
LOCALISM ACT 2011 - REVISED MEMBERS CODE OF CONDUCT, ARRANGEMENTS FOR DEALING WITH COMPLAINTS AND CONSEQUENTIAL AND RELATED MATTERS

To: **Standards Working Party - 22 June 2012**
Constitutional Review Working Party - 26 June 2012
Standards Committee - 28 June 2012

By: Harvey Patterson, Monitoring Officer

Classification: Unrestricted

Summary:

To consider :

- (i) a Revised Members Code of Conduct based on the Kent Members Code of Conduct drafted by the Kent Secretaries Group;**
 - (ii) The Terms of Reference for a Voluntary Standards Committee;**
 - (iii) Draft 'Arrangements' for dealing with a complaint alleging a failure by a Member to comply with the Members Code of Conduct; and**
 - (iv) Consequential amendments to the Council Procedure Rules and the Scheme of Delegations to Officers and related transitional arrangements.**
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1.0 Introduction and Background

1.1 Members will be aware that Chapter 7 of the Localism Act 2011 introduced a revised Members Standards Framework for local authorities in England. In terms of the Council's approach to the emerging Framework, on 14 July 2011 full Council agreed a number of key principles as follows (Minute 29/2011 refers):-

1.1.1 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;

1.1.2 Upon the abolition of the statutory Standards Committee, 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;

1.1.3 The principle that the voluntary Standards Committee be composed of elected Councillors and co-opted Independent Members in proportions to be agreed by full Council;

1.1.4 The principle 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;
- cost effective and efficient procedures for the investigation and determination of complaints alleging a breach of the voluntary Code of Conduct.

1.1.5 The principle of establishing an informal cross-party member working party to consider putting forward suggestions to make the Standards Regime more Member-friendly.

1.2 Members will further recall that the Standards Working Party was duly established by the Group Leaders and met for the first time on 19 December 2011. At the meeting the Monitoring Officer advised the Working Party that Chapter 7 of the Localism Bill (as it then was) had been substantially amended in the third reading in the House of Lords and that the Bill had received Royal Assent on the 15 November 2011. He summarised the revised Standards Framework as follows:

- (i) The Council had a duty to promote and maintain high standards of conduct;
- (ii) The Council was required to adopt a Code of Conduct for elected and co-opted members;
- (iii) The new Code of Conduct had to be consistent with the seven 'Nolan' Principles - Selflessness; Integrity; Objectivity; Accountability; Openness; Honesty and Leadership;
- (iv) The new Code of Conduct had to include a requirement for Members to register and disclose pecuniary interests and interests other than pecuniary interests;
- (v) The adoption, revision or replacement of the new a Code of Conduct had to be publicised to bring it to the attention of persons living in Thanet;
- (vi) The current requirement to have Standards Committee's was replaced by a requirement on the Council to adopt 'arrangements' to deal with complaints alleging a breach of the Code of Conduct;
- (vii) Those arrangements had to include provision for the Council to appoint at least one 'Independent Person' whose views had to be sought and taken into account before the Council made a decision on a complaint that it had decided to investigate;
- (viii) Town and Parish Councils were also required to have a Code of Conduct, but could adopt the District Council's Code of Conduct as their own Code of Conduct;
- (ix) The Council's arrangements had to include 'arrangements' for dealing with complaints in relation to Town and Parish Councillors;
- (x) The Council's arrangements had also to include provision for allowing the views of the Independent Person to be sought by a District, Town or Parish Councillor whose conduct was the subject of a complaint;
- (xi) The Independent Person would have an influencing role but could not be a co-opted member of a voluntary Standards Committee;
- (xii) The appointment of the Independent Person had to be advertised publicly, applicants had to complete an application form and any appointment would be

made by full Council acting on the recommendations of the Standards Appointments Working Party;

- (xiii) The Independent Person could receive an allowance and expenses for performing the duties of his or her appointment;
- (xiii) The Monitoring Officer would have to continue to maintain a Register of Interests for both District and Town/Parish councillors and subject to the Regulations to be made by the Secretary of State in relation to the registration of Disclosable Pecuniary Interests, it would be for the Council to decide what interests should be entered on the Register; and
- (xiv) A failure by a Member to comply with the registration and disclosure requirements in respect of Disclosable Pecuniary interests risked committing a criminal offence punishable on summary conviction by a fine of up to £2,500 and disqualification from office for a period of up to five years.

1.3 The Working Party noted that beginning in 2012 the Kent Secretaries Group was aiming to draft a Kent wide Members Code of Conduct together with related arrangements for dealing with complaints that could operate across the three tiers of local government in the County. The Working Party further noted that the Secretary of State intended to make Regulations prescribing the categories of interests that would constitute Disclosable Pecuniary Interests (DPI'S) and the registration and disclosure requirements to be applied to Members when they had such interests. Accordingly, the Working Party agreed to meet again when the Kent Members Code of Conduct had been drafted and the Secretary of State had made the relevant Regulations.

1.4 By the beginning of April 2012 the Secretary of State had not published the Regulations on DPI's nor, partly for that reason, had the Kent Secretaries Group completed the drafting of the Kent Members Code of Conduct or the related arrangements for dealing with complaints. However, as the Department for Communities and Local Government (CLG) were indicating a possible commencement date for the new Standards Framework of 1 July 2012, the Monitoring Officer submitted a report to the Constitutional Review Working Party (CRWP) on 26 April 2012 outlining proposals for the arrangements to be adopted for complaints management under the new Framework. Those included:

1.4.1 The structure and membership of a new voluntary Standards Committee and sub-committees

1.4.2 The process for dealing with allegations that a Member may have breached the Council's Code of Conduct

1.4.3 Arrangements relating to dispensations, and so on.

1.5 The Monitoring Officer explained that in the available time frame it had not been possible to consult the Standards Review Working Party prior to consideration by the Constitutional Review Working Party if the arrangements were to be considered by Council at the Annual Meeting on 17 May 2012. However the Standards Review Working Party would meet prior to consideration of the proposed arrangements by the Standards Committee and therefore the recommendations of the Working Party would be reported to the Standards Committee alongside the recommendation of the Constitutional Review Working Party.

1.6 The Constitutional Review Working Party rejected that approach, considering that it was important that the Standards Review Working Party reported as intended to the Constitutional Review Working Party, The Standards Committee could then make recommendations to full Council on 12 July 2012 in the knowledge of whether the pending regulations would, for example permit an existing Independent Member of the Standards

Committee to be eligible for appointment as an Independent Person under the new Framework.

1.7 The Constitutional Review Working Party therefore agreed to recommend to the Standards Committee the following interim arrangements:-

1.7.1 That the current Members Code of Conduct be adopted as the Code of Conduct for elected and co-opted members of Thanet District Council for the Council year 2012/13

1.7.2 That the current statutory Standards Committee, Sub-Committees, processes and Code of Conduct be established at the Annual Meeting of Council to continue until Chapter 7 of the Localism Act 2011 comes into full force and effect ; and,

1.7.3 That the remainder of the report be deferred to enable the Standards Working Party to consider it first and submit its comments to the Constitutional Review Working Party, prior to onwards referral to the Standards Committee and Council.

1.8 On 9 May 2012 the Standards Committee considered, the interim arrangements recommended by the Constitutional Review Working Party and agreed to recommend to the Annual Meeting of Council as follows:

1.8.1 That the current Members Code of Conduct be adopted as the Code of Conduct for elected and co-opted members of Thanet District Council for the Council year 2012/13 until a replacement Code under the Localism Act can be adopted.

1.8.2 That the current Committee arrangements be re-established at Annual Council on 17 May 2012, that is to say;

(i) For the Standards Committee, seven elected Councillors, four appointed Independent (non councillor) Members and three nominated Town/ Parish Representatives; and

(ii) For the Standards (Assessment and Appeal) Sub Committee and the Standards Hearings Sub Committee, a continuation of the current structure and membership.

1.8.3 That the Monitoring Officer be given delegated authority to prepare a job description for the role of Independent Person and commence the recruitment procedure for two Independent Persons using the Standards Appointments Working Party to make recommendations to Council.

1.8.4 That the current complaints procedure be continued until Council adopts new procedures under the Localism Act 2011.

1.9 Council agreed and adopted the recommendations of the Standards Committee at the Annual Meeting of Council held on 17 May 2012 (Minute 7/2012 refers).

2.0 Current position

2.1 As the Regulations on DPI's had not been made by the date of the Annual Meeting it was considered that the Secretary of State would now make and publish transitional arrangements that would defer the implementation of the new Framework and continue the current regime until 1 September 2012. However, on 6 June 2012 the Secretary of State made the Local Authorities (Disclosable Pecuniary Interests) Regulation 2012 and the Localism Act 2011 (Commencement No.6 and Transitional, Savings and Transitory Provisions) Order 2012 of which Article 5 of the latter brought the Standards Framework into effect on 1 July 2012 notwithstanding that the late publication of the DPI Regulations

would mean that the hardly any Council in England would have a Code of Conduct and related arrangements in place by the implementation date. In fact the only consolation was that Article 7 of the Commencement No.6 Order temporarily relieved the rigour of Section 28 (8)(b) of the Localism Act 2011 by authorising the Council to appoint an existing Independent Member of the statutory Standards Committee to the role of Independent Person, provided such appointment was made by the Council before 1 July 2013.

- 2.2 For the avoidance of doubt the implications of the implementation of the New Standards Framework are that as at midnight on 30 June 2012 the statutory Standards Committee and its Sub Committees will cease to exist and that any complaints begun but not completed under the existing arrangements will be treated as if they had been made under the new arrangements (when adopted). Moreover, as the Constitution provides that It is the Standards Committee that makes recommendations to the Council on Standards and Constitutional matters, a draft revised Members Code of Conduct and related complaint management arrangements would have to be consider by the statutory Standards Committee prior to its abolition on 30 June 2012.
- 2.3 As a result the Kent Secretaries Group accelerated its programme of meetings and concluded its work on the Kent members Code of Conduct and related complaints handling arrangements on 18 June 2012. These are presented as Annexes to this report along with draft Terms of Reference for a voluntary Standards Committee. The report will indicate where any of the proposed arrangements differ from those recommended by the Kent Secretaries Group.

3.0 Draft Members Code of Conduct - the Kent Code

- 3.1 The proposed Kent Members Code of Conduct is set out at **Annex 1**. Member will note that it does not contain a general conduct obligation to treat others with respect although it will require Members not to bring their office or the Council into disrepute. In addition, the scope of the Code is limited to when Members are acting in an official capacity but does not make it clear that acting as a Member or co-opted Member of the Council can include when a Member '**acts, claim to act or give the impression that they are acting**' as a member or co-opted Member of the Council. Members may therefore wish to consider amending the Kent Code in these two respects.

Disclosable Pecuniary Interests

- 3.2 Member will also note that the Preamble to the Kent Code describes the circumstances in which a criminal offence may be committed by a Member for non compliance with the registration and disclosure requirements that apply in relation to Disclosable Pecuniary Interests. These are defined in Paragraph 2.1 of the Kent Code and described in detail at Annex 2 of the Code - which is a direct lift from the DPI Regulations. Paragraph 4 of the Kent Code records the registration requirements that will apply to DPI's and Paragraph 5 deals with declarations at relevant meetings of the Council or a joint committee
- 3.3 In particular, Members should note that the Registration requirements set out in Paragraph 4 of the Kent Code exceed the statutory requirements as the statutory provisions only require Members to enter a DPI on the Register of Members Interests by notifying the Monitoring Officer within 28 day of election or co-option, nor do they require Members to notify the Monitoring Officer of any changes in those interests unless they are (or ought to be) the subject of a declaration at a meeting. In summary, Paragraph 4 of the Kent Code borrows on the current Code of Conduct by also requiring Members to notify DPI's to the Monitoring Officer with 28 days of adoption of the Kent Code and also to notify the Monitoring Officer within 28 days of becoming aware of any changes in those interests.
- 3.4 There are two further but very important change in relation to DPI's that should be drawn to Member attention. At present the Register of Members Interests is limited to the

prescribed interests of the Member personally whereas the DPI Regulations define a Disclosable Pecuniary Interest to include the interests (so far as the Member is aware of them) of a Member's spouse or civil partner, The second important change is that in addition to the right of public inspection of the Register of Members Interests, the Register, including the interests of spouses/civil partners, must be published on the Council's web site.

Disclosure of a DPI at Meetings

- 3.5 Paragraph 5 of the Kent Code provides that where Members are present at a meeting and have a DPI in any matter to be considered or being considered, they must disclose the existence of the DPI and explain its nature (unless in the latter case the Monitoring Officer has agreed that the DPI is a Sensitive Interest). The Member must also (unless they have been granted a Dispensation) not speak or vote on the matter and withdraw from the meeting in accordance with the Authorities Procedure Rules. The Member must also not seek to improperly influence a decision about that business – i.e. they must not lobby any of the decision makers. The latter two requirements- to leave the meeting room and not to seek to improperly influence a decision on the matter, reflects current practice in relation to Prejudicial Interests but exceed the statutory requirements

Other Significant Interests

- 3.6 The Kent Code also introduces a second, non registrable interests that must be declared at relevant meetings - the Other Significant Interest - defined in Paragraph 2.1 of the Kent Code to broadly reflect the current Code of Conduct definition of a Prejudicial Interest; that is to say an interest (other than (other than a Disclosable Pecuniary Interest or an interest in an Authority Function) which

- (i) affects the financial position of the Member and/or an Associated Person; or
- (ii) relates to the determination of your application for any approval, consent, licence, permission or registration made by, or on behalf of the Member and/or an Associated Person;

and which, in either case, a member of the public with knowledge of the relevant facts would reasonably regard as being so significant that it is likely to prejudice the Members judgment of the public interest.

- 3.7 Consequently, Members will not only have to declare an Other Significant Interest at a relevant meeting in relation to themselves but also in relation to an 'Associated Person' (in so far as they are aware of the existence of such interest). An Associated Person is defined as follows:

- (a) a family member or any other person with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or

- (e) any body in respect of which you are in a position of general control or management and which:
 - (i) exercises functions of a public nature; or
 - (ii) is directed to charitable purposes; or
 - (iii) has as its principal purpose or one of its principal purposes the influence of public opinion or policy (including any political party or trade union).

3.8 The actions to be taken by a Member when declaring a Significant Interest are the same as for DPI's - unless the Member has been granted a Dispensation - not to speak, and/or vote on the matter but to leave the meeting room during its consideration. Members must also not seek to improperly influence a decision on the matter.

3.9 Members attention is also drawn to Paragraph 5.4 of the Kent Code which only applies to Significant Interests and which mirrors a relieving provision in the current Code of Conduct in relation to Prejudicial Interests by enabling a Member to speak on an item in respect of which they have a Significant Interest provided the public can also speak at the same meeting, the Member declares the interest in the usual way and then leaves the meeting after speaking.

Gifts & Hospitality

3.10 Paragraph 7.0 of the Kent Code increases the current threshold of declaring Gifts and Hospitality from £25 to £100. Members may wish to amend this threshold.

4.0 Draft Terms of Reference - Voluntary Standards Committee

4.1 Council is recommended to establish a voluntary Standards Committee to fulfil the duty to promote and maintain high standards of conduct by Members and co-opted Members. It is further recommended that in accordance with the guiding principles set down by the Council last year, the voluntary Standards Committee comprises seven elected and seven co-opted Members, four of the co-opted Members being Independent (non councillor) Members and three being Town or Parish Councillors. Strict political balance rules will apply to the elected Members and is therefore recommended that strict political balance is waived by Council in favour of the 'approximate' political balance applied to the current statutory Standards Committee which enables the Council to appoint an elected member from one of the small Independent Party Groups. As the voluntary Standards Committee is mainly a recommending body the co-opted Members will be able to vote on such matters and Council can also consider appointing one of the Independent Members as Chairman and Vice-Chairman.

4.2 It is also recommended that when established, the voluntary Standards Committee establishes two Sub Committees - the Standards (Assessment) Sub Committee and the Standards (Hearings) Sub Committee - the former to recommend to the Monitoring Officer how complaints should be dealt with and the latter to conduct a hearing and make findings in relation to a complaints that has been referred to it.

4.3 Draft Terms of Reference for a voluntary Standards Committee, Standards (Assessment) Sub Committee and Standards (Hearings) Sub Committee are attached for consideration as **Annex 2**. Members will also note the dispensation powers that Council is requested to delegate to the Standards Committee.

5.0 Draft Arrangements for Dealing With Complaints

- 5.1 Draft Arrangements for Member complaints handling are set out at **Annex 3**. The Statement of Arrangements incorporates four Annexes. Annex 1 is a Complaints Form (which is still in the process of being finalised) Annex 2 is the Procedures to be Adopted on receipt of a Complaint, Annex 3 relates to the appointment of an Investigating Officer and the conduct of an investigation and Annex 4 sets out a proposed procedure for the conduct of a Hearing.
- 5.2 The proposed arrangements follow the Kent Secretaries Model Arrangements but with two major differences. Firstly, the Kent Secretaries Model envisages all assessment/filtering decisions to be taken by the Monitoring Officer in consultation with the 'Independent Person' whereas Council is being asked to delegate this function to the Monitoring Officer in consultation with the Standards (Assessment) Sub Committee - as this will enable the Sub Committee (as an advisory Sub Committee) to be chaired by one of the co-opted Independent Members and for one of the co-opted Town/Parish Councillors to be appointed to the Sub Committee where the complaint is against a Town or Parish Councillor. The second major difference is in the composition of the Standards (Hearings) Sub Committee where it is proposed that one of the co-opted Independent Members is appointed to the Sub Committee as a non voting Member.

6.0 Consequential and Related Matters

- 6.1 The adoption of the Kent Members Code of Conduct and Model Arrangement (with appropriate amendments) will require some consequential and related amendments to the Constitution and Officer Scheme of Delegations. The Council Procedure Rules need to be amended to require Members to leave the Meeting Room when a Disclosable Pecuniary Interest or a Significant Interest has been declared and the Scheme of Delegations to Officers will need to be amended to enable the Monitoring Officer to:
- (i) take initial assessment decisions in consultation with the Standards (Assessment) Sub Committee;
 - (ii) appoint Members to the Standards (Assessment) Sub Committee and the Standards (Hearings) Sub Committee; and
 - (iii) grant dispensations to Members in circumstances where to not grant a dispensation would adversely affect political balance or mean that the meeting would not be quorate.- in the former case the dispensation to be to permit the Member to remain in the meeting and speak and vote and in the latter case to permit the Member to remain in the meeting only to count toward at quorum
- 6.2 Members will note that it is proposed that the voluntary Standards Committee will have more extensive dispensation powers. However, it is consider necessary to delegate the more limited dispensation powers referred to above to the Monitoring Officer due to the impracticality of convening a meeting of the full Standards Committee to consider a single dispensation request from a Member.

- 6.4 Draft consequential amendments are attached for Members consideration as **Annex 4**.

7.0 Corporate Implications

7.1 Financial and VAT

- 7.1.1 There are no financial implications arising from this report.

7.2 Legal

- 7.2.1 As set out in the report

7.3 Corporate

7.3.1 The Council has duty to promote and maintain ethical standards by elected an co-opted Members

8.0 Recommendations

8.1 To consider and a recommend for approval and adoption, with or without amendment:-

8.1.1 The terms of the draft Kent Members Code of Conduct at Annex 1.

8.1.2 The draft Terms of Reference for a voluntary Standards Committee including the Terms of Reference for a Standards (Assessment) Sub Committee and a Standards (Hearings) Sub Committee at Annex 2

8.1.3 The terms of the draft Arrangements for the management of complaints at Annex 3.

8.1.4 The proposed amendments to the Council Procedure Rules and Scheme of Delegations to Officers at Annex 4

9.0 Decision Making Process

9.1 Recommendations from the Standards Committee are reported to Council for a final decision.

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Reporting to:	<i>Dr Sue McGonigal, Chief Executive</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

Annexes

Annex 1	Draft Kent Members Code of Conduct
Annex 2	Draft Terms of Reference for a voluntary Standards Committee, including the Terms of Reference for Standards (Assessment) Sub-Committee and a Standards (Hearings) Sub-Committee
Annex 3	Terms of the draft Arrangements for the management of complaints
Annex 4	Proposed amendments to the Council Procedure Rules and Scheme of Delegations to Officers