

COUNCIL

26 NOVEMBER 2013

REPORT OF MONITORING OFFICER AND CORPORATE DIRECTOR (CORPORATE SERVICES)

A.3 PROPOSED NEW STANDARDS ARRANGEMENTS

(Report prepared by Lisa Hastings and Martyn Knappett)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To report on the outcomes of a review into Members' conduct arrangements and to seek Council's approval of a new Standards Framework, including a new Members' Code of Conduct and a revised Committee structure and working arrangements to fulfil the Council's statutory duty to promote and maintain high standards and instil public confidence in Councillors' behaviour.

EXECUTIVE SUMMARY

Context

- The Localism Act 2011 introduced new arrangements, for adoption at local level, promoting and maintaining high standards of conduct by Members and dealing with complaints about Members with effect from 1 July 2012. At its meeting held on 22 May 2012 (Minute 19 refers), the Council agreed new arrangements commensurate with the Act.
- Practical application of these new arrangements for dealing with complaints received about Members resulted in concern being expressed about, and a loss of confidence in, the way the new arrangements were working.
- Both the Conduct Committee and Cabinet have asked for a review of the new conduct arrangements to be carried out and the review has now been completed.

Proposals

This report builds on the outcomes of that review, together with the lessons learnt from the operation of the new arrangements across a range of Councils and proposes a new Standards Framework for this Council which includes the following key features:

- A revised, clearer and more specific **Members' Code of Conduct** (which underpins all of the other arrangements).
- Terms of Reference for a **Standards Committee** to replace the current Conduct Committee together with a **Town and Parish Councils Standards Sub-Committee**.
- **An enhanced role for the Monitoring Officer** to manage the complaints process in accordance with the agreed policies and delegations and a Member commitment to accept the decisions and respect the recommendations of the Monitoring Officer.
- Different arrangements and roles for the **Independent Persons** – reduced from 5 to 3 and contributing via individual consultation rather than as a Panel investigating and reporting.

- Greater emphasis on **Group Leaders** taking responsibility for dealing with complaints early on and resolving complaints informally where possible.
- **Clear timescales** throughout the process both for officers and Group Leaders.
- **Delegations to the Monitoring Officer** in accordance with the adopted Complaints Procedure including determining where formal investigations are required in most cases and granting dispensations on all 5 grounds set out in the Localism Act.
- Use of **investigating officers from Councils outside Essex** where possible.
- A revised and much more thorough **Complaints Procedure** including a **flowchart** setting out the process to be followed.
- A clear statement of the roles of the Monitoring officer in a **Monitoring Officer's Protocol**.
- A clear statement of the roles of the Independent Persons in an **Independent Person's Protocol**.

RECOMMENDATIONS

It is recommended that:

- (a) The Council approves the proposed new Standards Framework set out in this report and that it replaces the Conduct Arrangements which were agreed by the Council in May 2012.
- (b) Council notes the outcomes of the review of the existing Conduct arrangements as detailed in the Executive Summary in Appendix A.
- (c) The Members' Code of Conduct set out in Appendix B, be approved and that all Town and Parish Councils in the Tendring District be invited by the Monitoring Officer to adopt the same Code for their own Councils.
- (d) All Tendring District Council members review their Declarations of Interests and provide any updates to the Monitoring Officer in accordance with the Code of Conduct.
- (e) The Terms of Reference and Delegated Powers for the Standards Committee and the Town and Parish Councils' Standards Sub-Committee set out in Appendix C, be approved.
- (f) The Chairman, Vice-Chairman and membership of the Standards Committee be as four Conservative, one Labour, one Independent and one Tendring First Member as follows:
 - Councillor N Stock (Chairman);
 - Councillor R Heaney (Vice chairman);
 - Councillor P Honeywood;
 - Councillor F Nicholls;
 - Councillor T Howard;
 - Councillor I Johnson and
 - Councillor J Hawkins

That when conducting a hearing regarding a specific complaint the Chairmanship will pass to a member of the Committee who is not of the same political group as the Member complained about (or the complainant

if that person is also a Member of the Council).

- (g) The Membership of the Town and Parish Councils Standards Sub-Committee be three (TDC) members of the Standards Committee together with 3 co-opted, non-voting Town and Parish Council representatives nominated by Tendring District Association of Local Councils.
- (h) That the TDC membership of the Sub-Committee consist of two Conservative and one Labour or Independent Members (to be nominated) and that the Sub-Committee appoints a Chairman from the TDC membership.
- (i) The Monitoring Officer Protocol, as set out in Appendix D, be approved.
- (j) The Independent Person's Protocol, as set out in Appendix E, be approved.
- (k) The number of Independent Persons appointed by the Council be reduced to three with effect from the commencement of the 2014/15 Municipal Year and that authority be delegated to the Monitoring Officer to bring about the revised arrangements with regard to the Independent Persons in the manner set out in this report.
- (l) The current Independent Persons appointment will end on 6th May 2014, unless resolved otherwise in the interim.
- (m) The Complaints Procedure, as set out in Appendix F, be approved.
- (n) The Standards Committee adopt hearing procedures setting out how complaints will be considered by the Standards Committee when conducting a hearing based on the principles in this report.
- (o) The Council's Constitution be amended by the deletion of the current Members' Code of Conduct and the Terms of Reference for the Conduct Committee and that they be replaced by the Terms of Reference and Delegated Powers for the Standards Committee and the Town and Parish Councils' Standards Sub-Committee, the revised Members' Code of Conduct, the Complaints Procedure, The Monitoring Officers Protocol and the Independent Persons Protocol.
- (p) Authority be delegated to the Monitoring Officer to make any consequential amendments to the Constitution arising from the adoption of the proposals set out in this report.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

It is important that both Members and the wider community, including the general public and external stakeholders have confidence in the Council's procedures for dealing with complaints about Members. This report and the attached appendices set out proposals to address concerns that have been raised and amend the current arrangements to promote and maintain high standards of conduct.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

Any changes to the procedures can be implemented within the Council's existing budget and resources.

Risk

There is a risk that the new proposals may not address concerns raised and it is proposed that the arrangements be further reviewed by the Monitoring Officer in May 2014 after six months of operation.

The External Auditor's 2013 Audit Plan makes reference to the following:-

"The Council needs to continue to develop a culture of openness, transparency, trust and confidence between members and in member and officer relationships. Reflecting honestly and openly on handling of recent complaints and concerns, the Council's members should positively identify the actions it needs to take to embed a culture of strong ethical and corporate governance at all levels in the Council. We therefore strongly recommend the Leader of the Council, working with all members and the Council's senior management team, continue to take these actions forward."

This has been carefully considered when the proposed arrangements have been developed. All Members have been given the opportunity to contribute to the review of the arrangements to date and the development of the proposed arrangements has been progressed in consultation with Group Leaders.

LEGAL

The Localism Act 2011 ("the Act") places a statutory duty upon Councils to promote and maintain high standards of conduct amongst its own Elected Members and any co-opted Members. Strong ethical governance is critical to the corporate governance of the authority and also supports the Council's decision making processes across the organisation.

The Act requires Councils to adopt a code dealing with the conduct which is expected of Members and also have in place effective procedures to enable the investigation of any complaints or allegations that a Member has been in breach of the Code of Conduct. There is also a specific requirement to appoint an Independent Person to have involvement in the process.

The definition of Disclosable Pecuniary Interests (DPIs) is contained within the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

Section 27(12) of the Act requires that the Council must publicise the adoption, revision or replacement of its Code of Conduct.

The standards provisions within the Act equally apply to Town and Parish Councils and the Monitoring Officer's role of contributing to the promotion of high standards extends to advising Town and Parish Councils in relation to conduct matters. Any new arrangements will be promoted to the Town and Parish Councils to adopt where necessary.

It is worth noting the recent criticisms of the new standards regime within the 14th report from the Committee on Standards in Public Life. The most damning quote in respect of local government standards was: "The new, slimmed down arrangements have yet to prove themselves sufficient for their purpose. We have considerable doubt that they will

succeed in doing so and intend to monitor the situation closely". On 24 January 2013, the President of the Association of County Secretaries and Solicitors (ACSeS), a professional association for Monitoring Officers, wrote an open letter to Brandon Lewis MP, in which he stated "ACSeS has raised with your department a number of issues concerning interpretation of the standards provisions where the drafting has given rise to doubt and ambiguity. However, we have not received a response which has the benefit of apparent legal input. In the absence of certainty from the legislation, some authorities have properly and reasonably sought external legal advice. As you will appreciate, the wording of the Act and relevant Regulations does not always lend itself to the particular interpretation that Ministers might desire."

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

The content of this report does not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The Localism Act 2011 brought in new arrangements for promoting high standards of Members' conduct and dealing with complaints about Members with effect from 1 July 2012.

In May 2012, the Council agreed new arrangements commensurate with the Act. These included a revised Code of Conduct, arrangements for implementing and updating a new Register of Members' interests, a different procedure for dealing with complaints about Members, the setting up of a Conduct Committee and the appointment of Independent Persons.

Following the practical application of these new arrangements to complaints received about Members, widespread concern was expressed about the way in which the new arrangements were working. This resulted in a loss of confidence in the arrangements from both Members and across the wider community.

At a meeting of the Conduct Committee in October 2012, Members discussed the need for a thorough review of the processes and procedures of the Conduct Committee and in November 2012, the Cabinet resolved "That an investigation be carried out into the way the recent complaint against Councillor Halliday was dealt with, with particular regard to any mistakes made and any instances of bias, and that the outcomes of this be reported to the Conduct Committee and made available to Cabinet members."

The Cabinet's decision was called in and was referred back to Cabinet which decided that the decision should stand.

In accordance with the minutes of the meetings of the Conduct Committee and Cabinet, a full and thorough review of Members' conduct and complaint arrangements has been carried out, led by the Chief Executive and undertaken by the Corporate Director (Public Experience).

Many of the recommendations from the review have been incorporated into the proposals now set out in this report following further review and consideration by the Monitoring Officer. **A copy of the Executive Summary of Recommendations from this report is attached at Appendix A.**

CURRENT POSITION

A new Monitoring Officer (Lisa Hastings) was appointed in July 2013, and since her appointment has considered the recommendations made in Appendix A, and has also taken account of the experience and learning from other Councils following the first year of operation of the new arrangements under the Localism Act. Consultation has also taken place with Members and Group Leaders from all parties to reach a consensus on the enhanced procedures for Tendring District Council as a whole.

The outcome of these various stages of work is the proposed new Standards Framework for the Council.

The proposed new Standards Framework consists of five key elements. Each of these is set out as a separate appendix to the report and is explained and summarised in the text below.

The five elements are:

- The Members' Code of Conduct - Appendix B.
- The Terms of Reference and Delegated Powers for the Standards Committee and the Town and Parish Councils' Standards Sub-Committee – Appendix C.
- The Monitoring Officer Protocol – Appendix D
- The Independent Persons Protocol – Appendix E
- The Complaints Procedure – Appendix F

The documents set out in these appendices collectively strengthen the Council's arrangements for fulfilling its duty to promote and maintain high standards of conduct and to building public confidence by demonstrating a commitment to maintaining positive behaviours in relation to all seven Principles of Public Life.

The overall approach of the new arrangements is to seek:-

- A focus on clarity of information and training for Members to increase awareness and support good standards of behaviour;
- Proportionality – responses to complaints which are proportionate to their seriousness;
- Timeliness – with clear timescales for the various stages of complaints to be progressed;
- Checks, balances, reporting requirements and delegation to the Monitoring Officer of key elements of the process to maximise independence from the political process, and
- Early and informal intervention to resolve complaints wherever possible (including an expectation that Group Leaders will play a key role).

With this approach, it is hoped that the focus and emphasis of the Committee's work will be positive and proactive rather than on only being reactive and dealing with complaints. It is further envisaged that, through a stronger role for Group Leaders in managing group

discipline and involvement in a mediated resolution where complaints do arise, the need to utilise the full formal complaints procedure can be minimised in the future.

MEMBERS' CODE OF CONDUCT

The Council adopted its Code of Conduct in May 2012, which contained reference to the seven Principles of Public Life and the requirements in relation to interests, and was based on the minimum requirements of the Localism Act 2011. The Monitoring Officer has considered the feedback from Members during the review of the existing arrangements which clearly highlighted feelings of immense frustration with the former process by all those involved.

In addition, the experience of working with the current Code and comments received since her appointment have been taken into account, relating to the assessment of evidence and whether breaches were proved or not, demonstrates the need for a clearer and more detailed Code of Conduct against which judgements can be made.

The Monitoring Officer has undertaken research on Codes of Conduct adopted by other authorities using the models proposed by the Local Government Association (LGA) and Department of Communities and Local Government, and a Code prepared by the Public Law Partnership and the experiences of those authorities in applying them over the past year in order to develop an effective Code for this Council.

The Council is therefore recommended to adopt a revised Code of Conduct, as set out in Appendix B. This Code is a revised version of the LGA Code of Conduct, against which a legally trained or otherwise suitably qualified investigator, would be able to assess the evidence produced in support of a complaint to form a clear recommendation for the Committee or Sub-Committee to consider when determining a complaint.

The proposed Code underpins the whole approach being adopted and is:

- Longer and fuller than the existing Code,
- Clearer and more specific than the existing Code,
- More meaningful – with definitions and explanations rather than just the seven principles, and
- Clearer regarding Member's interests.

It will be a clear and informative reference point for Members who are required to adhere to the Code and an essential tool for the Monitoring Officer and those charged with giving advice and making decisions regarding conduct issues.

The proposal to change the Code of Conduct is fully compliant with the Localism Act 2011 (Section 28(5)(a)) which states that: "A relevant authority may revise its existing code of conduct".

The proposed Members' Code of Conduct is attached at Appendix B.

MEMBER DECISION MAKING ARRANGEMENTS

It is proposed that the Conduct Committee be replaced by a Standards Committee, together with a Town and Parish Councils' Standards Sub-Committee.

The Terms of Reference and Delegated Powers for the Committee and the Sub-

Committee are set out in Appendix C. The following is a brief summary of the key features of each body.

The **Standards Committee** will be politically balanced and will have seven Members. No more than one member shall be a member of the Cabinet and Group Leaders will not be permitted to serve on the Committee.

The principal role of the Committee will be to promote and maintain high standards of conduct by Members and adherence to the seven Principles of Public Life as set out in the Members' Code of Conduct.

The Committee will also conduct hearings into complaints against District Councillors where a formal investigation has been carried out. On such occasions the Committee will receive a clear recommendation from the Monitoring Officer as to whether a breach of the Code of Conduct has occurred. It will then be for the Committee to formally determine the recommendation of the Monitoring Officer and the appropriate sanction to be applied.

The Committee will have a standing Chairman elected by the Full Council, but when the Committee is convened to conduct a hearing in respect of a complaint, the meeting will be chaired by one of the Members of the Committee who is not from the same political Group as the Member who is the subject of the Complaint (nor of the same Group as the complainant if that is a Member of the Council). The Committee, when it convenes, will appoint the Chairman for the meeting on the above basis.

It will be a requirement that all members of the Committee undertake training by the Monitoring Officer in relation to the Council's statutory duty and the TDC Code of Conduct and Standards Framework before participating in the consideration of any conduct hearings.

Furthermore it is proposed that there will be named substitute Members from each Group with a seat on the Committee and that they too will be required to undertake the same training before participating in consideration of any conduct hearings.

The **Town and Parish Councils' Standards Sub-Committee** will consider all matters relating to complaints against individual Town and Parish Councillors.

It will consist of three Members of the Standards Committee and three co-opted non-voting members who will be Town or Parish Councillors nominated by the Tendring District Association of Local Councils (TDALC). It will be a requirement that the nominees put forward by TDALC will be of independent standing and that they will not have been either District or County Councillors in the four years prior to their nomination.

In accordance with Local Government legislation only the District Council Members on the Sub-Committee can vote so in order to give the maximum profile to the views and judgements of the Town and Parish Council members their views and recommendations will be recorded in the minutes of the meeting.

The **Delegated Powers** for the Standards Committee include a number of important delegations of power to the Monitoring Officer, which are:

- Dealing with complaints in accordance with the Council's policy and the Complaints Procedure.
- Carrying out the initial assessment of all complaints (including if they wish

consulting with one of the Independent Persons) and making an initial decision of taking no further action, seeking informal conciliation and settlement, or, (in all but exceptional circumstances), to initiate a formal investigation.

- To carry out the investigation, or to commission an investigation by a suitably qualified person outside the Council (all investigations relating to complaints against TDC Members will be carried out externally).
- To grant dispensations in respect of Members interests on all five of the grounds set out in the Localism Act 2011.

Proposed Terms of Reference and delegated powers for the Standards Committee and the Town and Parish Councils Standards Sub-Committee are set out at Appendix C.

THE ROLE OF THE MONITORING OFFICER

The Monitoring Officer has a central role in the operation of the new Standards Framework and throughout the whole Complaints Procedure and, as has been set out above, has significant delegated powers.

It is therefore important to ensure that the role of the Monitoring Officer is clearly explained and understood by those making complaints, those complained about, Officers, Members and the wider public.

In order to achieve this a Monitoring Officer's Protocol has been drawn up which sets out the Statutory basis of the role, the obligations on the Monitoring Officer and the relationship between the Monitoring Officer and the Committee, Sub-Committee, Town and Parish Councils, Independent Persons and the other key elements of the Complaints Procedure.

The idea of having a protocol was initially introduced in the report to Council on 2 July 2013 when the Monitoring Officer was appointed.

The proposed Monitoring Officer's Protocol is set out in Appendix D.

INDEPENDENT PERSONS

The Localism Act requires Councils to appoint at least one "Independent Person" to introduce an element of independence into the Standards and Conduct arrangements.

The Independent Person has three roles

- To be available to complainants to give their independent view and advice;
- To be available to the person who is the subject of the complaint to give their independent view and advice, and
- To be available to the Monitoring Officer to give their independent view and advice.

An Independent Person must be consulted before a decision is made after a complaint has been referred for investigation and where requests are made for dispensations, the Independent Persons may be consulted in other such circumstances, which the Council deems appropriate. The Complaints Procedure refers to the consultation requirements in more detail.

It is not the case that the Independent Persons should work together as a panel nor that they should be charged with carrying out investigations, gathering evidence, or making recommendations to Member decision making bodies. The role the Independent Persons were asked to undertake in the Councils Conduct arrangements since June 2012 has placed them in a difficult position which is to be regretted and their forbearance is appreciated.

It is therefore necessary to make a significant change to the way in which the Independent Persons appointed by the Council engage in the complaints process.

The specific proposals are that the number of Independent Persons should be reduced from five to three and that their roles, acting as individuals rather than as a panel, should be to carry out the functions set out above. The specific role they would carry out for successive complaints would rotate, on a basis to be determined by the Monitoring Officer.

It is furthermore proposed that the best way to enable the new Standards Framework to succeed with a fresh start is for new appointments to the roles of the three Independent Persons, positions to be made with effect from the date of the Annual Council on 6 May 2014. However in order to cover the transition period between now and May 2014, it is proposed to ask the current Independent Persons to remain in position with their terms of appointment coming to an end on 5 May 2014.

It is proposed that the three positions of Independent Person be advertised in the local press and authority be delegated to the Chief Executive and the Monitoring Officer to review the applications received, interview suitable candidates and to make recommendations to Full Council as to who should be appointed.

To provide clarity and confidence in the Independent Person's role a Protocol has been drafted and is set out in **Appendix E**.

COMPLAINTS PROCEDURE

A Complaints Procedure has been produced, which follows accepted national good practice and incorporates those matters highlighted by the review, setting out the roles and responsibilities of those involved in the complaints process. The intention is that the procedure is easily understood by all parties and gives public confidence in the Council's procedure and arrangements.

The Complaints Procedure is underpinned by the Code of Conduct and sets out how individual complaints against Members of the District and Town and Parish Councils will be dealt with.

During the consultation with members, the procedure to be followed by the Standards Committee when conducting a hearing was raised. It is noted that some authorities have adopted the practice and recorded in their procedures, for the Committee to adjourn for the Committee Members, considering the complaint, to deliberate in private and reconvene the meeting for the Decision. The next Standards Committee are requested to approve, draft hearing procedures produced by officers giving consideration to deliberation of a complaint in private, within the legislative framework

The proposed Complaints Procedure is set out at Appendix F.

BACKGROUND PAPERS FOR THE DECISION

None

APPENDICES

Appendix A Review of existing arrangements – Executive Summary of Recommendations
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Appendix B Revised Members' Code of Conduct
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Appendix C Terms of Reference of the Standards Committee and the Town and Parish Councils' Standards Sub-Committee

Appendix D – Monitoring Officer Protocol
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Appendix E – Independent Person Protocol
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Appendix F – Complaints Procedure
