

# TONBRIDGE & MALLING BOROUGH COUNCIL

## STANDARDS AND TRAINING COMMITTEE

12 JUNE 2013

### Report of the Director of Central Services & Monitoring Officer

#### Part 1- Public

#### Matters for recommendation to Council

#### **1 CREATION OF A JOINT STANDARDS COMMITTEE**

##### **1.1 Introduction**

- 1.1.1 At a previous meeting of this Committee on 26 June 2012, and after detailed discussion with Town/ Parish Council representatives, Members recommended to Council that the Monitoring Officer be requested to write to all Town and Parish Councils in the Borough to invite them to indicate whether their Council would be agreeable to the creation of a Joint Standards Committee. The recommendation was agreed by Council on 10 July 2012.
- 1.1.2 It was proposed that the Joint Committee would be comprised of 13 Borough Councillors, 6 Town/ Parish representatives (to be appointed on a rotational basis from a pool of Town/ Parish representatives) and the Independent Persons.
- 1.1.3 Where there is a complaint made against a Parish Councillor, it was proposed that the Hearing Panels be made up of 3 Borough Councillors, 3 Town/ Parish representatives drawn from the pool and an Independent Person. Where practicable, the members of the Hearing Panel would be drawn from a different planning area of the Borough than the member against whom the complaint had been made.
- 1.1.4 This report updates Members on the responses received and recommends that the Joint Standards Committee be established.

##### **1.2 Responses from Town/ Parish Councils**

- 1.2.1 Responses have now been received from all Town/ Parish Councils within the Borough. All 27 have confirmed their agreement to the proposal to create a Joint Standards Committee. I would like to record my thanks to Mr Harry Rayner of the Kent Association of Local Councils for his assistance in this regard.

### 1.3 Terms of reference for joint committee

1.3.1 The existing terms of reference for the Standards and Training Committee are set out at **Annex 1**. Whilst the majority of these are equally appropriate for the proposed joint committee, it is considered that a small number should not form part of the terms of reference. Specifically:-

- (1) Each relevant authority (which includes Borough and Town/ Parish Councils) is required to adopt a code dealing with the conduct that is expected of members/ co-opted members of the authority when they are acting in that capacity. In practice, 2 different codes have been adopted throughout the Borough; a number of parishes have followed the lead of the Borough Council and adopted the Kent Model Code, others have adopted the Code prepared by the National Association of Local Councils.

The adoption or revision of the Borough Council Code of Conduct should quite properly remain within the sole remit of the Borough Council; likewise each Town/ Parish Council should be solely responsible for the adoption or revision of their own Code. It is therefore suggested that paragraph 3 (advising the Borough Council on the adoption of or revisions to its Code of Conduct) and the first part of paragraph 6 (i.e. monitoring and assessing the operation and effectiveness of the Code of Conduct) be removed from the terms of reference for the joint committee.

- (2) Paragraph 7 of the existing terms of reference deal with local ethical governance protocols and procedures. Members will be aware that Part 5 of the Constitution contains a number of additional protocols on matters such as attendance at training, use of council resources, member/ officer relations together with Codes of Good Practice for Planning and Licensing. As with the Code of Conduct, these Codes/ Protocols should quite properly remain within the sole remit of the Borough Council and it is therefore recommended that paragraph 7 be removed.
- (3) Paragraph 14 of the existing terms of reference deals with dispensations for Borough Council Members. It would clearly be inappropriate for this to be within the terms of reference for a joint committee, and it is recommended that this paragraph be removed.

1.3.2 With those exceptions, it is recommended that the existing terms of reference be adopted for the joint committee. An amended version is attached at **Annex 2**. It is proposed that paragraphs 3, 7, 14 and the first part of paragraph 6 of the existing terms of reference are incorporated within the terms of reference for the General Purposes Committee.

1.3.3 The training function exercised by the existing Standards and Training Committee remains important in identifying and delivering appropriate training for Members of the Borough Council. Over the course of the past two years this function has

worked effectively through close liaison between the Chairman, the Leader and the Personnel and Development Manager. A report on progress made in this regard appears elsewhere in the Agenda. It is therefore proposed that this approach should continue, with authority delegated to the Chairman of the Joint Standards Committee, in liaison with the Leader and the Personnel & Development Manager, to oversee arrangements for the training of Borough Council Members and co-opted Members. In order to appraise Members of progress, it is proposed that an annual report be submitted by the Chairman to the General Purposes Committee.

#### **1.4 Composition of Hearing Panels**

- 1.4.1 Following discussion with the Town/ Parish Councils, it was agreed at a previous meeting of this Committee that Hearing Panels considering complaints made against Parish Councillors should be comprised of 3 Borough Councillors, 3 Town/ Parish representatives and an Independent Person (who will be in attendance in fulfilment of their statutory role under the Localism Act 2011).
- 1.4.2 In respect of complaints made against Borough Councillors, it is proposed that the number of members of the Panel should remain at 6, but with the split between Borough and Town/ Parish members being 5:1.

#### **1.5 Independent Persons**

- 1.5.1 Members will recall that Mr David Ashton and Mr John Gledhill were appointed as 'Independent Persons' under the Localism Act, for a term expiring on 30 June 2017.
- 1.5.2 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;
  - (ii) They may be consulted by the authority in respect of a standards complaint at any other stage;
  - (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.
- 1.5.3 The assistance provided by both Mr Ashton and Mr Gledhill continues to be invaluable. Both have provided great assistance to me in the initial assessment of a number of complaints made since the introduction of the new standards regime, which are reported elsewhere in the agenda.
- 1.5.4 It is possible to co-opt both Mr Ashton and Mr Gledhill as members of the joint standards committee, although they will not be entitled to vote as this would

disqualify them from being 'independent persons' for the purposes of the Localism Act 2011. This statutory restriction on voting is most unfortunate, however a non-voting co-option would allow the Committee to continue to benefit from the input of Mr Ashton and Mr Gledhill on ethical issues affecting members across the Borough.

## **1.6 Legal Implications**

- 1.6.1 The Borough Council is required under s28(6) of the Localism Act to have in place arrangements under which allegations can be investigated and decisions on allegations can be made. Whilst no equivalent duty exists for Parish Councils, the Borough Council may establish a Joint Standards Committee as part of its 'arrangements' under s28(6).
- 1.6.2 A general power for local authorities to discharge their functions through a joint committee is provided under sections 101 & 102 of the Local Government Act 1972.
- 1.6.3 In entering into a joint committee, the Town/ Parish Councils are not adopting the 'arrangements' of the Borough Council, but simply agreeing to participate in a joint committee, the functions of which are calculated to facilitate, or be conducive or incidental to, the discharge of their functions under the Localism Act 2011 (s111 of the Local Government Act 1972).

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

- 1.7.1 The introduction of the new standards regime has not given rise to any additional resource implications. It is not considered that the creation of a joint committee will create any additional administrative work.

## **1.8 Risk Assessment**

- 1.8.1 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. It is considered that the creation of a joint committee represents an effective way of maintaining high standards of conduct throughout the Borough.

## **1.9 Equality Impact Assessment**

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

## **1.10 Recommendations**

- 1.10.1 The Committee is requested to **RECOMMEND** to Council that

- (1) A Joint Standards Committee is established with all Town and Parish Councils within the Borough;

- (2) The Joint Standards Committee shall comprise 13 Borough Councillors plus 6 Parish representatives (to be appointed on a rotational basis drawn from a pool of Parish/ Town representatives). The Parish/ Town representatives shall be nominated by the Parish Partnership Panel on an annual basis;
- (3) The Chairman and Vice –Chairman of the Joint Standards Committee shall be appointed by the Borough Council on an annual basis;
- (4) Mr David Ashton and Mr John Gledhill are co-opted as non voting members of the Joint Standards Committee for a period coincident with their term as independent persons;
- (5) Hearing Panels of the Joint Standards Committee are established as follows –
  - (a) Where there is a complaint against a Borough Councillor, the Panel shall be comprised of 5 Borough Councillors plus 1 Parish/ Town Member.
  - (b) Where there is a complaint against a Town/ Parish Councillor, the Panel is comprised of 3 Borough Councillors plus 3 Parish/ Town Members.

An Independent Person must also be present at each Hearing Panel in order that the Panel are able to consult with them (and take their views 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.

Where practicable, members of the Hearing Panel shall be drawn from a different planning area of the Borough than the member against whom the complaint has been made.
- (6) The terms of reference as set out at **Annex 2** be approved.
- (7) Authority be delegated to the Chairman of the Joint Standards Committee, in liaison with the Leader and the Personnel & Development Manager, to oversee arrangements for the training of Borough Council Members and co-opted Members.
- (8) An annual report be submitted to the General Purposes Committee on the training programme for Borough Council Members.
- (9) The following be incorporated within the terms of reference for the General Purposes Committee.
  - (a) To advise the Borough Council on the adoption of or revisions to its Code of Conduct.

- (b) To monitor and assess the operation and effectiveness of the Code of Conduct.
- (c) To advise on local ethical governance protocols and procedures
- (d) To grant dispensations pursuant to section 33(2) of the Localism Act 2011 and paragraph 8 of the adopted code of conduct where:
  - (i) 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.
  - (ii) that the Committee considers that the dispensation is in the interests of persons living in its area; or
  - (iii) where the Committee considers that it is otherwise appropriate to grant a dispensation.

<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	
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

None

Adrian Stanfield

Director of Central Services & Monitoring Officer