

**MAIDSTONE BOROUGH COUNCIL**

**STANDARDS COMMITTEE**

**REPORT OF THE MONITORING OFFICER**

**4 APRIL 2012**

**FUTURE OF STANDARDS REGIME**

**1. Introduction**

- 1.1 As Members will be aware, the Localism Act received the Royal Assent on November 15 2011, and it is currently expected that the new Standards Regime will come into force in July this year, although there is some suggestion that this may be delayed. Since the Council's decision relating to the new regime there have been amendments to the Bill before it was enacted. The Kent District Secretaries Group has been working on formulating model arrangements for dealing with Standards Issues and this report is based on this work to date. However, this is still work in progress, and there may be further refinements in the future which will be the subject of further reports. In particular, the Government still has yet to make regulations about discloseable pecuniary interests, and the Local Government Association is formulating a proposed model Code of Conduct for Councils to consider.

**2. Independent Persons**

- 2.1 The Bill introduced the concept of the Independent Person whose views must be sought, and taken into account, by the Council before it makes its decision on an allegation of misconduct that it has decided to investigate. The Independent Person's views may be sought by the Council at other times as well, and may be sought by Borough and Parish Councillors if they are the subject of allegations of misconduct. It is understood that as currently written, the Localism Act does not permit our existing Co-opted Independent Members of the Standards Committee to be eligible to be appointed as an Independent Person, although representations have been made to the Secretary of State to legislate to remove this prohibition

The Council must appoint at least one Independent Person, vacancies must be advertised, and the appointment must be made by the full Council. The current view is that one Independent Person should be appointed, (with the possibility of a reserve also being appointed) and I would suggest that I should be given delegated authority to prepare job descriptions for this position and commence the recruitment procedure in consultation with the Chairman and Political Group Spokesmen of the Standards Committee so that progress can be made.

3. Composition of the Standards Committee

- 3.1 The introduction of the Independent Person does mean that consideration should be given as to whether there is now any need for Independent Co-opted Members to be appointed to sit on the Standards Committee. It is anticipated that the Standards Committee will only meet once a year and that its main purpose will be to provide a pool from which panels could be drawn to deal with complaints, although it could meet more often should the need arise. Since Co-opted Members can only vote on advisory committees or sub-committees, if they are to be Members of sub-committees which make decisions, they could only do so as non-voting members and could not Chair the sub-committee. As the advisory role will now be covered by the Independent Person there does not appear to be very much to be gained by Independent Members being co-opted onto the Committee/Sub-Committee. I would therefore suggest that the main Committee comprise 3 Members from each political group of the Council (a political group being more than 1 member who have requested to be treated as a political group) to be nominated, as usual, by the Group Leaders and to be appointed by the full Council. This would mean that the Council would have to agree, with no member voting against, to appoint a Committee which is not politically balanced. The Sub-Committees could then comprise 3 Councillors selected from the Committee (again not political balanced). If Members still wished to have Independent Co-opted Members on the main committee and the sub-committees, this could be done on a non-voting basis. The position relating to Independent Co-opted Members voting on advisory committees is set out in the note to paragraph 8 at Appendix A. As the proposed complaints system would lead to findings of breaches of the Code of Conduct in relation to Parish Councillors (and the Localism Act places a duty on the Borough Council to deal with such complaints) being reported to the Parish Council to take action (as the sanctions currently open to the sub-committee will no longer be available), then maybe there is no longer a need for there to be Parish representatives on the Committee.

However, there may be some advantage to be gained from having a Parish representative on the Sub-Committees when they hold hearings into alleged breaches of the Code by Parish Councillors. If Members still want to have Parish representatives on the Committee and Hearing Sub-Committee, then this would be done as non-voting co-opted members.

4. Code of Conduct

- 4.1 The Council will have to adopt a New Code of Conduct and the Local Government Association has undertaken to produce a draft for Councils to consider adopting. Parish Councils will have to adopt a Code and they may adopt the same Code as that adopted by the District Council. The Code and Register of Interests will have to deal with those pecuniary interests which must be registered and disclosed pursuant to regulations yet to be made (failure to comply with which will be a criminal offence) and those other interests, pecuniary and non-pecuniary, which the Council decides must be declared. The Council's Register of Interests and the

Register of Interests of all Parish Councils within the Borough must be published on the Council's website. If the Parish Council has a website, their Code must also be published on it. Maidstone Borough Council already has a facility for publishing Interests on-line and has begun preparations to put Parish Registers on its website. It is suggested that the Code of Conduct should also be available on the website.

5. Dispensations

- 5.1 Currently the Standards Committee deals with applications for dispensations from Borough and Parish Councillors who wish to participate in meetings notwithstanding the fact they have a prejudicial interest in a matter to be discussed. The Sub-Committee has power to do so in case of urgency. The dispensations will continue to be available under the new regime to permit members with discloseable pecuniary interests to participate in meetings. It is recommended that this function be delegated to the Monitoring Officer in consultation with the Independent Person, but that he will be able to report applications to Standards Committee for decision where he does not feel able to make a decision, as some of the new criteria for granting dispensations are quite subjective. Parish Councils will deal with their own dispensations.

6. Dealing with Complaints

- 6.1 I attach at Appendix A a suggested method of dealing with complaints of misconduct by Borough and Parish Councillors. These arrangements will need to be published. This is further explained by the flow chart at Appendix B. As mentioned above, these are still works in progress and may need to be refined. The main thrust of the suggested new process is to enable complaints to be dealt with simply, efficiently and proportionately by the Monitoring Officer in consultation with the Independent Person, with an opportunity to deal with complaints informally if appropriate. It is proposed that the Monitoring Officer in consultation with the Independent Person should decide at the outset if a complaint should be investigated, whether other action should be taken, or if no action should be taken. If the Monitoring Officer is not sure whether a case should be investigated, it is proposed that he should refer the case to a Standards Sub-Committee comprising 3 Councillors to decide. If it is investigated (this would usually be undertaken by the Council's own Deputy Monitoring Officer), the Monitoring Officer will use his discretion as to the nature of the investigation. If the Monitoring Officer is then satisfied having consulted the Independent Person that there has been no breach of the Code, then that will be the end of the matter. The Monitoring Officer could also decide the issue could be dealt with by other action. However, if the Monitoring Officer believes that there has been a breach which cannot be resolved by other action, then the issue will be heard by the Standards Sub-Committee. If the Sub-Committee finds there has been a breach, Appendix A describes the sanctions which are open to it, the majority of which will involve recommendations elsewhere. Members will see that in the case of Parish Councils, recommendations will be made to them to undertake suggested courses of action. The main sanction will be publicizing the fact that the

Member has been found to have breached the Code of Conduct. This could be published on the Council's website accompanied by a press release.

7. Other issues currently carried out by the Standards Committee

- 7.1 The Council will continue to have a duty to promote and maintain high standards of conduct by Members and it is anticipated that at its annual meeting the Committee will receive a report of the past year's activities for its Chairman and it could set up a work programme for the Monitoring Officer. It would seek to ensure that Members and Parish Members did receive sufficient training in conduct issues. It would also consider any Codes of Conduct before making recommendations to the Council to adopt or amend a Code.

The Committee currently has an oversight of the Constitution. All changes to the Constitution are dealt with by the full Council and these must be accompanied by an evaluation from the Standards Committee. I would recommend that the full Council continue to deal with amendments to the Constitution but these should be accompanied by an evaluation from the Monitoring officer.

I recommend that the overview of the Whistle Blowing Policy should be carried out by the Audit Committee.

The overview of complaints handling and Ombudsman investigations could be undertaken by the Scrutiny function.

Currently the Chief Executive has delegated authority to make payments in case of maladministration up to £500. All other payments are authorised by the Council on the recommendation of the Standards Committee. I recommend that the Chief Executive's authority be raised to £1,000 and that for payments above this figure these should be authorised by the Cabinet Member.

The Committee deals with certain appeals made by officers against being designated as being in a politically restricted post. This function has been transferred to the Head of the Paid Service (Chief Executive) by legislation.

In conclusion I would recommend that the Council be recommended to make the following decisions, and that this Committee receive further reports as and when more information becomes available.

1. That Council appoint one Independent Person and that the Monitoring Officer be given delegated authority to agree the Job Description with the Chairman of the Standards Committee and the Political Group Spokesmen and to commence the recruitment process, culminating in a recommendation being made to Council as to who should be nominated (following consideration by a group of members).

2. That as from the commencement date the new Non Statutory Standards Committee should comprise three Members from each political group of the Council (i.e. that it should not be politically balanced) and that Members consider whether 2 Parish representatives be appointed as non voting Members of the Committee on the nomination of KALC (and that members consider whether there should be independent co-opted non-voting members), and that the existing arrangement be maintained until the commencement date.
3. That Assessment Sub-Committees (not politically balanced) comprising 3 Councillors be appointed from the Membership of Standards Committee as and when the Monitoring Officer requires.
4. That Hearing Sub-Committees of 3 Councillors (not politically balanced) be appointed to hear complaints where in the opinion of the Monitoring Officer there has been a breach of the Code of Conduct. Members may wish to consider whether Parish representatives should be appointed to the Sub-Committees as non voting Members when Parish Councillors are the subject of the complaint.
5. That the procedures set out at Appendices A and B for dealing with complaints be adopted.
6. That further reports be submitted as and when the LGA publishes its model code of conduct.
7. That the Standards Committee be given delegated authority to deal with applications for dispensations and that the Monitoring Officer also be given authority to deal with these in consultation with the Independent Person.
8. Standards Committee continues to be responsible for promoting and maintaining high standards of conduct by Members including making recommendations to Council as to the Code of Conduct and by maintaining an oversight of the training process.
9. That all changes to the Constitution continue to be approved by full Council, and that any proposed changes be accompanied by an evaluation from the Monitoring Officer.
10. That the Audit Committee become responsible for the oversight of the Whistle Blowing Policy.
11. That the Overview and Scrutiny Committee become responsible for the overview of complaints handling and Local Government Ombudsman investigations.
12. That the Chief Executive be given delegated authority to make payments in cases of maladministration up to £1,000 and that the appropriate Cabinet Member be responsible for authorising payment in excess of this figure.
13. That the arrangements set out at Appendix A be agreed.