
FUTURE CODE OF CONDUCT COMPLAINT SYSTEM

To: **Constitutional Review Working Party - 26 April 2012**
Standards Committee - 9 May 2012
Annual Council - 17 May 2012

By: **Harvey Patterson, Corporate & Regulatory Services Manager and Monitoring Officer**

Classification: **Unrestricted**

Summary: **To recommend to Council the establishment of a voluntary Standards Committee for the Council from 1 July 2012**

To recommend to Council the adoption of a provisional Member's Code of Conduct for the Council year 2012/13 in the same terms as the current Member's Code of Conduct

To consider a revised procedure for the investigation of complaints alleging a breach of the Member's Code of Conduct

For Decision

1.0 Introduction and Background

- 1.1 As Members will be aware, the Localism Act received the Royal Assent on 15 November 2011. Members will also recall that in the end, Chapter 7 of the Localism Act 2011 (the Act), required the Council and the Town and Parish Councils established in Thanet to adopt a Members Code of Conduct consistent with the seven 'Nolan' principles. It further required the Council to make and adopt 'arrangements' for the investigation of complaints alleging a failure by a member to comply with the adopted Members Code of Conduct (including a complaints made against a Town and Parish Councillors). However, although the Act places the Council (and the Town and Parish Councils) under a duty to promote and maintain high standards of ethical conduct by elected and co-opted members, it does not require the Council to continue to have a Standards Committee. It did however require the Council to appoint at least one 'Independent Person' (who may not be a co-opted member of a voluntary Standards Committee) 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 also be sought by the Council at other times as well and may further be sought by District and Town/Parish Councillors if they are the subject of allegations of misconduct. As currently enacted the Act does not permit existing Independent Members of the statutory Standards Committee to be eligible for appointment as an Independent Person. Representations have been made to the Secretary of State to legislate to remove this prohibition and there are now some indications from the Minister that transitional arrangements might be published that would allow such re-appointment. In the meantime, the Standards Board for England was formally abolished with effect from 31 March 2012.
- 1.2 Transitional arrangements are going to be put in place to continue the current Standards regime until the new Standards regime is in place and it is expected that the implementation date for the new regime will now be 1 July 2012. However, there are already some indications that the planned implementation date may be further postponed because as at the date of writing this report the Department for Communities and Local Government (CLG) and the Local Government Association (LGA) have only just published suggested Codes of Conduct and CLG has yet to publish the regulations that will define

the interests that members will have to declare in the Register of Members Interests and the circumstances in which pecuniary interests will have to be disclosed at meetings of the Council.

1.3 In terms of the Council's approach to the new regime, on 14 July 2011 full Council agreed a number of key principles (Minute 29/2011 refers) as follows :

- That the principle of adopting a voluntary Code of Conduct for elected and co-opted Members of Thanet District Council upon the abolition of the mandatory Code of Conduct, be agreed;
- That the principle of establishing a voluntary Standards Committee to promote and maintain high standards of ethical conduct and to provide advice and guidance to Members on compliance with the Voluntary Code of Conduct, be agreed;
- That the voluntary Standards Committee be composed of elected Councillors and co-opted Independent Members in proportions to be agreed by full Council;
- That, in advance of the abolition of the current Standards Framework, the statutory Standards Committee in consultation with the Group Leaders, be responsible for formulating a voluntary Code of Conduct for elected and co-opted Members of Thanet District Council, the Terms of Reference for a voluntary Standards Committee which includes members of the public and cost effective and efficient procedures for the investigation and determination of complaints alleging a breach of the voluntary Code of Conduct;
- That an informal cross-party working party be set up to consider putting forward suggestions to the Standards Committee and onward transmission to the Constitutional Review Working Party to make the Standards Regime more Member-friendly.

Note however that under the Localism Act 2011 it is now mandatory to adopt a Code of Conduct under the new regime.

1.4 The Group Leaders duly nominated members to a Standards Working Party which met on 19 December 2011. The Working Party noted that at that time the LGA and the Association of Council Secretaries and Solicitors were considering the drafting and publication of a model Code of Conduct and that Kent Secretaries and Monitoring Officers were meeting in the new year to consider how a standardised lighter touch members complaints investigation procedure might be developed. The Working Party requested not to meet again until it had a draft Code of Conduct and Member Complaints Procedure to consider.

1.5 Given that Kent Secretaries only relatively recently reached agreement on a common member complaints procedure (which may nevertheless be modified by Councils at a local level) and 'rival' model Codes of Conduct have only just been published by CLG and the LGA (and the regulations on discloseable pecuniary interests are still awaited) and that constitutional changes like these have to be considered by the Constitutional Review Working Party and the Standards Committee prior to consideration by full Council, it has not been possible in the time available to programme in prior consultation with the Standards Working Party. It is therefore proposed that a copy of this report is considered separately by the Standards Working Party - whose comments and views will then be reported to the Standards Committee when it meets to consider this report on 9 May 2012.

2.0 Members Code of Conduct

2.1 As noted above, possible model Codes of Conduct have only just been published and will require detailed consideration by the Standards Working Party, the Constitutional Review Working Party and the Standards Committee when the regulations on discloseable pecuniary interests have been published. It is therefore recommended that for the Council

year 2012/13 the Council adopts a voluntary Code of Conduct in the terms of the current Member's Code of Conduct. This will ensure that the Council will have provisional Member's Code of Conduct in place at the transitional date of 1 July 2012 while properly deliberating the terms of the replacement Code (which it is hoped can be adopted at the Council meeting on 12 July 2012).

3.0 Establishment and Composition of the Standards Committee

- 3.1 The Council is required to continue to have a statutory Standards Committee comprising seven elected Councillors, four appointed Independent (non councillor) Members and three nominated Town/ Parish Representatives, until the date proposed in Regulations to bring the new Standards regime into full force and effect - currently 1 July 2012. It is therefore proposed that the current Independent Members and Town/Parish Representatives are re-appointed to the Statutory Standards Committee by Council at the annual meeting to hold office until 30 June 2012 or such later date being the day before the date given in Regulations as the date by which Chapter 7 of the Localism Act 2011 comes into full force and effect.
- 3.2 However, as Council has resolved to establish a voluntary Standards Committee upon the abolition of the statutory Standards Committee, it is therefore also recommended that a voluntary Standards Committee comprising of seven elected District Members, three Town/Parish co-opted representatives and two co-opted Independent (non councillor) Members is established to take effect from 1 July 2012. This will enable the Committee to continue to promote high standards of ethical conduct and provide advice and guidance to members on compliance with the new Member's Code of Conduct when adopted. It will also, as now, provide a pool of members to deal with complaints casework in accordance with the adopted member complaints investigation procedure.
- 3.3 Suggested Terms of Reference for the voluntary Standards Committee are attached at **Annex 1**. As this will be a non statutory advisory Committee established pursuant to Sections 101 and 102 of the Local Government Act 1972, it is not only possible to co-opt Town/Parish Representatives and appoint Independent (non councillor) Members; such members will also have voting rights on recommendations to Council (but not on decisions delegated to the Committee). However, unless the Council agrees (without dissent) to waive political balance, it will be necessary to apply strict political balance to the TDC component and appoint a TDC councillor to the roles of Chairman and Vice Chairman. Council can co-opt the Town/Parish Representatives to the Standards Committee on the nomination of the Thanet Association of Local Councils but the two Independent Members of the voluntary Standards Committee should be appointed by Council on the recommendations of the Standards Appointments Panel. Accordingly, the Monitoring Officer should be given delegated authority to commence the recruitment procedure using the existing Independent Member job descriptions.

4.0 Independent Person(s)

- 4.1 As explained above the Council has to appoint at least one Independent Person who must be consulted before the Council makes any findings in relation to a complaint that has been investigated. He or she may also be consulted by the Council at the initial complaints assessment stage or by the member the subject of a complaint. It is therefore recommended that the Council appoints two Independent Persons in order to manage potential conflicts and resignations as well as sickness and holiday absence.
- 4.2 Accordingly, the Monitoring Officer should be given delegated authority to prepare a job description for this position and commence the recruitment procedure using the Standards Appointments Working Party to make recommendations to Council.
- 4.3 The law allows the Independent Person to be paid an allowance and/or expenses. It does not allow the co-opted Independent Member to receive an allowance, although expenses can be covered. The Constitutional Review Working Party are asked to agree that the

Monitoring Officer put forward proposals regarding allowances and expenses to the annual meeting of the Council.

5.0 Dispensations

- 5.1 Currently the statutory Standards Committee deals with applications for dispensations from District and Town/Parish Councillors who wish to participate in meetings notwithstanding the fact they have a prejudicial interest in a matter to be discussed. Dispensations will continue to be available under the new regime to permit members with discloseable pecuniary interests to participate in meetings. However, Town and /Parish Councils will be required to deal with their own dispensations. It is therefore recommended that in relation to district councillor dispensations, this function be delegated to the Monitoring Officer in consultation with the Independent Person, but that the Monitoring Officer has the power to report applications to Standards Committee for decision where he does not feel able to make a decision. Alternatively the granting of dispensations can be delegated by Council to the Standards Committee but it should be noted that the Town/Parish Representatives and the independent Members would not be able to vote on a dispensation and therefore the decision whether or nor to grant a dispensation could be subject to political considerations.

6.0 Members Complaints Procedure

- 6.1 Attached as **Annex 2** is a suggested method of dealing with complaints of misconduct by District and Parish Councillors. As mentioned above, these processes are still work in progress and may need to be refined in the light of comments made by the Working Party. Once finally approved by Council, these arrangements will need to be published.
- 6.2 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 therefore proposed that the Monitoring Officer is given delegated powers to make a final decision on the **initial assessment** of all Code of Conduct complaints. This principle requires further elaboration.
- 6.3 The intention is that in the most simple cases, the Monitoring Officer, in consultation with the Independent Person, should decide at the outset if a complaint should be investigated, or other action should be taken, or no action should be taken.
- 6.4 However, in cases of doubt or difficulty the Monitoring Officer will refer the complaint to a three member Standards Assessment Panel chaired by one of the Independent Members of the Standards Committee. As this would be an advisory Committee whose job it is to consider the complaints and make an initial assessment recommendation to the Monitoring Officer, each member will have a vote - nor with a three member Panel will the use of second or casting votes by the Chairman ever come into issue. The Monitoring Officer will then make the final decision having due regard to the recommendations of the Standards Assessment Panel. Moreover, if the complaint concerned a Town/Parish Councillor then one of the Town/Parish Representatives would sit with a district Councillor and the Independent Member Chairman to conduct the initial assessment hearing. In all such cases the officer advising the Standards Assessment Panels would be the Deputy Monitoring Officer as it would be inappropriate for the Monitoring Officer as the final decision maker to be involved at this stage.
- 6.5 If a complaint is recommended for investigation, the Monitoring Officer will use his discretion as to the nature of the investigation. On receipt of the Investigation Report, if the Monitoring Officer is 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 Hearing Sub-Committee.

6.6 The Standards Hearing Sub-Committee will comprise 3 District Councillors, with the Chairman being nominated from one of its membership. It will have delegated power from the Standards Committee. An Independent Person will be present as an observer. The Independent Person will have had sight of the papers before the meeting. If there are any questions he/she has for the subject member, then these should be given to the Monitoring Officer before the Hearing. The Independent Person may make a verbal observation following submissions and before the Subject Member speaks. The Independent Person leaves the room while the members of the Hearing Committee consider the submissions. If there is a finding of breach, Annex 2 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 publicising 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.

6.7 There is no provision for appeal on assessment or hearing decisions.

7.0 **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 from 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.

7.2 The Constitutional Review Working Party will comprise of 6 District Councillors. It will remain politically balanced. There will no longer be an Independent Chairman or Vice Chairman. It will continue to make recommendations to the Standards Committee.

8.0 **Corporate Implications**

8.1 **Financial and VAT**

8.1.1 There are no financial implications arising from this report. Any costs arising from the new standards regime can be contained within existing budgets.

8.2 **Legal**

8.2.1 The proposals contained within the report comply with the provisions of the Localism Act 2011 as currently known. It should be noted that some of the content reflects indications from the Department for Communities and Local Government that it proposes to make transitional arrangements, but the Regulations governing such arrangement have not yet been published.

8.3 **Corporate**

8.3.1 While the changes introduced by the Localism Act do not represent a root and branch alteration of the standards regime, the Code of Conduct and detailed procedures will change. There will be a need for training at both District and parish level and also a need to update the information the Council provides about alleged breaches of the code of conduct on its web site and in other publications.

8.4 **Equity and Equalities**

8.4.1 It is suggested that there are no specific equity or equalities implications arising from these proposals. These proposals do not have any particular implications regarding one "protected group" over another.

9.0 Recommendation(s)

- 9.1 It is recommended that the Working Party makes the following recommendations to the Standards Committee, and that this Committee receive further reports as and when more information becomes available.
- 9.2 It is therefore proposed that the current Independent Members and Town/Parish Representatives are re-appointed to the Statutory Standards Committee by Council at the annual meeting to hold office until 30 June 2012 or such later date being the day before the date given in Regulations as the date by which Chapter 7 of the Localism Act 2011 comes into full force and effect.
- 9.3 That Council appoints two Independent Persons and two Independent Members of the Standards Committee and that the Monitoring Officer be given delegated authority to agree the Job Description with the Chairman of the Standards Committee and to commence the recruitment process, culminating in a recommendation being made to Council as to who should be nominated (following consideration by the Standards Appointment Working Party).
- 9.4 That as from the commencement date (1 July 2012) the new non statutory Standards Committee should comprise seven District Members of the Council (i.e. that it should not be politically balanced) and that Members consider whether 3 Town/Parish representatives be appointed as members of the Committee and that members consider whether there should be two independent co-opted members, and that the existing arrangement be maintained until the commencement date.
- 9.5 That an Assessment Sub-Committees comprising 2 Councillors one Independent Member, (Chairman), or 1 Councillor, 1 Independent Member and 1 Town/Parish Councillor in the case of Town/Parish complaints, is appointed from the Membership of Standards Committee as and when the Monitoring Officer requires.
- 9.6 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 Town/Parish representatives should be appointed to the Sub-Committees as non voting Members when Town/Parish Councillors are the subject of the complaint.
- 9.7 That the procedure set out at Annex 2 for dealing with complaints be adopted.
- 9.8 That further reports are submitted as and when officers have further developed the draft code of conduct for the Working Party to consider.
- 9.9 It is recommended that in relation to district councillor dispensations, this function be delegated to the Monitoring Officer in consultation with the Independent Person, but that the Monitoring Officer has the power to report applications to Standards Committee for decision where he does not feel able to make a decision.
- 9.10 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 any by maintaining an oversight of the training process.
- 9.11 The new system of Code of Conduct complaints should be known as Councillor Code of Conduct Complaints.
- 9.12 The terms of reference for the Constitutional Review Working Party be amended to reflect the change of membership.
- 9.13 The terms of reference for the Standards Committee, attached at Annex 1 are agreed

- 9.14 The Monitoring Officer should be given delegated authority to commence recruitment of 2 co-opted Independent Members of the new voluntary Standards Committee using the existing Independent Member job descriptions.
- 9.15 The Monitoring Officer should be given delegated authority to prepare a job description for the position of Independent Person and commence the recruitment procedure using the Standards Appointments Working Party to make recommendations to Council with the names of the 2 Independent Persons who they have selected.
- 9.16 The Constitutional Review Working Party are asked to agree that the Monitoring Officer put forward proposals to the annual meeting of the Council concerning allowances and/or expenses regarding Independent Persons and co-opted Independent Members.

10.0 Decision Making Process

- 7.1 Recommendations from the Constitutional Review Working Party will be reported to the Standards Committee for referral to Council.
- 7.2 This report will be considered by the Standards Committee on 9 May 2012 and the recommendations will be reported to Annual Council on 17 May 2012.

Contact Officer:	<i>Harvey Patterson, Corporate & Regulatory Services Manager</i>
Reporting to:	<i>Dr Sue McGonigal, Chief Executive</i>

Annex List

<i>Annex 1</i>	<i>Terms of Reference for the Standards Committee</i>
<i>Annex 2</i>	<i>Arrangements for dealing with Code of Conduct Complaints under Localism Act 2011</i>

Background Papers

Title	Details of where to access copy
<i>Localism Act 2011</i>	http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted