

MAIDSTONE BOROUGH COUNCIL

COUNCIL

5 JULY 2012

REPORT OF HEAD OF LEGAL SERVICES AND MONITORING OFFICER

LOCALISM ACT 2011 – ADOPTION OF A NEW CODE OF CONDUCT FOR MEMBERS AND ASSOCIATED ARRANGEMENTS

Purpose of the report: For the Council to adopt a new Code of Conduct for members and to make associated arrangements for dealing with allegations of failures to comply with the Code.

Recommendation

1. That the Council adopts the Kent Model Code of Conduct as set out at Appendix 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 5 July 2012.
2. That the Council, makes the Arrangements contained within Appendix 2 under which allegations of non-compliance with the Code can be investigated and under which decisions can be made. The arrangements shall be effective from 5 July 2012.
3. That the Monitoring Officer be given delegated authority to make amendments to the arrangements to reflect the Model arrangements intended to be adopted across the county of Kent.
4. That the new Standards Committee established by the Council at the last meeting have the Terms of Reference as set out in Appendix 3.
5. That the executive be requested to make appropriate arrangements for the remuneration, expenses and insurance of the Independent Person and substitute.
6. That the Scheme of Officer Delegations be amended as from 5 July 2012, so as to confer on the Monitoring Officer the functions set out in Appendix 4.
7. That the Council Procedure Rules set out in Appendix 5 be adopted with effect from 5 July 2012.
8. That the Monitoring Officer be requested to keep the Code and Arrangements under review and to report further to the Standards Committee as he considers necessary.

1. **Summary**

Under the provisions of the Localism Act 2011 the existing Standards regime ceased to operate from midnight on 30 June 2012. The transitional arrangements are very limited and do not allow for the old arrangements to continue. The Act puts in place a system of requiring members to notify the Monitoring Officer of a new breed of interests (The Disclosable Pecuniary Interest "DPI") and requires him to maintain a public register of those interests. Additionally, the Council must adopt a new code of conduct and put in place arrangements for investigating allegations of failure to comply with the Code and for making decisions in respect of those allegations. I have previously reported on these issues and the Council has established a New Standard Committee.

2. **Introduction and Background**

- 2.1 As a result of the recommendations of the Committee on Standards in Public Life, the Local Government Act 2000 put in place a regime for regulating the conduct required of members. This was developed from the seven so called "Nolan Principles of standards in public life". Central to the regime was a Model Code of Conduct containing mandatory provisions which councils were required to adopt and also, procedures for dealing with complaints which were prescribed by law. This was all overseen by Standards for England (previously known as the Standards Board for England) which variously had regulatory, investigatory and advisory functions together with an overall co-ordinating role.
- 2.2 It was a manifesto commitment of the conservative party which also featured in the publication "The Coalition – Our Programme for Government" to abolish the Standards Board Regime. Early indications that the review would result in the total abolition of a statutory standards regime for elected members have not materialised. The vehicle for the delivery of the changes to the regime was the Localism Bill. Early drafts of the bill proposed the almost wholesale repeal of those parts of the Local Government Act 2000 dealing with standards. However, during the late stages of its passage through the parliamentary process the bill was significantly revised resulting in the requirement to have in place a formal standards regime but one which has much more locally determined standards but which still operates within a statutory framework.
- 2.3 The Monitoring Officers and chief legal officers throughout the county all agreed that there was considerable merit in attempting to develop a code which could apply across all tiers of local government in the county. What follows has been developed adopting that joint approach.

3. **Features of the New Arrangements.**

- 3.1 As enacted the Localism Act (which received Royal Assent on 15 November 2011) puts in place a standards regime which included the following features and requirements:
 - A duty to promote and maintain high standards of conduct by members and elected members of the authority.

- A requirement to have a Code of Conduct dealing with the conduct that is expected of members and co-opted members when they are acting in that capacity
- A requirement for the code of conduct, when viewed as a whole, to be consistent with the principles of selflessness; integrity; objectivity; accountability; openness; honesty and leadership. (The Model Code attached to this report at Appendix 1 sets out at annex 1 these seven principles together with a commentary on each).
- A requirement to have in place arrangements under which allegations that a member has failed to comply with the Code can be investigated and also under which decisions relating to those allegations can be made. The district council remains responsible for administering the complaint handling process and ensuing investigations and hearings for parish councils. However, the Standards Committee no longer has any power to impose sanctions on parish councillors and its role is limited to making findings as to breach and making recommendations to parishes as to sanction.
- A requirement for the authority to appoint an 'Independent Person' whose views must be sought and taken into account by the authority before it makes its decision on an allegation that it has decided to investigate. Additionally, the views of the Independent Person may be sought by the authority and by an elected and co-opted member in other limited circumstances specified in the Act.
- A regime for requiring the notification to the Monitoring Officer of Disclosable Pecuniary Interests (DPIs) to enable him to establish and maintain a register of interests backed by criminal sanctions. Under the new regime it is not only the interests of the member which must be notified and registered but also those of a spouse or civil partner; a person with whom the member is living as husband or wife or as civil partners.
- The authority must also secure that its Code of Conduct includes appropriate provisions in respect of the registration of DPIs and interests other than pecuniary interests.
- As with the current regime, the new provisions allow for the withholding of sensitive information from the Register where the member concerned and the Monitoring Officer consider that the disclosure of details of the interest could lead to the member being subject to violence or intimidation.
- As with the existing regime there are provisions for obtaining dispensations to allow a member to speak and vote notwithstanding an interest. The procedure for obtaining these dispensations has to some extent been simplified and the scope for obtaining them broadened. Parish councils are required to grant their own dispensations under the new regime.

- Parish Councils remain responsible for adopting their own Code of Conduct but are still required to rely upon the district council and Monitoring Officer to register notifications of interests and to investigate allegations of breach. To ensure consistency across all tiers of local government in Kent the Kent Model Code (with minor amendments to omit references to executive functions) has been commended to parish councils within our borough.
- The district council's Monitoring Officer is responsible for maintaining the register of parish council interests and for securing that the register is published on the district council's website.

4. **Significant Departures from the Current Arrangements**

4.1 In accordance with the underlying policy intentions behind the legislation there are some significant differences from the current regime. These can be summarised as follows:

- The 10 general principles are replaced by 7. This has some consequences, for example, the statutory underpinning for codes of conduct dealing with 'respect' has gone.
- The Model Codes and undertakings by Members to comply with them have gone although the requirement to have a code remains.
- Standards for England has been abolished together with its various functions.
- The jurisdiction of the first tier tribunal to hear appeals has gone.
- The classification of personal and personal and prejudicial interests under the existing code has gone and is replaced by new registration and disclosure requirements. The legislation itself introduces the concept of DPIs and other interests which under the Kent Model we have referred to as 'other significant interests' ('OSIs').
- The new registration requirements for DPIs are wider in that they also apply to the interests of spouses etc. The requirement has been introduced in the interests of transparency but could be regarded by some as disproportionately intrusive. It should be noted that, where known about, the member must register these interests, otherwise a criminal offence is committed. There are no exemptions other than for sensitive information. These criminal offences are automatically matters for police investigation.
- The concept of a statutory standards committee no longer features. The consequence of this is that any committee now appointed to deal with standards issues is now an ordinary local authority committee subject to all of the usual procedural rules. This means that its processes will be more open to public scrutiny because of the application of Schedule 12A to the Local Government Act 1972.

A further consequence is that the role of independent members and parish appointed members no longer exists as we have known it.

- It follows from the abolition of the statutory standards committee that the statutory processes of initial assessment of complaints, review, consideration and hearing have all now gone. It is now solely for the authority to determine how allegations are to be received and processed.
- The powers of the Council to impose specific sanctions for breach of the Code have been removed. Particularly, no facility exists to disqualify or suspend a member for a breach of the code exists. In effect, the powers of a standards committee dealing with a complaint will be limited to censure and making recommendations to the authority (or political leaders where the political balance rules apply) that a member be removed from a particular office or committee.

5. **Implementation**

- 5.1 The law requires the authority to adopt a new Code of Conduct for Members in furtherance of its duty to promote and maintain high standards of conduct by members and co-opted members of the authority.
- 5.2 It was hoped that a single national 'model' code would be produced and commended to councils for adoption. This has not happened and the situation has become complicated because there are now at least three Model Codes in circulation. These comprise a model produced by the Local Government Association, what is described as an illustrative text produced by the Department for Communities and Local Government and a template Model Code for parish councils produced by NALC.
- 5.3 In the absence of a single national Model Code the Association of Kent Secretaries (a professional association for Kent local authority chief legal officers and Monitoring Officers) has always seen merit a Model Code of conduct for Kent authorities of all tiers. Many councillors are members of councils operating at different tiers and this, together with the increased incidence of shared working led to the association to consider that it would simplify matters for all if members of authorities of all tiers were operating in accordance with a common code of conduct. In order to achieve this the Association formed a working group which has produced a Model Code of Conduct for all Kent authorities. This is attached at Appendix 1 and is recommended to the Council for adoption.
- 5.4 It is appreciated that earlier this year, the 1 July was indicated by DCLG as the likely commencement date for the new code and arrangements. However, the extreme lateness of the regulations dealing with interests, transitional arrangements and commencement led to the belief that implementation was to be delayed. However, the necessary regulations were tabled in parliament on 8 June to bring the significant provisions into force on 1 July. Although it is understood that early drafts of the

regulations may have been made available to executive officers of the Association of Council Secretaries and Solicitors ('ACSeS') in late May, they were not generally available so as to inform the earlier preparation of codes of conduct and arrangements. Without the detail of the regulations it was impossible for authorities to frame their codes. In view of the late publication of the Regulations, ACSeS did not consider that the proposed timescale was realistic or deliverable and made representations to government in this connection. Regrettably, these representations appear to have been ignored. The Association of Kent Secretaries has attempted to respond to this by urgently finalising the text of the papers before the Council.

5.5 Although timescales have been constrained, there have been a number of well attended and very intensive meetings of the Association of Kent Secretaries, where through effective collaboration progress and ultimately consensus and agreement has been achieved on all of the significant matters relating to the Code and arrangements.

5.6 The authority must also have in place "Arrangements" which set out:-

- How it will deal with allegations
- How it will decide whether an allegation requires investigation
- How it decides whether there has been a failure to comply with the relevant code (ie a local hearing)
- What actions it might take as a result of the failure to comply with the local code.

For district councils this covers allegations against parish council members.

5.7 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 the Monitoring Officer will report to the Council or Standards committee as appropriate.

6. **The Code and the Arrangements**

6.1 The Kent Code is attached at Appendix 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 above 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.

6.2 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 limited 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'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.

- 6.3 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, without a dispensation, would require the member to declare the interest and withdraw from the consideration of the item.
- 6.4 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.
- 6.5 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 Appendix 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.
- 6.6 The general obligations in the Model Code will be familiar to members as they are not dissimilar from 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.

- 6.7 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 previously 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 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 (see further below) is appointed by the full council. These two functions excepted, it is proposed that the Standards Committee will discharge all functions associated with the new standards regime which have not been delegated to a Standards Sub-Committee or to the Monitoring Officer (or ascribed to him by statute) once they have initially been established by Council. Appendix 3 sets out the proposed terms of reference/Delegations to the Standards Committee.
- 6.8 In order to consider reports into any allegations which are investigated, the Kent Model Arrangements envisage that the Standards Committee will need to establish sub-committees (in the nature of hearing panels) from amongst its membership. The establishment of these sub-committees is a function which is within the competence of the Standards Committee.
- 6.9 The arrangements before the Council at Appendix 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. It is not envisaged that any further changes will be significant and thus Members are 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. A flow chart summarising the process is attached at Appendix 6.
- 6.10 The scheme of the Localism Act 2011 aims to secure independent input into the standards regime through the requirement placed upon the authority to appoint an 'Independent Person'. The requirements of the Act in this connection are quite specific. The Act provides that the arrangements put in place for the investigation of allegations and making decisions on them must include provision for the appointment of at least

one independent person. The role of the Independent Person is prescribed by section 28(7) of the Act. This provides:

"(7) Arrangements put in place ...by a relevant authority must include provision for the appointment by the authority of at least one independent person –

- (a) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and
- (b) whose view may be sought –
 - (i) by the authority in relation to an allegation in circumstances not within paragraph (a)
 - (ii) by a member, or co-opted member of the authority if that person's behaviour is the subject of an allegation, and
 - (iii) by a member, or co-opted member, of a parish council if that person's behaviour is the subject of an allegation and the authority is the parish council's principal authority.

Thus, the independent person's functions are all related to 'allegations' and the independent person does not have a general advisory role in advising upon or monitoring the operation of the standards regime. This is fundamentally different from the role previously fulfilled by the independent representatives on the Standards Committee.

- 6.11 The Localism Act 2011 contains detailed provisions as to who may and may not be regarded as an Independent Person. It also prescribes that an appointment as an Independent Person can only be made after public advertisement of a vacancy, and receipt of an application by a candidate. The appointment must be approved by the majority of members of the authority. It should be noted that, as enacted, the Localism Act prohibited the appointment of an existing independent member of a Standards Committee as an Independent Person. However, the transitional arrangements (which are extremely limited) have at least now relaxed this to allow the appointment of an independent member provided that the appointment is made before 1 July 2013. The process of recruiting an Independent Person is in hand.
- 6.12 The role of the Monitoring Officer is key to the administration of the registration of interests requirements of the new regime. However, whereas under the existing arrangements the Monitoring Officer's role is to maintain the register and for members to register their own interests, under the new arrangements, members notify the Monitoring Officer of their interests and it is the duty of the Monitoring Officer to register them.
- 6.13 The proposed Kent Model Arrangements place on the Monitoring Officer responsibility for deciding which allegations should be investigated and

which should not (the process currently known as 'Initial Assessment'). Members will recall that under the existing regime this was a function that the law placed on the Standards Committee (and its sub-committees). This aspect of the Kent Model Arrangements was the subject of extensive discussion by the Association of Kent Secretaries.

- 6.14 The balance of opinion was that the existing arrangements for initial assessment are bureaucratic, unwieldy and unnecessarily resource intensive. Also, they do not admit of the possibility of trivial or ill-founded allegations being dismissed at a very early stage. A continuation of these practices under the new legislation would also generally have required the process of initial assessment to be held in public given that the new Standards Committee has to be an ordinary committee of the authority to which the access to information provisions would apply. It was also noted that when Standards for England were responsible for the receipt of allegations under the existing regime, an individual officer of Standards for England decided which complaints should be investigated and which should not. It was only when responsibility for the receipt of complaints was transferred from Standards for England to Standards Committees that the process of Initial Assessment by sub-committees of the Standards Committee became a feature of the system.
- 6.15 The proposed Kent Model Arrangements do have the benefit of simplicity of operation in their treatment of this aspect of the receipt of allegations but at the price of placing responsibilities on the shoulders of the Monitoring Officer as an individual. In recognition of this, the Model Arrangements attempt to lay down comprehensive criteria by reference to which the Monitoring Officer will be required to exercise his judgement and allow for the involvement of the independent person.

7. Identification of Options

- 7.1 To accept the recommendations and in particular to adopt the Kent Model Code and associated arrangements.
- 7.2 To reject the Kent Model Code and the arrangements.
- 7.3 To amend the Kent Model Code and arrangements.
- 7.4 To adopt a code and arrangements which are completely different from the Kent Model but which meet the statutory requirements.

8. Evaluation of Options

- 8.1 For the reasons set out in this report the adoption of the Kent Model Code and arrangements is the recommended option. Members can be reassured that provisions to amend these documents are available and that the Association of Kent Secretaries as a group is committed to sharing experience and to keeping documents under review.
- 8.2 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, your officers have carefully considered the alternative models available and strongly commend the Kent Model and Arrangements to the Council.

- 8.3 Outright rejection of the recommendations is not an option given the requirement to have a Code of Conduct and Arrangements in place.

9. **Resource Implications**

- 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 streamlined procedure for the assessment of allegations in their initial stages should reduce the need for meetings of the Standards Committee and any sub-committees.

10. **Appendices**

Appendix 1 – Kent Model Code of Conduct

Appendix 2 – Kent Model Arrangements (plus Annexes 1-3)

Appendix 3 – Terms of Reference/Delegations to the Standards Committee

Appendix 4 – Delegation of Functions to the Monitoring Officer

Appendix 5 – Council Procedure Rules/Standing Orders

Appendix 6 – Complaints Procedure Flow Chart

11. **Background Papers**

Localism Act 2011