

MAIDSTONE BOROUGH COUNCIL
JOINT REPORT OF THE MONITORING OFFICER
AND CHAIRMAN OF STANDARDS COMMITTEE
STANDARDS COMMITTEE
30 NOVEMBER 2011

SELF REGULATION FOLLOWING ABOLITION OF THE STANDARDS REGIME

1. Introduction

1.1 On 25 August this Committee considered a report on the future of the Standards Regime and made the following recommendations to Council.

RESOLVED:

1. That following the abolition of Standards for England, the Model Code of Conduct and statutory Standards Committees:-
 - a) There should continue to be a Code of Conduct adopted by the Council to guide Members as to the standard of behaviour expected of them.
 - b) There should continue to be a Standards Committee comprising Borough, Parish and Independent Members to meet on an ad hoc basis as and when complaints are received or guidance sought from the Council on ethical issues.
 - c) The chairmanship of the new Standards Committee should be open to Borough, Parish and Independent Members, and not restricted to the Independent Members as at present.
 - d) Parish Councils should be offered a service in relation to any future standards regime, but the issue of payment be deferred for consideration at a later date.
2. That the Chairman of the Standards Committee and the Monitoring Officer be requested to report back to the Committee on 30 November 2011 (and subsequently to Council) with detailed proposals based on the above.

The Council agreed these recommendations at its meeting on the 21 September, following which we met members of the Standard Committee

on 26 October to discuss details. This report takes account of the views expressed at the meeting.

- 1.2 Since then, amendments have been made to the Localism Bill. We attach at Appendix A a note of those amendments prepared by the House of Commons Library (see pages 3, 8, 14, and particularly 20-21). The Bill received Royal Assent on 15 November. A copy of the relevant part is also attached at Appendix B.

All authorities (including Parish Councils) must now have a Code of Conduct and this must accord with the seven Nolan principles. However, there will no longer be a national mandatory code. The code must require Members to disclose pecuniary and non pecuniary interests (non registration/declaration of pecuniary interests will also be an offence).

All local authorities must have a system to deal with allegations that Members have breached the code, but there is no statutory requirement to have a Standards Committee. However, local authorities will have to appoint an independent person whose views must be sought before any decision following an investigation of a complaint is made. A person against whom a complaint is made may also seek the views of this independent person. This independent person is different to the independent members co-opted onto the Standards Committee at present. The independent person will not make a decision but will offer views which must be taken into account when decisions on complaints are made. The Council may still co-opt independent members onto Standards Committees, but these members may only vote if the Committee is advisory in nature.

- 1.3 Parish Councils must also have a Code of Conduct and may adopt the Code adopted by the Borough Council. However, they do not have to put in place arrangements under which allegations of misconduct can be investigated, but they may do so, either themselves or through another body (e.g. MBC).
- 1.4 The Council will in due course have to make arrangements for discharging the other functions currently carried out by the Standards Committee.
- 1.5 Given the degree of uncertainty as to what will be stipulated in regulations made pursuant to the Act we believe the Committee should establish certain principles now, with details to be agreed at a subsequent Standards Committee, which can then be endorsed by Council, once we know the implications of such regulations and transitional arrangements. It is not yet known when the part of the Act covering Standards will come to force.

2. Consideration

2.1 Code of Conduct

It may be that a new model code will be issued by, for example, the Local Government Association, but at present this has not happened. We

believe that as the current code (attached at Appendix C) is well established it should form the basis of any new code to be adopted by the Council. Members are requested to give us a view on whether any requirements of the existing code should be deleted/amended (e.g. the requirement that certain gifts/hospitality are deemed to be personal interest for three years following receipt, which should be declared whenever business relating to the donor is being considered).

2.2 Standards Committee

The Council has decided that there should continue to be a Standards Committee comprising Borough, Parish and Independent Members. Ad hoc groups of Members chosen from the Standard Committee Membership could then be called (as now) to deal with any allegations of misconduct. The Standards Committee itself would meet once a year to elect a Chairman/Vice Chairman and then on an ad hoc basis if called upon by the Council to undertake any specific duties. We suggest that both the main committee and groups be chaired by independent co-opted members and that the committee comprises 3 Parish Councillors, 3 Independent co-opted members and 1 Borough Councillor from each party (included Independent). This would give a big enough pool to select the groups to deal with complaints.

2.3 Complaints Handling

We suggest that as and when allegations of misconduct are received they should be considered by the Monitoring Officer, who will make a decision as to whether they should be considered, having consulted the Independent Person. If it is decided that an allegation should be considered, a panel of 3 members would be called, which would consider the written representations of the complainant, the Councillor complained about and the Independent Person. If the panel concludes that there has been no breach, that will be the end of the matter. If the panel believes that it needs to hear oral representation from the complainant, Councillor and Independent Person, it may arrange to do so, or if it concludes that a fuller investigation is needed, it may request the Monitoring Officer to carry this out. If the panel concludes that there has been a breach, it will make a recommendation to that effect to a sub-committee of Standards Committee comprising 3 borough councillors (1 of whom will have sat on the panel). The reason for this approach is that only councillors can vote on decisions but the consideration of the issues by an independent/parish representative on the advisory panel is very valuable.

2.4 Parish Councils

If the Parish Council request the Borough to consider allegations of misconduct, then the panel would report its findings to the Parish Council which would then itself decide whether it agrees that there has been a breach and determine any action. The Council has decided to defer consideration as to whether Parish Councils should pay for the Borough Council to deal with allegations of misconduct.

2.5 Costs

We will report on the costs of the current regime and potential costs of the proposed new regime later.

2.6 Other functions of the Standards Committee

The Standards Committee currently takes an overview on the handling of complaints against the Council. We suggest that this function could be dealt with by the Cabinet Member for Corporate Services together with the Scrutiny function. The Standards Committee also makes representations to the Council on ex gratia payments in cases of maladministration over £500. We recommend that the delegation to the Chief Executive to make ex gratia payments be increased from £500 to £1,000, and that the General Purposes Committee be responsible for making recommendations to the Council in respect of larger payments.

A decision will need to be made as to how applications for dispensations will be made, and how changes to the Constitution will be made.

3. **Recommendations**

It is recommended that

- 3.1 Unless and until a new model code of conduct is published, the Monitoring Officer draw up a Code of Conduct based on the existing Code for consideration by the next Standards Committee (on 15 February – or earlier if needs be).
- 3.2 Members agree the suggested membership of the Standards Committee, its panel, and the Sub-Committee, and the suggested complaints handling process and requests the Monitoring Officer to report back to the next meeting with any further implications of the Localism Act and its regulations and the role of the Independent Person, together with details of costings, and implications for Parish Councils.
- 3.3 The Monitoring Officer report to the next meeting with further suggestions as to where each function of Standards Committee could be discharged in the future.
- 3.4 It is acknowledged that these suggested arrangements might change in the light of guidance published pursuant to the Act.