

## ANNEX 1 – PROPOSED RESPONSES

- a. **Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.**

*Save for the significant issue of sanctions (see response to f. below), the existing processes generally work well. Our experience has been that the vast majority of councillors wish to achieve high standards of conduct in the discharge of their democratic duties and will therefore have very little (if any) interaction with the standards process over and above the registration and declaration of interests. The ability to filter out groundless complaints at an early stage works well, but the existing processes are however weakened by the absence of meaningful sanctions for those found to be in breach of their Code(s).*

- b. **What, if any, are the most significant gaps in the current ethical standards regime for local government?**

*The absence of meaningful sanctions is a fundamental weakness of the existing arrangements. Please see response to f. below.*

### **Codes of conduct**

- c. **Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?**

*Broadly speaking, we believe that Councillors understand the requirements of the Code(s) applicable to them. However, we would wish to make the following points:-*

- *There is a potential difficulty for dual/ twin hatted Members, who may be subject to 2 or 3 different Codes and may therefore inadvertently breach one of those Codes by confusing the requirements applicable to them. The removal of the single national code has led to inconsistencies between codes, which is not ultimately helpful to Members, nor to members of the public.*
- *The wording of the statutory provisions relating to Disclosable Pecuniary Interests (DPIs) could be improved so as to clarify when a Councillor will have a DPI 'in' a matter being voted on or discussed at a meeting.*

*We are one of the few local authority areas in the Country that operate a Joint Standards Committee between the Borough Council and all 27 Parish/ Town Councils within the administrative area. We believe this is an example of good practice that facilitates the promotion of high standards of conduct.*

- d. **A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for**

**registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.**

*Yes. The requirements allow sufficient flexibility for local authorities to decide what matters should be addressed within their adopted Code.*

### ***Investigations and decisions on allegations***

**e. Are allegations of councillor misconduct investigated and decided fairly and with due process?**

**i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?**

*The Borough Council has adopted detailed arrangements for handling standards complaints. It is considered that these processes operate well. In particular, the arrangements allow for complaints to be dealt with more quickly than before, particularly in relation to the initial assessment process.*

*Under the existing standards arrangements i.e. those adopted under the Localism Act 2011, the Borough Council has received 29 complaints. Of these:-*

*18 have resulted in no further action;  
7 have been assessed as suitable for informal resolution (in 2 cases the Subject Members rejected the proposed informal resolution ie. Training);  
1 was investigated with no breach found; and  
3 were considered by a Hearing Panel*

*19 of the complaints were made against Parish Councillors, 7 against Borough Councillors and 3 against dual-hatted Members in both their Borough & Parish capacities.*

**ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?**

*The role of the Independent Person(s) (IP) is an important element of the current process, although there is potential for some Members and the public to misunderstand the role. The input of the IP is important throughout the process of dealing with a complaint against a Member, not just when the complaint is considered by a Panel following an investigation. In our adopted arrangements, the IP is consulted by the Monitoring Officer (MO) as part of the initial assessment process, and again when an investigation report is*

*considered by the MO with a view to determining whether a Hearing Panel should be convened. Whilst the 2011 Act provides a discretionary power to Local Authorities to seek the views of the IP in circumstances other than as set out above, the integrity of the process could be improved by strengthening the mandatory grounds for consulting the IP.*

*There is potential for a conflict to arise for the IP, should they be consulted by a Member against whom a complaint has been made. Having given their views to that Member, or alternatively be lobbied by that Member, the IP may then feel conflicted in giving their views to a Hearing Panel as required by S28(7)(a) of the Localism Act 2011. We have found that the only way to address this is to (a) appoint 2 IPs and (b) allocate 1 IP to discharge the duties in s28(7)(a) of the 2011 Act and the other to discharge (if required) those duties set out in s28(7)(b) of the 2011 Act.*

- iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?**

*There are undoubted pressures upon MOs in handling complaints against Councillors at their own authority. These pressures exist irrespective of whether the MO handles the investigation against a Member, but will be increased when an allegation proceeds to investigation. The absence of meaningful sanctions has only increased the likelihood of MO being placed under pressure, or facing unwarranted criticism from Members during an investigation (see response to f. below).*

## **Sanctions**

- f. Are existing sanctions for councillor misconduct sufficient?**

*No. The absence of meaningful sanctions is a fundamental weakness of the existing arrangements.*

*Whilst a Councillor who fails to meet the statutory obligations relating to DPIs may be subject to criminal proceedings, very few prosecutions have actually resulted.*

*In respect of other misconduct by Councillor, the removal of the powers previously open to local authorities to suspend a Councillor and the broader sanctions open to Standards for England has removed the teeth of the standards regime, particularly in relation to repeat offenders. This undermines public confidence in the standards regime, particularly in the eyes of complainants who may be left with the belief that a Councillor found guilty of a breach has 'got away with it'.*

**What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?**

*The Borough Council has set out a range of possible sanctions within its adopted arrangements. The sanctions open to a Hearing Panel include*

- *issuing a formal censure;*
- *training;*
- *Recommending to the Subject Member's Group Leader or Parish Council, or in the case of a ungrouped Subject Member, to the Borough/ Parish Council that they be removed from committees or sub-committees of the Council*
- *Sending a formal letter to the Subject Member;*
- *Recommending to the Borough/ Parish Council to issue a press release or other form of publicity*
- *Publishing its findings in respect of the Subject Member's conduct in such manner as the Panel considers appropriate*

*It is not considered that these are sufficient to deter breaches or to enforce compliance. In respect of the latter, the only means of dealing with non-compliance with a positive obligation on a Councillor e.g. to undergo training, is by way of a further complaint under the Code. Given the available sanctions, the threat of a further complaint is unlikely to deter errant Councillors in these circumstances.*

*Furthermore, in so far as complaints about Parish Councillors are concerned, there is no requirement for Parish Councils to accept any recommendations made to them by the Borough Council Hearing Panel on sanctions to be imposed upon one of their Members who has been found to be in breach of the Code. This can weaken public confidence in the system, particularly in situations where the offending Member has substantial influence at Parish level.*

**Should local authorities be given the ability to use additional sanctions? If so, what should these be?**

*Yes. The removal of the power previously open to local authorities to suspend a Councillor has removed the teeth of the Borough Council to address the worst cases of poor conduct. It is suggested that this power is re-imposed.*

#### ***Declaring interests and conflicts of interest***

- g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.**

*The existing arrangements to declare interests are satisfactory.*

**A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes**

**that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?**

*In so far as they relate to financial interests, the statutory duties applicable to DPIs are appropriate. However, the requirement for Councillors to disclose interests of their spouse or partner has caused some concern, particularly at Parish level.*

**What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.**

*The Borough Council has adopted a second category of interest, known as an Other Significant Interest (OSI) to deal with non-financial interests. This second category has also been adopted by many other districts and parishes within Kent.*

*OSIs are similar in many respects to the previous 'prejudicial' interest applicable under the national code, and are therefore familiar to many Councillors. The operation of the OSI category has not caused any issues.*

### ***Whistleblowing***

- h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?**

*The Borough Council has an adopted policy on whistleblowing, which applies to the public, councillors and officers. It is not considered that any changes are required to these arrangements.*

### ***Improving standards***

- i. What steps could *local authorities* take to improve local government ethical standards?**

*The removal of the requirement to establish a formal Standards Committee has in our view weakened the status of the standards regime. It is suggested that local authorities should nevertheless establish such a Committee.*

- j. What steps could *central government* take to improve local government ethical standards?**

*As set out above, the most fundamental weakness of the existing regime is the absence of meaningful sanctions. It is considered that this should be addressed.*

### ***Intimidation of local councillors***

- k. What is the nature, scale, and extent of intimidation towards local councillors?**

**What measures could be put in place to prevent and address this intimidation?**

*We are not aware of any concerns being raised by local councillors in relation to intimidation.*