made to the description of interests that are required to be disclosed.

### **1.4 Code of Conduct**

- 1.4.1 A model code of conduct has now been finalised by the Kent Secretaries (attached at **Annex 1**). It only applies to conduct when acting as a member. There is no possibility of application of the Code to a member's private life. In terms of statutory requirements, the Code has to comply with the 7 principles mentioned at paragraph 1.4.2 of my earlier report and must secure the provision the authority considers appropriate in respect of the registration in its register and disclosure of (a) Pecuniary Interests and (b) interests other than pecuniary interests.
- 1.4.2 The approach taken by the Kent Model Code is only to require the registration of DPIs as prescribed under the Localism Act. However, it was recognised that in view of the categories of persons by reference to which DPIs arise this would not address the issue of disclosure to meetings of interests relating to those of wider family and friends. By way of example only, if the Code did not expand on the disclosure requirements there would be nothing to require a member to disclose to a meeting and withdraw from the consideration of his brother in law's planning application or interest in a contract. In the preparation of the Kent Model it was felt that both members and the wider public would consider it necessary, in the interests of good governance, to address such issues. The overall effect of this is to require members to disclose to meetings the nature of interests and to withdraw

in much the same circumstances as maintained in the case of personal and prejudicial interests under the current regime. Personal interests as we have known them have disappeared. Therefore, if a member needs to declare an interest in accordance with the requirements of the new code they will, in nearly all circumstances be required to leave the meeting. For legal reasons this needs to be reinforced by a standing order requiring a member to declare and withdraw.

- 1.4.3 In many respects the categorisation of the DPIs follows the existing regime for registerable interests for members although it is now extended to their spouses, civil partners etc. However, one important change is that whereas under the current arrangements a member would not have a personal and prejudicial interest in an item relating to local authority housing if he were to be a council tenant, this is no longer the case. The tenancy would be a registerable DPI and, absent a dispensation, would require the member to declare the interest and withdraw from the consideration of the item.
- 1.4.4 Provisions in the Code will require all members to notify the Monitoring Officer of all DPIs within 28 days of the Code coming into effect. These provisions have been included because, under the Localism Act itself, members would not be required to register DPIs until re-elected unless a matter came before a meeting which concerned a DPI. In such a case, the member would be required to declare the interest at the meeting and notify the Monitoring Officer within 28 days so as to enable registration of the specific DPI. The Association of Kent Secretaries carefully considered this matter and took the view that this would be unworkable and confusing both to members and to the wider public.
- 1.4.5 Members are reminded that there are criminal sanctions for failure to declare and notify DPIs. Additionally, members' attention is drawn to the attached arrangements at **Annex 2** which consider the relationship between an allegation of a criminal matter and a breach of the Code and how this would be dealt with in practice.
- 1.4.6 The general obligations in the Model Code will be familiar to members as they are not dissimilar from under the existing Code. The notable exception is the non-inclusion of a provision relating to respect. This is because the statutory underpinning for this is regarded as weak but, perhaps more significantly, because experience has shown that this provision has generated some of the more trivial and time consuming complaints under the current code. The Association of Kent Secretaries believes that the retention of the bullying provision and the disrepute provision adequately addresses the cases which should properly be investigated.
- 1.4.7 The Localism Act 2011 contains no requirement for the establishment of a Standards Committee. Notwithstanding this, Members will note that the Kent Model Arrangements do call for the establishment of such a committee as, without it, it is difficult to see how the results of investigations into allegations could be considered in a way which would be seen to be fair and transparent. However,

unlike the Standards Committee as presently known, (which owed its existence and derived its rules of procedure from specific statutory provision contained in the Local Government Act 2000), the new Standards & Training Committee will be an ordinary local authority committee established under the Local Government Act 1972. The Localism Act requires the Code of conduct to be adopted by the full council. It is also a requirement that the Independent person is appointed by the full council. These two functions excepted, it is proposed that the Standards & Training Committee will discharge all functions associated with the new standards regime which have not been delegated to the Monitoring Officer (or ascribed to him by statute) once they have initially been established by Council. **Annex 3** sets out the proposed terms of reference/Delegations to the Standards & Training Committee.

- 1.4.8 In order to consider reports into any allegations which are investigated, the Kent Model Arrangements envisage that the Standards & Training Committee will need to establish sub-committees (in the nature of hearing panels) from amongst its membership. This is consistent with the proposed approach of Tonbridge and Malling towards the determination of complaints (as agreed at the previous meeting of this Committee on 5 March 2012), and amendments have been made to the model arrangements to reflect the agreed approach of the Borough Council.
- 1.4.9 The arrangements before the Council at **Annex 2** represent what is advanced draft of the Kent Model being developed by the Association of Kent Secretaries. At the time of this report going to print they have not been quite finalised due to the limited time available following publication of the regulations. I expect to be able to update you on any changes in the final version at the committee meeting. It is not envisaged that any further changes will be significant and Members are therefore asked to approve the current version whilst delegating to the Monitoring Officer the power to make changes to ensure consistency with the final version of the Kent Model Arrangements. The length of the Model Arrangements arises from the necessity to encapsulate within them material which was previously contained in statutory regulations and guidance. Nevertheless, the Association of Kent Secretaries have attempted to develop arrangements which are succinct and proportionate to what the new standards regime requires.

## 1.5. Identification and evaluation of options

- 1.5.1 The following options arise from the production of the Kent Model Code -
- (a) To accept the recommendations and in particular to adopt the Kent Model Code and associated arrangements
  - (b) To reject the Kent Model Code and the arrangements
  - (c) To amend the Kent Model Code and arrangements

- (d) To adopt a code and arrangements which are completely different from the Kent Model but which meet the statutory requirements.
- 1.5.2 For the reasons set out in this report the adoption of the Kent Model Code and arrangements is the recommended option. Members will appreciate that there is very little time left for the necessary consideration of alternatives to the Code and Arrangements presented for adoption. Members can be reassured that provisions to amend these documents are available and that the Association of Kent Secretaries as a group are committed to sharing experience and to keeping documents under review.
- 1.5.3 A Code and Arrangements must be adopted as soon as possible as the new provisions come into effect on 1 July 2012. Our existing code will consequently cease to exist on this date. The permutations of possible amendments within the statutory framework are potentially wide and varied. Practically speaking, there is insufficient time for the Council to prepare, evaluate and consider alternatives to the Kent model and arrangements. However, I have carefully considered the alternative models available and strongly commend the Kent Model and Arrangements to the Committee.
- 1.5.4 Outright rejection of the recommendations is not an option given the requirement to have a Code of Conduct and Arrangements in place with effect from 1 July 2012.
- 1.5.5 The intention is to gain experience and within a year for the association to review the operation of the Kent Code and arrangements and, if necessary, make recommendations for change. However, it is recognised that experience may demonstrate that more urgent review of the provisions of the code or the arrangements may be necessary on a local basis in which case I will report to the Council or Standards committee as appropriate

## **1.6 Standards Committee**

- 1.6.1 Members will note from paragraph 1.2 of this report that the future composition of the Standards Committee was the subject of some discussion with the parishes at the workshop. Members are invited to consider the representations made by the parish representatives with a view to determining whether any changes should be made to the proposed arrangements.
- 1.6.2 To date only 2 Parish Councils have confirmed in writing their agreement to the establishment of a joint Standards Committee as proposed by the Committee on 5 March 2012 i.e. with 13 Borough members and 3 voting Town/ Parish representatives. On a practical level, there is insufficient time for the Borough Council to consider the feedback from the workshop and consult/ agree arrangements for a joint committee with the Town & Parish Councils within the Borough prior to the meeting of full Council on 10 July.

- 1.6.3 Pending any final decision on the composition of the proposed joint committee, and in light of the imminent implementation of the new provisions, it is critical to ensure that the functions of the Council relating to ethical standards are exercisable once the new regime comes into effect. Otherwise, the Council would be unable to discharge a number of its responsibilities under the Act e.g. it would be unable to act in the event that any complaints were made to it regarding the conduct of members. Whilst the discussions with the parish representatives at the workshop provide a positive platform for further consideration, the timing of the Commencement Order leaves insufficient time to conclude these discussions prior to implementation of the new regime.
- 1.6.4 It is therefore proposed that, as an interim measure, the Standards & Training Committee be confirmed as the appropriate Committee to discharge the responsibilities of the Borough Council for ethical standards under the Localism Act 2011. This will be revisited as soon as possible in light of any progress with discussions as to the creation of a joint committee.
- 1.6.5 The composition of the Standards & Training Committee as originally proposed was 13 Borough members, together with 3 Town/ Parish Council representatives (to be drawn from a pool of nominated representatives). As an interim measure, and in light of the views expressed at the workshop, Members may wish to consider whether they wish to increase the number of parish representatives on the Committee. It may be appropriate, for example, to increase the number of co-opted representatives to 5.
- 1.6.6 Given the imperative to establish a Committee to discharge the statutory duties of the Borough Council, it is not proposed at this time to seek a new pool of parish representatives. The existing pool was approved by this Committee on 18 October 2011 and contains 12 representatives. This can of course be revisited in due course once we have some agreement as to the future composition of the Committee.
- 1.6.7 Similarly, it is also necessary to confirm the interim arrangements for the establishment of a Hearing Panel. At the previous meeting of this Committee on 5 March it was recommended that a Hearing Panel be established as a Sub-Committee of the Standards and Training Committee. As originally proposed, the Panel would comprise 5 Borough members of the Standards and Training Committee, to be drawn from 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 Town or Parish representative, to be drawn from the Town/ Parish representatives on the Standards and Training Committee.
- 1.6.8 As with the Standards Committee, Members may wish to consider whether the composition of the Hearings Panel should remain as proposed. In light of the discussions at the workshop, Members may wish to consider increasing the number of Town/ Parish representatives on the Panel to 4. For consistency, it

may also be appropriate to apply this to all Panel Hearings i.e. not just those where the complaint relates to a Town or Parish Councillor.

- 1.6.9 The positions of Chairman and Vice-Chairmen on the Standards and Training Committee, and on the Hearings Panel, would need to be undertaken by Borough members, as co-opted members are legally unable to fulfil this role.

## **1.7 Independent Persons**

- 1.7.1 In my earlier report I indicated that draft transitional provisions had been published which proposed to allow authorities to appoint existing independent members as 'independent persons' for the purposes of the Localism Act 2011. These provisions have now been confirmed.

- 1.7.2 The necessary advertisement has been placed for the appointment of 2 independent persons (as agreed by this Committee on 5 March 2012), with a closing date of 28 June 2012. It is intended to report to Council on 10 July on the outcome of the recruitment process.

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

- 1.8.1 The proposed timetable for implementation of the new provisions set out at paragraph 1.7 of my earlier report has now been confirmed. In practical terms, this means that the new ethical standards regime set out in the Localism Act 2011 will come fully into effect on 1 July 2012.

## **1.9 Financial and Value for Money Considerations**

- 1.9.1 It is too early to assess the overall resource implication of the introduction of the new standards regime on the Council. On the one hand it can be anticipated that the new registration of interest requirements will create additional administrative work for the Monitoring Officer and his office support, particularly in its initial stages. However, other changes to the Code and a streamline procedure for the assessment of allegations in their initial stages should reduce the need for meetings of the Standards & Training Committee and any hearing panels.

## **1.10 Risk Assessment**

- 1.10.1 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.

## **1.11 Equality Impact Assessment**

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

## 1.12 Recommendations

### 1.12.1 The Committee is REQUESTED to RECOMMEND to Council that

1. The Council adopt the Kent Model Code of Conduct as set out at **Annex 1** which deals with the conduct expected of members and co-opted members of this authority when they are acting in that capacity. The Code to be effective from 10 July 2012.
2. The Council commends the Kent Model Code of Conduct to the town and parish councils within the borough.
3. The requirements of the Localism Act for members to notify the Monitoring Officer of any disclosable pecuniary interests ("DPIs") and of the duty Monitoring Officer to establish and maintain a register of members' interests are noted.
4. The Arrangements contained within **Annex 2** under which allegations of non-compliance with the Code can be investigated and under which decisions can be made, are approved. The arrangements shall be effective from 10 July 2012.
5. 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 be composed of 13 elected members of the Borough Council whose appointment shall be governed by political proportionality.
6. 5 representatives of the Town & Parish Councils within the Borough shall be co-opted as non-voting members of the Standards and Training Committee. The 5 representatives shall be drawn on a rotational basis from the pool of existing Town and Parish representatives on the Standards Committee.
7. A Hearing Panel shall be established as a Sub-Committee of the Standards and Training Committee. The Panel shall comprise 5 Borough members of the Standards and Training Committee together with 4 co-opted representatives from the Town and Parish Councils, to be drawn from the members of the Standards and Training Committee on a pool basis.
8. The Monitoring Officer be authorised to make amendments to the Code & Arrangements at **Annexes 1 & 2** to reflect the Model arrangements intended to be adopted across the county of Kent.
9. The Terms of Reference/Delegations to the Standards & Training Committee and Hearing Panels as set out in **Annex 3** be approved.
10. The Scheme of Delegations to Officers with regard to Council functions be amended so as to confer on the Monitoring Officer the delegation of functions set out in **Annex 4**.



11. The Procedure Rule set out in **Annex 5** be adopted with effect from 10 July 2012.
12. The Monitoring Officer be requested to keep the Code and Arrangements under review and to report further to the Council or Standards & Training Committee as he considers necessary and following further dialogue with Parish Councils.

<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. 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:

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Localism Act 2011

Adrian Stanfield

Chief Solicitor & Monitoring Officer