

Independent Chair of Standards- Annual Report

Standards Committee – 7 March 2018

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Independent Chairman of Standards Committee

Status **For Information**

Classification: **Unrestricted**

Executive Summary:

The Chairman's annual report summarises and comments on the work of the Standards Committee for the period March 2017- March 2018.

Recommendation(s):

Members note the report.

CORPORATE IMPLICATIONS

Financial and Value for Money	None arising from this report						
Legal	The role of the Standards Committee is to promote high standards of conduct by councillors and co-opted members in accordance with the members' Code of Conduct. This report relates to the Committees function to monitor the effectiveness of the Code of Conduct.						
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Equality Act 2010 & Public Sector Equality Duty	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p> <table border="1" style="width: 100%;"> <tr> <td colspan="2">Please indicate which aim is relevant to the report.</td> </tr> <tr> <td>Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,</td> <td align="right"><input type="checkbox"/></td> </tr> <tr> <td>Advance equality of opportunity between people who share a</td> <td align="right"><input type="checkbox"/></td> </tr> </table>	Please indicate which aim is relevant to the report.		Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,	<input type="checkbox"/>	Advance equality of opportunity between people who share a	<input type="checkbox"/>
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Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,	<input type="checkbox"/>						
Advance equality of opportunity between people who share a	<input type="checkbox"/>						

	protected characteristic and people who do not share it	
	Foster good relations between people who share a protected characteristic and people who do not share it.	<input type="checkbox"/>
The Standards Committee is a key mechanism to enforce the requirements of the Public sector Equality Duty.		

CORPORATE PRIORITIES (tick those relevant)✓	
A clean and welcoming Environment	
Promoting inward investment and job creation	
Supporting neighbourhoods	

CORPORATE VALUES (tick those relevant)✓	
Delivering value for money	
Supporting the Workforce	<input type="checkbox"/>
Promoting open communications	<input type="checkbox"/>

1.0 Introduction and Background

- 1.1 My fourth report to Thanet District Council, largely covering the Municipal Year 2017/18 is being written at a time (late winter) of uncertainty in terms of the Council's political leadership. Furthermore whatever short term solution is determined, the coming year will be increasingly shadowed by the prospect of elections for a new Council membership in the spring of 2019. These factors might test some Members in their obligation to observe the Standards demanded of them by the Council's Constitution as well as by the nationally prescribed Seven Principles of Public Life.

I therefore invite all present Members to reaffirm their commitment at the beginning of this Council and regardless of political affiliation, to conduct themselves such that this does not detract from the reputation of the Council nor the office of Member, and to collaborate in this coming, potentially challenging period through reasoned debate and contestability.

It is also important for me to state that the behaviour of most Members has throughout 2017/18 been wholly acceptable and it is only a small minority who have warranted scrutiny through Standards processes.

2.0 A Review of Local Government Ethical Standards in England

- 2.1 Members may be aware that the Committee on Standards in Public Life, a body that advises the Prime Minister of the day, is currently undertaking a review of local government ethical standards. Robust standards arrangements are needed to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government. The Committee's consultation questions are being presented for consideration and debate by the Council's Standards Committee. In addition as the Independent Chair of Standards I will also be responding in my own right, based upon the experience gained with this Council.

When the previous arrangements for the formal removal of elected members through misconduct were abolished by the then Secretary of State in the early days of the Coalition government as part of the 'bonfire of a thousand QUANGOs', many have consistently argued that this was too drastic a step: without proper consideration being given to replacement sanctions; specifically the suspension of Members in appropriate and proper circumstances. The formal tribunal system with legal counsel in attendance may have been cumbersome and over elaborate. However the

resulting Standards system left to individual councils has, in the absence of some legal power been lacking in robust disciplinary sanctions to encourage or assure compliance. The current system is also overly reliant on the respect for and amour-propre of Independent and Elected Members and Officers who sit on Standards Committees.

3.0 Member Conduct within the Council Chamber and Overall Member Effectiveness

- 3.1 If I have chosen so early in this report to highlight short term risk to the reputation of the Council through any errant Member behaviour, I must also stress that there continues to be steady progress in proper conduct over the last five years. Subject to exceptional incidents, that improvement has continued over the past year, as set out in the sections below.

Overall the behaviour of members in Full Council has been satisfactory. Certainly the exchanges between the leading Members have been maintained wholly in an appropriate manner. Regrettably, however there have been some isolated lapses from expected behaviour from some Members. At the annual Budget steering meeting (8th February) two unaligned Members objected to their new placement within the Chamber consequent to the recent political regrouping. This made for an unfortunate spectacle, particularly to members of the public present. The said Members subsequently left the Chamber without recording either their assent or dissent to the annual budget being set; which fundamentally should have been the reason for any Members presence in the Chamber that evening.

Each year I stress the importance of continuing Member training, to enhance effects and not just within the Council Chamber. For that reason and whilst having nothing personally to do with its initiation nor development, I particularly welcome the Member Training Strategy, received and adopted by Full Council during 2017, and especially I applaud this as product of cross party working. I am also advised that the Council is working actively for Charter status through compliance with the South East Employers Charter for Elected Member Development. A Members' focus group has been engaged with a learning needs analysis for the quest for Charter accreditation and which already sustains the ongoing training programme already provided by the Council.

Every Member regardless of experience and long standing should avail themselves of the continuing training that is offered. Some of the Standards Sub Committee meetings concern issues of conduct which might have been avoided had training opportunities been taken up.

4.0 Constitutional Review Working Party(CRWP) and Standards Committee Meetings

- 4.1 The Constitutional Working Party has met on 20 February 2018, this being the first time since 24 August 2016. The substance of the changes being considered derive from issues that have arisen over the past six months. In due course the proposed changes will be presented to Full Council for approval. The infrequency of CRWP meetings continues to be testament to the considerable work to overhaul the Council's Constitution during the period 2015/16.

Meetings of the Standards Committee whilst scheduled in the annual meetings cycle are held whenever there are a number of issues to be discussed rather than for the sake of fulfilling a schedule. The Committee has met on 12 September and 9 November 2017 and on 7 March 2018. Issues covered included reviewing the Annual

Letter to all Councils from the Local Government Ombudsman, support to Parish Councils (see subsequent section), a DCLG consultation on proposed additional disqualification criteria for Councillors and Mayors (sexual offenders registration, receipt of civil injunction or Criminal Behaviour Order for anti-social acts), Constitutional changes, the aforementioned Local Government Ethical Standards Stakeholder Consultation, and this report.

5.0 Town and Parish Councils in the Thanet Area

- 5.1 Concern with supporting standards and conduct among Parish and Town Council Members has been a continuing issue that has been discussed at Standards Committee and informally between myself and the Monitoring Officer. On 26 October, Mr Howes met with the local Parish Forum to explore the potential for training and mentoring. It was agreed that a draft Social Media Code of Conduct for Parish/Town Councils would be drafted and training offered by TDC Media Officers on the appropriate use of social media. Other training potential is also being explored, though the cost would need to be determined, possibly based on the number of electors.
- 5.2 Recent case law has clarified the relationship between Town/Parish Councils where the latter bodies adopt the Code of Conduct of the relevant District Council, as is the case with all such councils in Thanet. In *Taylor v Honiton Council* 2016 Queens Bench Division (Administrative Court), it was contended that the district councils role was limited to that of investigator and adviser. Thus the ultimate decision maker in terms of sanctions to be imposed upon an errant Parish/Town Member (in this case Cllr Taylor) rest with a Parish/Town Council. This interpretation of law, the Court determined, was wrong. The Localism Act 2011 gave decision making power as to the appropriate sanction to be exercised to the principal authority (the District Council); indeed it required it to have arrangements in place for the exercise of that power.
- 5.3 In the previous municipal year TDC found itself opposed by a local Town Council in relation to a series of disciplinary measures it had determined were appropriate for a TDC Member specifically in that Members dual capacity as a Town Councillor (complaint TDSC144/16). The *Taylor v Honiton* case makes it clear that any sanctions judged appropriate by TDC as the principal authority must in future be implemented without further question.
- 5.4 I am grateful for the help received from the parish council members who are nominated to sit on the Thanet Standards Committee and whose insight is valuable when Sub Committees are formed to address complaints involving Parish and Town Council Members.

6.0 Complaints about Member Behaviour on Thanet District Council 2017/18

- 6.1 The totality of complaints received relating to both District and Town/Parish Councils is set out in the table below. In view of the data (small numbers), an expression in percentage terms might lead to misleading or sensational interpretation. Absolute numbers are therefore used

COMPLAINT NO:	DATE	PROGRESS	COMPLAINANT	AGAINST	ALLEGATION
2017/2018					
TDCSC161/17	22/02/17	Informal complaint resolution instigated. Closed.	Member of the public	Parish Councillor	Allegations of bullying behaviour and inappropriate use of language.
TDCSC162/17	27/02/17	No further action. Closed.	Member(s) of the public and TDC Councillor	TDC Councillor	Allegations of misuse of charity money.
TDCSC163/17	28/02/17	Did not meet legal jurisdiction test. Closed.	Member of the public	TDC Councillor	-
TDCSC164/17	09/03/17	No further action. Closed.	Member of the public	TDC Councillor	Allegations of inappropriate sharing of information.
TDCSC165/17	13/04/17	Currently on hold. Open.	Member of the public.	TDC Councillor	-
TDCSC166/17	10/05/17	Did not meet legal jurisdiction test. Closed.	Parish Councillor	Parish Councillor	-
TDCSC167/17	15/05/17	Investigation. Open.	TDC Councillors	TDC Councillor	Allegations of bullying and harassment.
TDCSC168/17	31/05/17	Did not meet legal jurisdiction test. Closed.	Members of the public	TDC Councillor	-
TDCSC169/17	20/06/17	Did not meet legal jurisdiction test. Closed.	TDC Councillor	TDC Councillor	-
TDCSC170/17	20/06/17	Did not meet legal jurisdiction test. Closed.	TDC Councillor	TDC Councillor	-
TDCSC171/17	03/07/17	Did not meet legal jurisdiction test. Closed.	Member of the public	TDC Councillor	-
TDCSC172/17	10/07/17	Did not meet legal jurisdiction test.	Member of the public	Parish Councillor	-

COMPLAINT NO:	DATE	PROGRESS	COMPLAINANT	AGAINST	ALLEGATION
2017/2018					
		Closed.			
TDCSC173/17	17/07/17	Did not meet legal jurisdiction test. Closed.	Member of the public	Parish Councillor	-
TDCSC174/17	24/07/17	Did not meet legal jurisdiction test. Closed.	Parish Councillor	TDC Councillor	-
TDCSC175/17	15/08/17	Investigation. Open.	Member of staff	TDC Councillor	Allegations that a subject member berated an officer on social media.
TDCSC176/17	24/08/17	Did not meet legal jurisdiction test. Closed.	Member of the public	Parish Councillor	-
TDCSC177/17	18/09/17	No further action. Closed.	TDC Councillor	TDC Councillor	Complaint regarding abusive posts on social media.
TDCSC178/17	18/09/17	No further action. Closed.	TDC Councillor	TDC Councillor	Complaint regarding abusive posts on social media.
TDCSC179/17	28/09/17	Did not meet legal jurisdiction test. Closed.	Member of the public	TDC Councillor	-
TDCSC180/17	12/10/17	Did not meet legal jurisdiction test. Closed.	Parish Councillor	TDC Councillor	-
TDCSC181/17	16/10/17	Did not meet legal jurisdiction test. Closed.	Member of the public	TDC Councillor	-
TDCSC182/17	18/10/17	Informal resolution. Closed	Member of the public	TDC Councillor	Complaint regarding offensive comments on social media.

COMPLAINT NO:	DATE	PROGRESS	COMPLAINANT	AGAINST	ALLEGATION
2017/2018					
TDCSC183/17	19/10/17	Informal resolution. Closed	Member of staff	TDC Councillor	Allegations that a subject member berated an officer on social media.
TDCSC184/17	27/10/17	Did not meet legal jurisdiction test. Closed	TDC Councillor	TDC Councillor	-
TDCSC185/17	03/11/17	Informal resolution. Closed	Members of the public	TDC Councillor	Allegations that the subject member met with a member of the public about their planning application and concerns that this was inappropriate.
TDCSC186/17	09/11/17	Investigation Open	Member of the public	TDC Councillor	Allegations about posts made on social media and contact made to the complainant's employer to bully and harass.
TDCSC187/17	13/11/17	Investigation Open	Officer	TDC Councillor	Allegations that the subject member posted an officer's private home telephone number online.
TDCSC188/18	11/01/18	Did not meet legal jurisdiction test. Closed	Member of the public	KCC Councillor	-
TDCSC189/18	12/01/18	Did not meet legal jurisdiction test. Closed	TDC Councillor	TDC Councillor	-
TDCSC190/18	08/02/18	Initial assessment. Open	TDC Councillor	TDC Councillor	-
TDCSC191/18	12/02/18	Initial assessment Open	Member of the public	TDC Councillor	-

- 6.2 The Council received 31 complaints since my last report was received. 40 complaint letters were received in relation to one specific incident (complaint TDCSC 185/17). I have chosen to group these 40 letters as one complaint, which is how they were managed through the Standards process. (A subsequent section of this report is devoted to complaint TDSC 185/17). 12 separate complaints concerned one Member alone, one Member was formally complained about 4 times, one Member's behaviour received 3 separate complaints, 5 complaints were made concerning Parish Council Members. 1 complaint was made about a Kent County Councillor and this was discounted from further consideration as a specifically Thanet Council matter.
- 6.3 Of the 31 complaints received, 12 passed the initial jurisdiction test and progressed for further scrutiny.
- 6.4 Of these 12 cases, 4 progressed to formal investigation. 1 case so investigated, was judged not to be a breach of the Code of Conduct. In 1 case a Member's Conduct was indeed found to have breached the Code of Conduct. The remaining 2 formal investigations are currently in progress (open investigation).
- 6.5 Having passed the aforementioned jurisdiction test, 4 other cases were also found to have potentially breached the Code of Conduct, but their nature was such that Informal Resolution was judged the appropriate sanction, typically a letter of admonishment from the Monitoring Officer.
- 6.6 Of the remaining 4 cases, Sub Committees determined that no further action was required.
- 6.7 Sadly, however this is viewed, these figures represent a palpable increase in complaints on last year. Should TDC therefore be required to submit a return to an outside body such as the Local Government Association I judge that our return should equate to 6 demonstrable Standards Complaints, with the potential for a further 2, to be added to this total, once the remaining formal investigations have been completed. Potentially therefore the number of complaints has doubled from 2016/7 and thus justifies my concern that Council Members be consciously mindful of the Code of Conduct during this coming demanding year.
- 6.8 Some other comments are appropriate. Complaints that have a social media content have again emerged as a key source; this notwithstanding the Council's advice, policy on use and training offered. Further, complaints involving Member against Member have become an increasing feature, which is to be regretted. No less than 9 complaints out of the 32 received are of this nature (that is more than one quarter of the total). I need to stress that Sub Committees tend to be wary of complaints initiated by Members against other Members of the Council, especially where these are of different political persuasions, and treat all of such complaints with some caution.
- 6.9 One regrettable incident has involved the public criticism of a named Council Officer in social media. This is particularly inappropriate, since officers are not able to defend themselves against such assertions. When I began in my role, similar public criticisms were being made against staff in the Council Chamber by one or two (now ex) Members almost normatively, and then deftly withdrawn when challenged through the Chair, but leaving unpleasantness and cynicism amongst the public attendees. Members must refrain from all public criticism of the Council's officers absolutely. Should there be strains in Member/Officer relations, there is an agreed Code within the Constitution to address such matters.

- 6.10 It seems necessary to stress that the Code of Conduct is concerned with laying down principles of acceptable Member behaviour. Thus breaches of the Code, where found, are not political judgements. Group policy is therefore inappropriate in this context. Regrettably one group of Members at Full Council on 22nd February, voted en bloc not to censure another Member, whose assertions as to the competence of a named Officer, were found to be in breach of the Code. This stance, seemingly endorsing the errant behaviour, was noted by many present in the public gallery and drew some unfavourable comment. A bizarre feature of this episode was that the lead Member of the group, had sat in person on the Sub Committee, heard all the evidence, and at the time, concurred both with the findings of fact and with the recommended sanctions. With publication of the sub committee's findings he then sought to distance himself from the conclusions reached. This culminated in posing at Full Council, an obtuse question as to the nature of censure, before declining to support this recommendation (the group colleagues following his lead). Members might wish to speculate amongst themselves as to the reasons for this change of stance.
- 6.11 From the perspective of managing the complaints process I am delighted that the informal performance standard of an average acknowledgement from receipt of 3 working days, and an average of 28 days to the meeting of an assessment Sub-Committee, has been maintained. In that regard I would like to commend Emily Kennedy for her personal commitment to achieving these time thresholds.
- 6.12 One of the frustrations with the management of formal investigations is that the external assessors that have been used in the past have tended to set their own time frames, being unmoved by much sense of momentum or the appropriateness of a timely resolution. Fortunately during this reported year, the Monitoring Officer has found a new person able to undertake such investigations and is committed to delivering reports in a consciously timely manner. His work has also been judged to be of a high professional standard. It is hoped that his services might be secured in future cases, should that prove necessary.
- 6.13 A final but related comment concerns the cost of formal investigations. These on average cost TDC £3.5K each. There is no budget for such assignments. Resort to formal investigation is not undertaken lightly and is driven by the severity of the allegations. Thus the necessity of pursuing such a course comes at the expense of other Council activities.

7.0 Complaint TDSC 185/17

- 7.1 This high profile incident attracted 40 complaints, the largest number received, certainly in my time associated with the Standards Committee. In view of the volume of letters received the issue warrants a specific account.
- 7.2 The complaint letters received largely followed a standardised format. They expressed concern at an observed (and photographed) meeting in a public place between a Member and a third party linked to the Manston Airport site. After due consideration, the appointed Standards Sub Committee determined that whilst such a meeting was ill advised, there was nothing in such behaviour which breached the Code of Conduct. I am advised that following this determination, a number of the complainants referred the matter to the Local Government Ombudsman. The Ombudsman's speedy response stated that the Council had conducted its Standards enquiries entirely properly and there were no grounds for intervention by the Commission for Local Government in England (the Ombudsman).

7.3 There is a rich mix of local politics woven into the issue of the future of the Manston airport site and it was apparent from social media that these complaints had been orchestrated to some extent. Put more directly, this complaint risked being employed for a partisan purpose.

8.0 Thanks

8.1 I would like to thank Mr Tim Howes, Monitoring Officer for his continuing wisdom, knowledge and professional integrity. My thanks also go to the officers of Democratic Services who continue to serve the Standards agenda with diligence. I must acknowledge the support of Mrs Janet Bacon, Vice Chair of Standards who has ably deputised on several occasions when I have been unavailable during the past year. I should also note the contribution of Mr Dennis James, the Independent Person who offers an opinion before each and every complaint received is determined as a potential breach of the Code of Conduct. Inexcusably, I have failed to acknowledge his role in previous reports!

8.2 Finally I would like to acknowledge those Members of the Standards Committee who have severally contributed at convened Standards Sub Committees. It is never easy to be required to pass judgement on other elected colleagues, and their essential contribution to good governance should be publicly acknowledged.

8.3 Membership of the Standards Committee and especially a convened Sub Committee should not be approached casually, since it is essential that having been party to a decision, all participants remain steadfast in their stance. Failure to remain firm risks weakening the Council's Standards duties.

Contact Officer:	Timothy Howes, Director of Corporate Governance & Monitoring Officer
Reporting to:	Madeline Homer Chief Executive