

Classification: N/A

Key Decision: No

Gravesham Borough Council

Report to: Standards Committee
Date: 24 September 2012
Reporting officer: Monitoring Officer
Subject: The Localism Act 2011 and Code of Conduct

Purpose and summary of report:

To consider the adoption of a new code of conduct and associated implementation of the new standards regime under the Localism Act 2011.

Recommendations:

1. That the Council adopts forthwith the Kent Code of Conduct;
2. That the Council adopts forthwith the Kent Procedures for dealing with allegations of non-compliance with the Code, with a three-member sub-committee of the Standards Committee as a 'Hearings Panel';
3. That the Monitoring Officer be authorised to make amendments to the Constitution and the terms of reference to reflect the adoption of the Kent Code of Conduct and Kent arrangements;
4. That the Monitoring Officer be authorised to recruit an independent person.

INTRODUCTION

1. The provisions of the Localism Act 2011 ('the Act'), which replace the existing Standards arrangements set out in the Local Government Act 2000, came into effect on 1 July 2012. The main differences from the old arrangements are the absence of a central regulatory authority and the removal of sanctioning powers. The Act permits a fairly high level of local choice in how councils wish to manage their arrangements for dealing with member conduct issues in the future.
2. This report sets out the key elements of the legislation, together with recommendations and options for how these statutory requirements could be met.
3. The Act repeals the 'standards arrangements' under the Local Government Act 2000 and in particular it abolishes Standards for England, meaning there is no longer a national regulator of local government standards. It also abolishes the requirement for councils to adopt a national model Code of Conduct and the requirement to have a statutory Standards Committee and related complaints' framework.

THE NEW STATUTORY FRAMEWORK AND OBLIGATIONS UNDER THE ACT

4. The key obligations set out in the Localism Act in respect of Standards are as follows:
 - (a) The Council must promote and maintain high standards of conduct by members and co-opted members of the authority;
 - (b) The Council must adopt a Code of Conduct consistent with the Nolan Principles of Conduct in Public Life;
 - (c) The Council must have arrangements for investigating allegations of failure to comply with the Code and for taking decisions on those allegations;
 - (d) The Council must seek the views of an independent person, and take them into account before a decision on the outcome of an investigation is made;
 - (e) The Council is responsible for investigating and determining allegations against parish members in the area;
 - (f) There are no statutory sanctions under the legislation and therefore the actions available to deal with a failure to comply with the Code of Conduct are those within the Council's own authority at common law;
 - (g) All Council members within the area must register any disclosable pecuniary interests with the Monitoring Officer. Failure to do so, the provision of false information, or participation in decision-making where there is such an interest, will be a criminal offence.
5. In summary there are two main areas upon which to decide, being the Code of Conduct to be adopted and how the Council will fulfil the duty to promote and maintain high standards of conduct (and its arrangements for investigating allegations of a failure to comply).

CODE OF CONDUCT

6. The Act provides that the Council must have a Code of Conduct for members and co-opted members. The Code must be based on the Nolan Principles of Conduct in Public Life, however within these parameters councils have the freedom to adopt a Code of their choosing. As a result a number of draft Codes have been produced either by relevant Local Government groups such as the Association of Council Secretaries and Solicitors (ACSeS), National Association of Local Councils (NALC) or by councils individually or as regional groups of councils. In that regard the Kent Secretaries' Group has produced a 'Kent Code' for use by all local authorities in Kent.
7. The final regulations under the Act were published on the evening of 9 June 2012. It seems that Kent-wide the majority of district councils have decided to adopt the Kent Code. A copy of the Kent Code of Conduct is attached to this report.
8. The Kent Code is consistent with the Nolan principles and fully compliant with the Act. Adoption of this Code would have advantages of keeping acceptable and established minimum standards which are widely known; and of increased credibility, particularly as it is likely to be adopted across Kent by the districts, the County Council and many town and parish councils. Adoption of the Kent Code would also be especially important for members who are "dual-hatted" either at Borough/County or

Borough/parish level. It would enable a more adequate body of case law, consistent practices, guidance notes and principles to be established across the region. Further, while Kent councils work increasingly together at member and officer level on strategic boards, such as the Joint Transportation Board it is helpful if the same rules apply. This paper therefore recommends that the Council adopt the Kent Code of Conduct.

PECUNIARY INTERESTS

9. The declaration of pecuniary interests, their entry into the Register of Interests and non-participation in decision-making which could affect those interests (unless a dispensation has been obtained) are areas where members have to be particularly vigilant as failure to comply is a potential criminal offence. Under the Act, the Monitoring Officer is responsible for receiving notifications of interest and their entry in the register, and will ensure that clear guidance and advice is provided to assist members in fulfilling the statutory requirements. Members will recall my letter earlier this year enclosing disclosure forms.

SANCTIONS FOR BREACH OF THE CODE OF CONDUCT

10. The Localism Act abolishes all statutory sanctions including the sanction to suspend a member for up to six months. Under a future regime only common law sanctions would be available when dealing with a member who has breached the Code of Conduct. This will include the ability for the Council to publically censure by publishing the name of a councillor who has been found to have breached the Code and the circumstances of that breach, make recommendations (rather than insist) of training and mediation and rely on political groups to assert party discipline on their members (which could include removing a particular member from a committee).

PROCEDURE FOR INVESTIGATING COMPLAINTS

11. The Act obliges councils to have a procedure for dealing with allegations that a member has breached the Code of Conduct. The Act gives substantial freedom for such procedures to be developed locally. The Council also needs to decide which Committee is to have oversight of such procedures and of course it has already decided to adopt a Standards Committee for this purpose. It is recommended that the 'Hearing Panel' required by the procedures be made up of any three members of the Standards Committee. This flexibility in membership, as compared to having a fixed three member panel, is more likely to permit panels to be called at short notice. It is also likely to promote confidence in the system more readily, with no small group of members having policing rights over the rest.
12. A set of procedures has been developed across Kent to complement the Kent Code. That model set of 'Kent Procedures' is attached. Compared to the former compulsory system, the Kent Procedures are much more flexible, will be cheaper in practice and fairer, allow greater expedition and transparency for members who are the subject of a complaint. The advantages of adopting the Kent Procedures mirror those in respect of the Kent Code set out at paragraph 8. There is currently no widely agreed alternative model to the Kent Procedures and therefore the alternative to adoption of the Kent Procedures is for this Council to draft its own procedures. This report recommends adoption of the Kent Procedures.

THE INDEPENDENT PERSON

13. The Act sets out a requirement that an 'independent person' plays a role in any procedures designed for investigating allegations that a member has breached the

Code of Conduct. The independent person's views must be sought and taken into account prior to a decision being made following an investigation into a complaint.

14. The Act requires arrangements to be put in place for the appointment of at least one independent person, either externally recruited or, under transitional provisions, a former member of a Standards Committee. This independent person should not be confused with independent co-opted members. It is recommended that authority to recruit an Independent Person be delegated to the Monitoring Officer.

DUTY TO PROMOTE AND MAINTAIN HIGH STANDARDS OF CONDUCT AND OPTIONS FOR OVERSEEING THE FUNCTIONS UNDER THE LOCALISM ACT 2011

15. The duty to promote and maintain high standards of conduct required under the Act is essentially the same as the general duty under the Local Government Act 2000. The fulfillment of this duty is the responsibility of the Standards Committee and it is recommended that the Monitoring Officer be authorised to adjust the terms of reference of the Committee as necessary to put this into effect.
16. It should be noted that the Monitoring Officer will have greater powers to reject vexatious and frivolous complaints and also personally to deal with less serious complaints without the need to refer these to a sub-committee. Therefore there will be much less potential work for a sub-committee under the new arrangements, with sub-committees called to determine only in serious cases.

IMPLICATIONS		APPENDIX 1	
The new standards regime under the Localism Act 2011 will have wide ranging implications but is a necessary regulatory tool.			
Legal	Any newly adopted regime may be subject to judicial review in the event of unlawful or otherwise unreasonable decisions, or if the process adopted by the Council steps outside of the statutory framework.		
Finance and Value for Money	Negligible, although costs associated with the committee process are likely to be incurred.		
Risk Assessment	Low.		
Equality Impact Assessment	Screening for Equality Impacts		
	Question	Answer	Explanation

	a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	There is no potential for the adoption of a new, simpler standards regime to discriminate against or adversely affect any group in the community.
	b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	Yes	The new process will more fairly address any alleged breach of the new Code, including breaches occasioned by acting in a fashion contrary to equality.
	c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		None required.
<i>In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above</i>			
Corporate Business Plan	Area of focus 17 (managing the Council's business) is engaged.		
Crime and Disorder	No direct implications under section 17 of the Crime and Disorder Act 1998.		