



Sevenoaks

DISTRICT COUNCIL

Despatched: 16.01.12

STANDARDS COMMITTEE

26 January 2012 at 7.00 pm

AGENDA

Membership:

Chairman:	Mr A Riddell	Vice-Chairman:	Mr A Smith
District Councillors:	Dickins, Eyre, Mrs. Morris, Mrs. Purves, Underwood and Mrs. Bracken		
Independent Members:	Mr J M Henderson, Mr K L Newman and Mr J Reece		
Town/Parish representatives:	Mr. T. Austin, Mrs. S. Dickinson, Mr. R. House, Mr. R. Parry, and Mr. D. Taylor		

1. Apologies for absence
2. Minutes of the meeting of the Committee held on 2 August 2011, the Assessment Sub-Committees held on 3 August and 3 November 2011 and the Review Sub-Committee held on 3 October 2011 (Pages 1 - 14)

	<i>Item and Brief Description</i>	<i>Page No</i>	<i>Contact</i>
3.	Monitoring Officer's Annual Report	15 - 36	Christine Nuttall Ext. 7245
4.	The New Code of Conduct	37 - 46	Christine Nuttall Ext. 7245
5.	Working Towards Establishing the New Standards Regime Under the Localism Act 2011	47 - 54	Christine Nuttall Ext. 7245

To assist in the speedy and efficient despatch of business, Members wishing to obtain factual information on items included on the Agenda are asked to enquire of the appropriate Director or Contact Officer named on a report prior to the day of the meeting.

Should you require a copy of this agenda or any of the reports listed on it in another format please do not hesitate to contact the Democratic Services Team as set out below.

For any other queries concerning this agenda or the meeting please contact:

The Democratic Services Team (01732 227241)

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STANDARDS COMMITTEE

Minutes of a meeting of the Standards Committee held on
2 August 2011 at 7pm

Present: Cllrs. Dibsdall, Dickins, Eyre, Mrs. Morris and Underwood.

Independent Members: Mr. Henderson, Mr. Newman, Mr. Reece,
Mr. Riddell and Mr. Smith.

Town/Parish Representatives: Cllrs. Austin, Parry and Taylor.

Apologies for absence were received from Cllr. Mrs. Bracken and Cllr.
Mrs. Purves.

Mrs. Dickinson was also present.

1. TO ELECT A CHAIRMAN OF THE COMMITTEE FOR THE ENSUING
MUNICIPAL YEAR

Resolved: That Mr. Riddell be appointed Chairman of the Committee for the
ensuing municipal year.

2. TO ELECT A VICE-CHAIRMAN OF THE COMMITTEE FOR THE ENSUING
MUNICIPAL YEAR

Resolved: That Mr. Smith be appointed Vice-Chairman of the Committee
for the ensuing municipal year.

3. DECLARATIONS OF INTEREST

Cllr. Parry declared a personal interest in minute item 9 as he had been discussing
the content of the Localism Bill with the Minister of State for Communities and Local
Government. However these discussions mostly concerned the powers and finances
for Councils, not Codes of Conduct or Standards Committees.

4. CHAIRMAN'S ANNOUNCEMENTS

The Chairman noted the significant change in membership of the Committee from the
previous year. He welcomed the new Members and thanked those who had left.

5. MINUTES OF THE LAST MEETING

Resolved: That the Minutes of the meetings of the Committee held on 11
January 2011, the Assessment Sub-Committees held on 15 February and 12
April 2011 and the Review Sub-Committee held on 15 February 2011 be
approved and signed by the Chairman as a correct record.

6. APPOINTMENT OF SUB-COMMITTEES (Report No. 5)

The Monitoring Officer explained that no changes were proposed to the system at

Agenda Item 2 Standards Committee – 2 August 2011

this time and that she believed the Sub-Committees were working well. She explained that the Democratic Services Team was in touch with Members each month to check whether they were available for Sub-Committee meetings.

A Member requested clarification on the definition of “Authority” in Appendix T to the constitution. He wanted to be sure which Authorities an Assessment Sub-Committee could receive complaints about. The Monitoring Officer indicated that Authority stood for the District Council as well as Parish and Town Councils. The Monitoring Officer agreed to check whether this definition was made clear in the Constitution.

Resolved: That the arrangements for sub-committees for the 2011/12 Municipal Year, as set out in the appendix to the report, be confirmed.

7. FORWARD WORK PROGRAMME (Report No. 6)

The Monitoring Officer informed Members that the work plan was similar to previous years but she highlighted that the Committee needed to prepare for the changes envisaged by the Localism Bill. The Committee agreed to discuss this further under The Localism Bill and Future Code of Conduct.

A Member enquired whether updating Members’ Registers of Interest and Gifts and Hospitality on the website also involved publishing those interests registered at the Parish level. The Monitoring Officer stated that Parish and Town Council interests were not put on the Sevenoaks District Council (SDC) website. However, the District Council did send reminders to all Town and Parish Councils that SDC should be notified of any changes to a Member’s Register of Interest within 28 days. At the District Level Members were encouraged to have their information put on the website. Only the paper register was compulsory but in practice only sensitive information was withheld from the website. The Parish and Town Councils could always choose to put their Members Register of Interests on their own website.

The Chairman expected that training would continue, for the moment, as it had in the past. A training programme would continue for Parish and Town Councils.

Resolved: That the Forward Work Programme be approved.

8. COMPLAINTS AND TRAINING (Report No. 7)

The Monitoring Officer said training and conciliation still had a strong role to play in maintaining standards within the District.

The Monitoring Officer was pleased with the response to a session held at Brasted Parish Council on 14 March 2011. Although this had been a difficult meeting it allowed a lot of issues to be aired which the Clerk and many Members were thankful for. The number of complaints had subsided since the conciliation. There was no update about Horton Kirby and South Darenth Parish Council beyond the one in the report.

The Monitoring Officer thanked those Members who had attended the training and conciliation sessions at Town and Parish Councils.

Resolved: That the report be noted.

9. LOCALISM BILL AND FUTURE CODE OF CONDUCT (Report No. 8)

The Chairman informed the Committee that as Chair of the Kent and Medway Association of Independent Members of Standards Committees he had been asked to write letters to Lords Tope and Beecham as they had submitted amendment 96A to the Localism Bill to permit a national Model Code of Conduct. Though the amendment had been withdrawn the letters were to support the Lords' negotiations with the government. A copy of the letter was circulated to the meeting.

He explained that some elements of the Localism Bill were likely to remain, such as the abolition of Standards for England and that standards matters would be resolved at a local level.

It was not yet clear whether there would be a national Code of Conduct but he expected that many bodies and private legal firms would offer one. Kent County Council had already offered. A Member, who was in the Kent Association of Local Councils, informed the group that the National Association of Local Councils would produce a Model Code. Members agreed it was inefficient for all Councils to devise their own Codes of Conduct and that this would make it difficult to have a consistent level of transparency.

The Monitoring Officer brought Members' attention to the questions raised in paragraph 10 of the report and the Chairman suggested that a working group could form some recommendations on them.

The Chairman asked for direction from the Committee on how to proceed.

In response to a question the Chairman clarified that, as the Bill stood, Independent Members would lose voting rights. Some Members of the Kent and Medway Association of Independent Members of Standards Committees had been concerned by this situation. However he felt Independent Members had no locus to lobby for changes to this. The SDC leadership had made it clear to him they wanted to keep Independent Members involved in the standards process. Independent Members could still work in an advisory capacity and the Chairman felt this would work so long as there was a proper mechanism in place for considering those recommendations and that there was a good working relationship between Independent Members and Councillors.

A Member, who had discussed the Localism Bill with the Minister for State, suggested that many of these matters would be dealt with under regulations rather than the Bill directly. If the Committee wanted to suggest amendments to these regulations then they should submit their views promptly.

Members discussed whether SDC would continue to have a role providing support to Town and Parish Councils when there was no longer an obligation to do so. Members accepted that Town and Parish Councils would be expected to pay for any support they received after the Bill had passed.

The Chairman felt SDC would have to show Town and Parish Councils that it was

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providing a valuable service. The final decision would be one for Town and Parish Councils but he believed the clerks appreciated their relationship with the Monitoring Officer. The Monitoring Officer added that the Bill would still oblige Councils to maintain high standards of conduct and that failure to register an interest would be a criminal offence, which was more draconian than under existing arrangements.

In response to a question the Monitoring Officer stated that the Committee dealt with approximately 17 complaints last year and only a couple each year tended to relate to District Councillors. A large number of complaints were dismissed at first instance.

The Committee thought more information would be needed on the possible cost of the District Council providing a service in relation to complaint handling for Town and Parish Councils once the changes set out in the Bill had become law. There was a concern that if Councils were charged a fixed sum then they might pay for services they did not use. If costs were based on use then Councils possibly faced insurmountable bills if problems escalated or if they faced a series of vexatious complaints, as had sometimes happened in the past. Some Members favoured some sort of fixed fee which would equate to insurance protection. This would help budgeting requirements.

The Committee agreed that the Monitoring Officer should notify Town and Parish Councils soon of the changes expected and invite comments on both the future of the SDC Standards Committee and whether they would be interested in Sevenoaks' Standards Committee providing a service for them in the future. The letter was to be circulated to Members of the Committee and the Portfolio Holder for Safe Community for comment before it was sent out. The letter should make it clear that, following the Localism Bill, Councils could be charged for services they had received for free. The Committee expected responses to this letter, from Town and Parish Councils, by the end of September.

Members agreed a task and finish group should be formed to consider the matters raised in the report, consisting of about 6 volunteers. Membership would be agreed later by email.

A Member felt it would be inappropriate for the Committee to put forward suggestions without full consultation first with Sevenoaks District Council. The Chairman agreed he would have a discussion with the Leader and Portfolio Holder for Safe Community in early September before a task and finish group was formed.

The Monitoring Officer agreed to keep the Committee informed of further information she received about the timetable of the Localism Bill.

Resolved: That:

- (a) the Monitoring Officer notify Town and Parish Councils of the changes currently expected from the Localism Bill and invite consultation responses on whether they would be interested in the Standards Committee at Sevenoaks providing a chargeable training and complaint handling service;
- (b) the Chairman discuss with the Leader of Sevenoaks District Council and

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Standards Committee – 2 August 2011

the Portfolio Holder for Safe Community their interest in the Standards Committee proposing new simplified structures following the abolition of the existing standards regime; and

- (c) pending such discussions, a task and finish group be formed to investigate recommendations to Sevenoaks District Council following the abolition of the existing standards regime.

THE MEETING WAS CONCLUDED AT 8.18 p.m.

Chairman

Minutes of a meeting of the
Standards Committee Assessment Sub-Committee held on
3 August 2011 commencing at 10:00 a.m.

Present: Independent Member: Mr A Riddell (Chairman)
Parish/Town Council Representative: Mr T Austin
District Council Representative: Cllr M Dickins
Monitoring Officer: Mrs C Nuttall
Democratic Services Officer: Mr D Williamson

1. DECLARATIONS OF INTEREST

There were no declarations of Interest.

2. EXCLUSION OF PRESS AND PUBLIC

Resolved: That the meeting of the panel to discuss the allegations of Member misconduct (reference FC42), be held in confidential session.

3. CONSIDERATION OF ANY ALLEGATIONS THAT A MEMBER HAS BREACHED THE CODE OF CONDUCT

FC43

This matter related to a Parish Councillor.

Resolved: That the subject member be provided with a summary of the details of the complaint.

The potential breaches of the Code of Conduct identified were:

Paragraph 5 – You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute

Paragraph 6 (a) – You must not use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage

Resolved: No further action:

Reason

The Assessment Sub-Committee thoroughly examined the complaint together with the evidence submitted by the complainant. In addition a map of the local area with key information and a copy of relevant documentation relating to planning permission

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Standards Committee – Assessment Sub-Committee – 3 August 2011

SE/09/02485 was provided. The Sub-Committee also had copies of contemporaneous notes provided independently by the subject member relating to the incident (the subject member had been informed of the complaint and the name of the complainant and had, correctly, assumed that the interaction that took place on 18th February was the subject of the complaint).

The Sub-Committee considered this information in conjunction with Standards for England guidance relating to paragraphs 2(1)(b), 5 and 6(a) of the Code of Conduct.

It was noted that the submissions by the complainant and the subject member were in conflict with regard to their perceptions of the interaction that, both agreed, did take place. The Sub-Committee noted that no such hard, independent, evidence was offered to indicate what took place and felt that it was unlikely that any such evidence would be forthcoming from any investigation which would show, on the balance of probabilities, what actually took place between the complainant and the subject member.

The Sub-Committee also considered that the incident was not of a sufficiently serious nature to warrant an investigation as the situation on site appeared to get out of hand on both sides thereby frustrating a satisfactory outcome.

The Sub-Committee noted that documentation relating to planning permission SE/09/02485 recognised the “high amenity value” of the Lime tree that was the subject of the interaction, and that the permission was dependent on the submission of a scheme of tree protection measures for this tree before development commences. There appeared to be no record of any such submission to the District Council.

The Sub-Committee also considered there was no evidence that the subject member, by her actions, was putting her own private interests above the public interest, or that she could have been acting on Parish Council business as this was principally a District Council matter.

For the above reasons the Sub-Committee considered there was not sufficient evidence that there had been a potential breach of the Code of Conduct, and they did not consider that the circumstances were such that it would be proportionate to investigate. They also did not consider that there was any other action which would be appropriate, given the conflicting views of the complainant and the subject member; and given the lack of any clear evidence of any breach of the Code.

THE MEETING WAS CONCLUDED AT 11:32 A.M.

Minutes of a meeting of the
Standards Committee Assessment Sub-Committee held on
31 January 2012 commencing at 2:30 p.m.

Present: Independent Member: Mr A Smith (Chairman)
Parish/Town Council Representative: Cllr D Taylor
District Council Representative: Cllr C Dibsdall
Monitoring Officer: Mrs C Nuttall
Democratic Services Officer Mr D Williamson

1. DECLARATIONS OF INTEREST

There were no declarations of Interest.

2. EXCLUSION OF PRESS AND PUBLIC

Resolved: That the meeting of the panel to discuss the allegations of Member misconduct (reference FC44 and FC45), be held in confidential session.

3. CONSIDERATION OF ANY ALLEGATIONS THAT A MEMBER HAS BREACHED THE CODE OF CONDUCT

FC44

This matter related to a Parish Councillor.

Resolved: That the subject member be provided with a summary of the details of the complaint.

The potential breaches of the Code of Conduct identified were:

Paragraph 5 – You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute

Paragraph 9 - Disclosure of Personal Interests

Paragraph 12 - Effect of Prejudicial Interests on Participation

Resolved: No further action:

Reason

The Assessment Sub-Committee thoroughly examined the complaint together with the evidence submitted by the complainants. In addition copies of the relevant Parish Council Standing Orders were provided and access to a public website related to the local issue at the heart of the complaint that was linked to the complainants.

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Standards Committee – Assessment Sub-Committee – 3 November 2011

The Sub-Committee considered this information in conjunction with Standards for England guidance relating to paragraphs 5, 8, 9, 10 and 12 of the Code of Conduct.

The Assessment Sub-Committee considered each individual page of the complaint in order to ascertain whether there was any prima facie evidence of a breach of the Code of Conduct. The Sub-Committee felt that the complaint may have highlighted some possible administrative issues in dealing with the proposed development, but did not consider that any of these could be considered the individual responsibility of the Chairman, but rather would be a collective responsibility of the whole Council, and would not amount to a breach of the Code of Conduct. It was also considered that there was no prima facie evidence that the subject member had acted in any way for private gain, or by putting their private interest above the public interest.

In terms of specific issues, it was noted that the Council's Standing Orders did allow the meeting Chairmen to use a casting vote in a situation where votes are tied. It was also noted that the relevant Item (Affordable Housing Project) was listed on the Agenda for the Parish Council meeting on 4th April 2011. It would not be normal practice to list "motions" on the Agenda, as expected by the complainants. Often Agenda items are moved with the agreement of the Chairman.

The Sub-Committee discussed the position of the subject member as sitting on the Village Project Steering Group and the Parish Council, and took advice from the Monitoring Officer. The members on the Steering Group would as part of that role need to feed back to the full Parish Council, and this would not preclude them from taking part in the discussions and decisions at the Parish Council meeting.

There was some concern voiced over the "written vote" taken at the 4th April meeting, and how this could be perceived by the public. It was noted though that it was within the rules of the Parish Council Standing Orders, and that the minutes set out that it had been proposed by a different Parish Councillor and had been agreed by those present before it was carried out. The Sub-Committee did recognise that, although it was difficult to assess what pressures may have prevailed at the meeting it did appear to be a difficult, controversial issue. A written vote would not have amounted to a breach of the Code of Conduct by the subject member.

The complaint also referred to the Chairman "allowing" misleading statements to be made at the meeting, but it was considered that the Chairman was allowing freedom of speech and individual perceptions and opinions would have differed. Members are allowed to hold strong views and the Code of Conduct is not meant to gag members..

The Monitoring Officer advised that she had obtained advice from Standards for England in relation to whether there can be any Prejudicial Interest when a Parish Council is considering a proposal, rather than an actual planning application. The advice was that a proposal as opposed to a planning application would not be regarded as a regulatory matter as the Parish Council would not be acting in their capacity as a statutory consultee. Therefore, in such a situation there would not be a Prejudicial Interest. It was noted that the complainants make reference to the Parish Council being in a position of "allowing" the Housing Association to put in a planning application. Whilst recognising that the Association may have stated that they would not do so without Parish Council support, in reality the Council could have no actual

power over the Association's decisions and actions. With regard to the question of possible Personal Interests, the complainants suggest that the subject member could have such an Interest, but do not provide any prima facie evidence but merely presented the Sub-Committee with a series of questions in relation to the subject member. It is not the role of the Sub-Committee to make such investigations, and there was no indicative reasons given why the subject member in particular, may be in such a position.

For all the above reasons the Sub-Committee concluded there was no substantive prima facie evidence to suggest a potential breach of the Code of Conduct had taken place in relation to the subject member.

FC45

This matter related to a Parish Councillor.

Resolved: That the subject member be provided with a summary of the details of the complaint.

The potential breaches of the Code of Conduct identified were:

Paragraph 5 – You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute

Paragraph 9 - Disclosure of Personal Interests

Paragraph 12 - Effect of Prejudicial Interests on Participation

Resolved: No further action:

Reason

The Assessment Sub-Committee thoroughly examined the complaint together with the evidence submitted by the complainants. In addition copies of the relevant Parish Council Standing Orders were provided and access to a public website related to the local issue at the heart of the complaint that was linked to the complainants.

The Sub-Committee considered this information in conjunction with Standards for England guidance relating to paragraphs 5, 8, 9, 10 and 12 of the Code of Conduct.

The Assessment Sub-Committee considered each individual page of the complaint in order to ascertain whether there was any prima facie evidence of a breach of the Code of Conduct. The Sub-Committee felt that the complaint may have highlighted some possible administrative issues in dealing with the proposed development, but did not consider that any of these could be considered the individual responsibility of the Deputy Chairman, but rather would be a collective responsibility of the whole Council, and would not amount to a breach of the Code of Conduct. It was also considered that there was no prima facie evidence that the subject member had acted in any way for private gain, or by putting their private interest above the public interest.

In terms of specific issues it was noted that the relevant Item (Affordable Housing

Agenda Item 2
Standards Committee – Assessment Sub-Committee – 3 November 2011

Project) was listed on the Agenda for the Parish Council meeting on 4th April 2011. It would not be normal practice to list “motions” on the Agenda, as expected by the complainants.

The Sub-Committee discussed the position of the subject member as sitting on the Village Project Steering Group and the Parish Council, and took advice from the Monitoring Officer. The members on the Steering Group would as part of that role need to feed back to the full Parish Council, and this would not preclude them from taking part in the discussions and decisions at the Parish Council meeting.

There was some concern voiced over the “written vote” taken at the 4th April meeting, and how this could be perceived by the public. It was noted though that it was within the rules of the Parish Council Standing Orders, and that the minutes set out that it had been proposed by a different Parish Councillor and had been agreed by those present before it was carried out. The Sub-Committee did recognise that, although it was difficult to assess what pressures may have prevailed at the meeting it did appear to be a difficult, controversial issue. A written vote would not have amounted to a breach of the Code of Conduct by the subject member.

With regard to the suggestion of misleading statements being made at the meeting, it was considered this was allowing freedom of speech and individual perceptions and opinions would have differed. Members are allowed to hold strong views and the Code of Conduct is not meant to gag members..

The Monitoring Officer advised that she had obtained advice from Standards for England in relation to whether there can be any Prejudicial Interest when a Parish Council is considering a proposal, rather than an actual planning application. The advice was that a proposal as opposed to a planning application would not be regarded as a regulatory matter as the Parish Council would not be acting in their capacity as a statutory consultee. Therefore, in such a situation there would not be a Prejudicial Interest. It was noted that the complainants make reference to the Parish Council being in a position of “allowing” the Housing Association to put in a planning application. Whilst recognising that the Association may have stated that they would not do so without Parish Council support, in reality the Council could have no actual power over the Association’s decisions and actions. With regard to the question of possible Personal Interests, the complainants suggest that the subject member could have such an Interest, but do not provide any prima facie evidence but merely presented the Sub-Committee with a series of questions in relation to the subject member. It is not the role of the Sub-Committee to make such investigations, and there was no indicative reasons given why the subject member in particular, may be in such a position.

For all the above reasons the Sub-Committee concluded there was no substantive prime facie evidence to suggest a potential breach of the Code of Conduct had taken place in relation to the subject member.

THE MEETING WAS CONCLUDED AT 3:05 P.M.

Minutes of a meeting of the
Standards Committee Review Sub-Committee held on
3 October 2011 commencing at 14:30

Present:	Independent Member:	Mr A Smith (Chairman)
	Parish/Town Council Representative:	Cllr R House
	District Council Representative:	Cllr Mrs E Purves
	Monitoring Officer:	Mrs C Nuttall
	Democratic Services Officer	Mr D Williamson

1. DECLARATIONS OF INTEREST

There were no declarations of Interest.

2. EXCLUSION OF PRESS AND PUBLIC

Resolved: That the meeting of the panel to discuss the allegations of Member misconduct (reference FC43R), be held in confidential session.

3. CONSIDERATION OF ANY ALLEGATIONS THAT A MEMBER HAS BREACHED THE CODE OF CONDUCT

FC43R

This matter related to a Parish Councillor.

Resolved: That the subject member be provided with a summary of the details of the complaint.

The potential breaches of the Code of Conduct identified were:

Paragraph 5 – You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute

Paragraph 6 (a) – You must not use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage

Resolved: Referral of the complaint to the Monitoring Officer for other appropriate action:

That the Monitoring Officer be directed to offer a one-to-one training session to the subject member, with help from a member of the Standards Committee or Deputy Monitoring Officer.

Agenda Item 2
Standards Committee – Review Sub-Committee – 3 October 2011

Reason

The Review Sub-Committee thoroughly examined the complaint together with all the evidence and documents considered by the original Assessment Sub-Committee, in addition to a letter dated 25 August 2011 submitted by the complainant requesting that the matter be re-considered.

The Sub-Committee considered this information in conjunction with Standards for England guidance relating to paragraphs 2(1)(b), 5 and 6(a) of the Code of Conduct.

It was noted that the submissions by the complainant and the subject member were in conflict with regard to their perceptions of the interaction that, both agreed, did take place. The Sub-Committee noted that no hard, independent, evidence was offered to indicate what took place and felt that it was unlikely that any such evidence would be forthcoming from any investigation which would need to show, on the balance of probabilities, what actually took place between the complainant and the subject member.

The Sub-Committee also considered that the incident was not of a sufficiently serious nature to warrant an investigation as the situation on site appeared to get out of hand on both sides thereby frustrating a satisfactory outcome.

The Sub-Committee noted that the complainant's perception was that the subject member was representing the Parish Council; and that the subject member had referred to her membership of the Parish Council during the incident. Whilst making no finding of fact, or apportioning blame, in the interests of public relations the Sub-Committee felt that it could be advantageous for the Monitoring Officer to offer a one-to-one session with the subject member to discuss the workings of the Code of Conduct.

THE MEETING WAS CONCLUDED AT 16:10

STANDARDS COMMITTEE – 26 JANUARY 2012

MONITORING OFFICER'S ANNUAL REPORT

Report of the: Monitoring Officer

Also considered by: Council – 20 February 2012

Status: For consideration and decision

This report supports the Key Aim of effective management of Council resources.

Head of Service Mrs. Christine Nuttall - Head of Legal and Democratic Services

Recommendation: That

- a) the Monitoring Officer's Annual Report be noted; and
 - b) the Full Council be recommended to note the Monitoring Officer's Annual Report.
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Background

- 1 This is the seventh Annual Report of the Monitoring Officer as attached as an appendix to this report.

Introduction

- 2 The purpose of the Monitoring Officer's Report is to provide an overview of the work of the Monitoring Officer, the work of the Standards Committee and the general governance arrangements within the Council in the past year and to provide an opportunity to review and learn from experience.
- 3 The information contained within this Report will also provide Members of the Standards Committee, many of whom are Independent Members and Parish and Town Council Members, with an overview of the workings of the Council thus providing them with valuable information to facilitate the carrying out of their functions.

Substance of Report

- 4 The Monitoring Officer's Report sets out the Monitoring Officer's statutory responsibilities, summarises how these duties have been discharged during 2011 in accordance with the Council's Constitution, legislative requirements and draws attention to those issues that will require attention in the next calendar year.

Key ImplicationsFinancial

- 5 The Monitoring Officer's Report has not identified any financial implications for this Council over and above normal requirements.

Impact on and Outcomes for the Community

- 6 The report sets out the work of the Monitoring Officer, Standards Committee and other governance arrangements monitored by other committees within the Council thus providing Members and the public with valuable information which should promote Member and Public confidence in the high ethical standards set by the Council.

Legal and Human Rights Implications

- 7 The Monitoring Officer's Report has not uncovered any illegality.

Resource (non financial)

- 8 No additional non financial resource implications are identified.

Value For Money and Asset Management

- 9 There are no identifiable value for money and asset management implications associated with the contents of this report.

Equality

- 10 This report has not identified any equality issues.

Sustainability Checklist

- 11 The contents of the Monitoring Officer's report should provide the public with confidence that robust systems exist to enable high ethical standards to be applied across all levels of the authority.

Conclusions

- 12 The Monitoring Officer's report sets out the elements of good governance and demonstrates that robust procedures are in place to raise ethical standards, identify problems and ensure that Members, Officers and the Public are aware of appropriate channels to raise concerns.

Risk Assessment Statement

- 13 The Monitoring Officer's Report increases awareness of the ethical framework and sets out the good governance arrangements that have been set in place. The Monitoring Officer's Report has not identified any illegalities and has not identified any potential illegalities for the next calendar year. The risk of impropriety remains low.

Item No. 3

Sources of Information:

Information supplied by the Standards for England

Information supplied by various officers and sections of the Council

Ombudsman's Report

Contact Officer(s):

Christine Nuttall – ext. 7245

**Christine Nuttall
Monitoring Officer**

**REPORT OF THE
MONITORING OFFICER
2011**

INTRODUCTION

This is the seventh Annual Report of the Monitoring Officer for the period December 2010 to December 2011. The purpose of the report is not only to provide an overview of the work of the Monitoring Officer in the past year, but also to provide an opportunity to review and learn from experience. This report therefore sets out the Monitoring Officer's statutory responsibilities and summarises how these duties have been discharged from the last Monitoring Officer's Report for the period November 2009 to November 2010. The Report also highlights the work of the Standards Committee.

1. RECOMMENDATIONS

That the Standards Committee comments on and notes the Monitoring Officer's Annual Report.

That the Full Council notes the Monitoring Officer's Annual Report.

2. THE ROLE OF THE MONITORING OFFICER

The role of the Monitoring Officer derives from the Local Government and Housing Act 1989. The Act requires local authorities to appoint a Monitoring Officer.

The Monitoring Officer has a broad role in ensuring the lawfulness and fairness of Council decision making, ensuring compliance with Codes and Protocols and promoting good governance and high ethical standards.

A Summary of the Monitoring Officer's Functions is as follows:

<u>Description</u>	<u>Source</u>
Report on contraventions or likely contraventions of any enactment or rule of law	Local Government and Housing Act 1989
Report on any maladministration or injustice where the Ombudsman has carried out an investigation	Local Government and Housing Act 1989
Appoint a Deputy	Local Government and Housing Act 1989
Establish and maintain the Register of Members' interests.	Local Government Act 2000
Report on sufficiency of resources.	Local Government and Housing Act 1989
Maintain the Constitution	The Constitution
Support the Standards Committee. Promote and maintain high standards of conduct.	Local Government Act 2000

Item No. 3 - Appendix

<u>Description</u>	<u>Source</u>
Receive reports from Ethical Standards Officers and case Tribunals	Local Government Act 2000
Consulting with, supporting and advising the Head of Paid Service and Chief Finance Officer on issues of lawfulness and probity.	The Constitution
Legal Advisor to the Standards Committee when carrying out a local Determination Hearing.	Local Authorities (Code of Conduct) (Local Determination)(Amendment) Regulations 2003
Receive referrals from Ethical Standards Officers for local Investigations.	Local Authorities (Code of Conduct) (Local Determination)(Amendment) Regulations 2003
Advising the Standards Committee in relation to allegations of breaches of the Code of Conduct including carrying out local investigations and advising when matters are determined.	Standards Committee (England) Regulations 2008 and Guidance produced by Standards for England
Advise on whether executive decisions are within the Budget & Policy Framework.	The Constitution
Provide advice on vires issues, maladministration, financial impropriety, probity, Budget and Policy Framework issues to all members.	The Constitution
Advising on dispensations to Members regarding prejudicial interests.	The Standards Committee
Considering whether certain Information is exempt from disclosure under the Freedom of Information Act.	Freedom of Information Act 2000

3. THE CONSTITUTION

The Constitution sets out how the Council operates and how decisions are made. It sets out the procedures which are followed to ensure that these decisions are efficient, transparent and that those who make the decisions are accountable to local people. The Monitoring Officer is responsible for ensuring that the Constitution operates efficiently, is properly maintained and is adhered to.

3.1 Constitutional Review and Revision

Since the modular constitution was produced by the Secretary of State in 2000 there has never been any revision of that model. However, this Council has continued to update its Constitution as necessary with a re-write having taken place in 2007.

The Association of Council Secretaries and Solicitors (Acses) is currently working to produce a new model Constitution in conjunction with Dickinson Dees who run a software platform produced by a software provider *Exari*. By this means a new model constitution will be produced, with the numerous variables that must be within it as Councils have the ability to move to differing systems of decision making under the Localism Act 2011. The design of the software will allow for production of a draft constitution, tailored to a relevant extent to differing councils' models of governance, quickly and easily. The Model and decision system will be assessed from a link on the Acses website. Acses members (the Monitoring Officer being one) may then use the package to produce a draft constitution from the model bank of precedents. As legislation requires further changes, the Acses editorial board will determine and publish "best practice" in the use of variants within the Model. With all the changes being implemented by the Localism Act 2011 this model will no doubt prove a valuable asset that this Council may utilise.

3.2 Fitness for Purpose

The Constitution sets out in clear terms how the Council operates and how decisions are made. Some of these processes are required by law, while others are a matter for the Council to choose. The purpose of the Constitution is to:

- ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions;
- support the active involvement of local people in local authority decision making;
- help Members represent local people more effectively;
- enable decisions to be taken efficiently and effectively; and
- hold decision makers to public account.

3.3 Managing the Constitution

Any significant changes to the Council's decision making arrangements and Committee structure need to be approved by full Council. The Council will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

4. LAWFULNESS AND MALADMINISTRATION

The Monitoring Officer is the Council's lead adviser on issues of lawfulness and the Council's powers and in consultation with the Head of Paid Service and the Chief Financial Officer advises on compliance with the Budget and Policy Framework. Part of this role involves monitoring Committee reports, agendas and decisions to ensure compliance with legislation and the Constitution. The Monitoring Officer ensures that

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agendas, reports and minutes of all Council meetings are made publicly available unless there is a reason for exemption under the Local Government Act 1972. In addition Portfolio Holder decisions are also made publicly available subject to the same caveat as are all planning and licensing decisions made by Officers. All such decisions can be viewed by members of the public through the Council's website: www.sevenoaks.gov.uk.

If the Monitoring Officer considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration she must report to the full Council or where appropriate the Cabinet after first consulting with the Head of Paid Service and Chief Financial Officer. Any proposal or decision that is subject to such a report cannot be implemented until the report has been considered.

The sound governance arrangements operated by the Council ensure that the power to report potentially unlawful decision making is rarely used and the Monitoring Officer has not had to issue such a report throughout 2010/11.

4.1 Reports from the Local Government Ombudsman

The annual letter for 2010/11 from the Local Government Ombudsman sets out a summary of statistics on the complaints made to the Ombudsman about the Council for the year.

During the past year the Ombudsman has changed the way they communicate their findings. They no longer give tailored feedback unless there are concerns with an Authority. Instead they provide statistics on the number of enquiries and complaints that they receive and they show the time taken by an authority to respond to written enquiries in comparison with average response times by type of authority.

The statistics show that there were 22 enquiries and complaints in total, 4 of which were deemed to be premature. The Ombudsman provided advice to 3 other enquirers and 15 were forwarded to the investigative team.

When an investigation is complete the Ombudsman generally issues a report. However, this year the Ombudsman did not issue any reports against the Authority and only one of the complaints resulted in a local settlement being reached.

The average time taken by the Authority to reply to the Ombudsman's written enquires was 26 days, which is well within the target time of 29 to 35 days.

5. GOOD GOVERNANCE

The Monitoring Officer has a pro-active role in ensuring good practice, good procedures and good governance. This involves promoting networking, collaboration and joined-up working practices and decision making as well as ensuring standing orders, codes of practice, procedures are kept under review and up to date. Collaborative working entails regular monthly liaison meetings with the three Statutory Officers, Heads of Service/Management Team as well as working in partnership with other departments to develop and disseminate policies and procedures. There is also the work undertaken in partnership with other authorities.

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The work this year has enabled the Council to win the Institute of Ratings, Revenue and Valuation (IRRV) Silver Aware for Excellence in Partnership Working.

6. THE ETHICAL FRAMEWORK AND WORK OF THE STANDARDS COMMITTEE

The Standards Committee currently comprises sixteen Members, six of whom are District Council Members, five Parish/Town Council Members and five Independent Members. Both the Chairman and Vice Chairman of the Committee are Independent Members.

The Standards Committee has a key role in facilitating and promoting the Ethical Framework and in promoting and maintaining high standards of conduct within the Authority. As well as policy development and implementation the Committee is also involved in advising Members including those within the Parish/Town Councils on propriety issues and applications for dispensations. The Standards Committee determine allegations of Member misconduct including Members from Parish/Town Councils. The maintenance of the Registers of Interests for the District as well as the Parish/Town Councils is the responsibility of the Monitoring Officer overseen by the Standards Committee.

The Local Assessment of Member Complaints was introduced on the 8th May 2008. The Local Assessment Sub-Committee and Review Sub-Committee of the Standards Committee can decide to refer a matter to the Monitoring Officer for Local Investigation and Determination. They can also direct the Monitoring Officer to undertake Other Action.

Examples of the Standards Committee's work during 2010/2011 is as follows:

- Annual Monitoring Officer's Report
- Considering Standards for England Case Review 2010
- Considering self-regulation following the abolition of the standards regime
- Election of a Chairman and Vice Chairman of the Committee for the ensuing municipal year
- Appointment of Sub-Committees in relation to the Local Assessment of Member Complaints
- Considering the Forward Work Programme
- Monitoring Complaints and Training
- Considering the Localism Bill and the future Code of Conduct
- Assessing complaints
- Induction process for new members
- Training and Development sessions for the Committee, Members including Parish/Town Council Members and Clerks
- Carrying out conciliation
- Keeping a watching brief on the future of the ethical framework

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- Advice given to Members including Parish/Town Council Members, Clerks and the Public on Code of Conduct matters.

6.1 Maintaining a Register of Member Interests

The Monitoring Officer is responsible for establishing and maintaining a Register of Member Interests for the District and Parish/Town Councils. Registers for Parish/Town Councils are held within the Elections and Land Charges Section of the Council. Registers of the District Council are held within the Democratic Services Section. Gifts and hospitality worth £25 or over must be included in the Register of Member Interests. This means that gifts and hospitality are a personal interest and must be declared at any meeting where a matter relating to that interest is discussed. The Standards Committee has produced guidance on the acceptance and registration of gifts and hospitality.

It is a requirement that Members' Register of Interest forms are made available for public inspection during normal office hours. District Council Members' Register of Interests are now made available online.

6.2 Code of Conduct for Employees

The Code is based on an original draft published by the IDeA and has been updated since being implemented in 2006. The Code forms part of the employers' terms and conditions of employment. The Code is well publicised on the Council's internal intranet and is introduced to employees through the induction process.

Under the Code employees must declare to their Directors any non-financial or financial interests that they or members of their family have which they consider could conflict with the Council's interests. Directors and the Chief Executive declarations of non-financial or financial interests are declared to the Monitoring Officer.

All relationships of a business or private nature with external contractors, or potential contractors should be made known to the employees' Head of Service and Director.

All hospitality received and given should be appropriate and necessary and must, wherever possible, have the prior sanction of the Head of Service or Director and must be recorded in the Hospitality book kept within Corporate Resources. There is a Protocol on Corruption, Gifts and Hospitality contained within the Staff Code of Conduct.

6.3 Whistle Blowing

The Council's Whistle Blowing Policy sets out how to raise concerns within the organisations with employees encouraged in the first instance to raise concerns with their immediate manager or superior.

Concerns may be raised verbally or in writing and there is a dedicated telephone number which allows communication in confidence to the Audit and Fraud Team.

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A record of concerns raised and the outcomes (but in a form which does not endanger confidentiality) is maintained and reported (in such a way as to preserve confidentiality), to the relevant committee of the Council.

The Policy is intended to provide an avenue within the Council to raise concerns. However, if it is felt that it is right to take the matter outside the Council contact points are given as follows:

- Public Concern at Work
- The Audit Commission
- Citizens Advice Bureau
- Relevant professional bodies or regulatory organisations
- Relevant voluntary organisation
- The police
- Trade Union representative
- Local Government Ombudsman

In the last calendar year no concerns have been raised under the existing Whistle Blowing Policy.

6.4 Human Resources Strategy and Workforce Plan

A Human Resources Strategy and Workforce Plan is available on the Council's internal intranet which incorporates many policies, strategies and procedures. These are regularly reviewed in line with legislative changes.

6.5 The Future of Standards for England and the Standards Framework

The Localism Bill became law on the 14th November 2011. Under the Act every authority including Parish and Town Councils will be under a duty to promote and maintain high standards of conduct by elected and co-opted members of the authority. The provisions apply to elected members and co-opted members when acting as members. There are no requirements in relation to private life.

The Government has now clarified the timetable for abolition of Standards for England which will take place through regulations. It is the Government's intention that abolition will take effect on 31st March 2012. Prior to this, the regulatory role in handling cases and issuing guidance will stop from a date that will be set out in regulations but anticipated to be 31st January 2012. From this date, Standard for England will no longer have powers to accept new referrals from local standards committees or conduct investigations into complaints against members. Any existing referrals or investigations will be transferred back to the relevant authority for completion. However, any complaints which are being handled locally on that date will need to continue through to a conclusion.

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DCLG have advised that the Government envisage that the remaining local elements of the current regime will be abolished on 1st July 2012. From 1st July all standards matters including consideration and determination of outstanding complaints made during the period the Standards Board regime was operating will be the responsibility of local authorities, to be handled under the new arrangements. The 1st July 2012 will also see the implementation of the new standards arrangements, which include a 'Nolan-based' code, the involvement of an Independent Person in allegations of misconduct, and a new criminal offence for failing to declare or register interests, coming into force.

The special provisions for the establishment of statutory Standards Committees are removed in England. Any voluntary Standards Committee or Sub-committee established by the authority would be an ordinary committee or sub-committee established under the Local Government Act 1972. The role of independent members will change as the new Independent Persons would not be able to be voting members, unless the committee or sub-committee was merely advisory. Any such Standards Committee will now be subject to the normal proportionality rules. The Standards Committee would assist in discharging the duty of the authority to promote and maintain high standards of conduct.

Each authority is required to adopt a Code of Conduct. Authorities are free to determine what they put in or leave out of a Code though the Act requires the inclusion of the provisions the authority considers appropriate in respect of the registration in its register and disclosure, of interests. The requirement for members to give an undertaking to comply with the Code of Conduct is removed.

The District Council must have in place arrangements to deal with complaints of breach of its Code of Conduct, including arrangements for investigation of complaints and arrangements "under which decisions on allegations can be made". In the case of District Councils this also applies to allegations in respect of parish councillors in their area. Leading London Solicitors who specialise in this area of law believe that it is likely that most authorities will decide that they need a Standards Committee of some nature to undertake these functions at member level, even if some actions, such as removal from Committees will have to be applied by full Council.

The Act gives authorities no explicit powers to take any action in respect of a breach of a local Code. Accordingly, other than naming and shaming the individual member it is unclear at present whether the authority will be able to take any further action beyond administrative actions to secure that it can continue to discharge its functions effectively. A Counsel's opinion has been sought by the Association of Council Secretaries and Solicitors on the sanctions that would be available to a Local Authority under the new standards arrangements.

Every District Council must appoint one or more Independent Persons. Independent Persons would be appointed by advertisement and application and there are strict rules of appointment.

It is believed that a person cannot be appointed as an Independent Person if they have within the past 5 years been a co-opted voting member of a Committee of the authority. This means that all existing independent co-opted members of Standards Committees are ineligible to be appointed as Independent Persons. This has

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become something of an issue for local government lawyers who are debating whether this result was intended or even achieved by the wording of the Act. The Association of Secretaries and Solicitors are seeking legal advice on this point and a Counsel's opinion on this has also been sought.

The Monitoring Officer is required to establish a register of members' interests for each authority including for parish councils within their area. The register must contain "pecuniary interests" not yet defined in Regulations. However, the Act also provides that an authority's Code must require registration of interests other than pecuniary interests, for which no definition is provided as yet.

The Monitoring Officer is responsible for ensuring that each authority's register of interests is kept within the principal authority's area at the principal authority's offices and on the authority's website. For Parish and Town Councils the District Council's Monitoring Officer must ensure that every parish council's register is available for inspection within the principal authority's, rather than the parish council's area and, if the Parish or Town Council has a website, the Parish/Town Council must ensure that the register is accessible on that website. The Parish/Town Council's register must also be published on the District Council's website.

Failure to register any disclosable pecuniary interests within 28 days of election or co-option, or the provision of misleading information on registration without reasonable excuse, will be criminal offences, potentially carrying a fine and or disqualification from being a councillor for up to five years. Prosecution will be at the instigation of the Director of Public Prosecutions.

Where an interest is already on the authority's register of interests, or is in the process of entry onto the register having been notified to the Monitoring Officer, the member is under no obligation to disclose the interest at the meeting. Where it is an unregistered interest, the member is required both to disclose it at the meeting and to register it within 28 days of the meeting at which relevant business is considered.

If a Member has a disclosable pecuniary interest he/she is simply barred from participating in discussion or voting on the matter at the meeting, or taking any steps in respect of the matter, other than referring it to someone else for determination. Participation in the discussion or the matter, or taking steps in respect of the matter, is also a criminal offence. The requirement for the member to withdraw from the meeting room may be dealt with in the authority's standing orders.

The ability for Members with a pecuniary interest to obtain a dispensation remain and has been extended. The function of granting dispensations can be delegated to a Standards Committee or a designated officer.

The rules on pre-determination have been clarified by the Localism Act. The Act provides that the decision maker is not to be taken to have had a closed mind "just because" the decision maker had previously done anything relevant to the decision, that directly or indirectly, indicated what view the decision-maker took, or would or might take, in relation to a matter. There is now a legislative presumption of "no closed mind" The provision on pre-determination is effective from 15th January 2012.

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The Localism Act 2011 gives the Councils the ability to implement a streamlined system of promoting and maintaining high standards of conduct amongst Members of both District and Parish/Town Councils which Members of the Standards Committee will be working on in order to provide proposals for the Modern Local Government Group's and full Council's consideration in the forthcoming year.

6.6 Standards for England, Complaints and Determinations

The Monitoring Officer has been responsible for establishing and maintaining an effective working relationship with the soon to be abolished Standards for England. The Monitoring Officer has also been responsible for receiving reports from Ethical Standards Officers regarding investigations carried out by Standards for England into the conduct of Members. Such reports may need to be determined by the Council's Standards Committee.

The Standards Committee (England) Regulations 2008 came into force on 8th May 2008. The Regulations along with Guidance produced by Standards for England sets out the details of how the locally based system for the assessment of alleged complaints into breaches of the Code of Conduct would operate. The Assessment Sub-Committee and Review Sub-Committee of the Standards Committee can refer matters to the Monitoring Officer for Local Investigation and Determination or Other Action. In limited circumstances matters can be referred to Standards for England.

6.7 Allegations of Member Misconduct dealt with by the Assessment Sub-Committee of the Standards Committee between 1 December 2010 and 31 December 2011.

Total allegations made:	7
District Councillors	2
Parish/Town Councillors	5
Complaints in which no action was taken	5
Complaints where other action taken	3
Referred cases sent for local investigation and determination	0
Cases sent for Review	3

The number of Member misconduct allegations decreased this year from 20 last year to only 7 this year. No action was taken in relation to 5 cases and initially other action was recommended on 2 cases. Three cases went forward for Review and out of those 3 cases one case was further recommended for other action.

There were two complaints involving District Councillors brought by a member of the public which resulted in no action. The complaint involved an allegation of a lack of communication leading to the perception of being ignored but insufficient evidence was given to justify the allegation. These cases also went forward for Review resulted in the same decisions being given.

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In relation to the 5 complaints involving Parish Councillors initially no action was taken in relation to 3 of the complaints. One of the complaints went forward for Review and on Review it was decided that other action should take place. The other action involved the Monitoring Officer being directed to offer a one to one training session to the subject member with help from a member of the standards committee or Deputy Monitoring Officer. This allegation related to the behaviour of the subject member towards the complainant whilst his contracting company were on site carrying out works and involved the subject member being accused of giving out false information and acting in a disrespectful manner whilst also giving the impression of acting on behalf of the Parish Council. Training successfully took place on the 20th October with the subject member reporting on the course assessment form that she was very impressed with the session and thanked everyone involved for the information provided.

In relation to the remaining two Parish Council complaints the following decisions were made:

1. The Monitoring Officer was directed to offer a conciliation session to the complainant and the subject member, with help from a member of the Standards Committee or Deputy Monitoring Officer.
2. That the Monitoring Officer liaises with the Clerk to the authority concerned to carry out mediation/conciliation for the whole of the Parish Council, but particularly between the complainant and the subject member.

In relation to the first direction by the assessment sub-committee although the panel had found prima facie evidence of a breach of the Code of Conduct in respect of one aspect of the complaint, they felt that a full investigation would not be appropriate/proportionate, but did decide that other appropriate action should be taken to try and ensure that the incident did not have implications in the longer term for the operation of the Parish Council. However, in this instance the subject member declined the approach made by the Monitoring Officer on the basis that the Parish Council had moved on and did not see the need for the offered session. As a result the Monitoring Officer asked the two members concerned to contact her if at any time in the future they felt any similar issues were building up to a level which could damage the operation of the Parish Council

In relation the second direction this was given on the basis that although the committee had felt that there was insufficient evidence to warrant investigation of the complaint they did pick up on some issues particularly around collective responsibility and communication that they felt deserved some action. Therefore the Monitoring Officer liaised with the Parish Clerk to carry out mediation/conciliation with the whole of the Parish Council and on the evening of 14th March 2011 the session took place. Seven of the nine members attended as well as the Parish Clerk. Although it was a controversial meeting the Clerk indicated afterwards that everyone had benefitted from the meeting and that relationships had improved. Since the meeting there have been no further complaints brought by one member of the Parish Council against fellow Councillors.

6.8 Local Assessment of Complaints into Member Misconduct

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All Members on the Sevenoaks Standards Committee have been given extensive training on the Code of Conduct and how to effectively assess Member complaints. The training sessions have been well received with some of the Independent Members of the Council's Standards Committee cascading such training to the Kent and Medway Independent Standards Committee Members' Liaison Group.

Monthly meetings of the Assessment Sub-Committee are set in place so that Member misconduct complaints can be considered in a timely fashion.

6.9 Local Investigation & Determination Procedures for Complaints regarding the Conduct of Members

If a local assessment of Member misconduct results in a decision to investigate the Monitoring Officer may delegate other Council Officers to perform the function of investigation into the conduct of Councillors of the District and Parish/Town Councils. In appropriate cases, the Monitoring Officer will appoint the Deputy Monitoring Officer to undertake the investigation, but in other cases it may be appropriate to appoint an outside investigator, which could involve borrowing from another authority and there is a Protocol for Mutual Assistance by the Kent Monitoring Officers.

The Monitoring Officer may require any Council Officer to provide a statement, answer questions or supply information to assist in the conduct of an investigation and require Councillors to provide such statements, answer questions or supply information.

8. EQUALITIES AND THE PUBLIC SECTOR EQUALITY DUTY UNDER THE EQUALITY ACT 2010

As a community leader, service provider and employer Sevenoaks District Council is committed to eliminating discrimination on the grounds of age, disability, gender reassignment, pregnancy and maternity, race (including ethnic or national origins, colour or nationality), religion or belief (including lack of belief) and sex and sexual orientation. This means respecting the different needs of the district's community and ensuring the Council, its contractors and its delivery partners deliver against our commitments.

9. SUPPORT TO COUNCIL, CABINET, SCRUTINY AND COMMITTEE MEETINGS

The distribution and publication of committee reports, agendas and decisions is central to meeting the requirements of a key deliverable. It is the Monitoring Officer's responsibility to oversee the process and ensure that these documents comply with statutory and constitutional requirements.

This includes:

- Distributing and publishing all agendas within five clear working days of the meeting taking place and ensuring that all agendas are compliant with the access to information rules and exempt information is marked up accordingly.
- Advertising public meetings five clear days before the meeting date.

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- Ensuring that papers are made reasonably available to the public.
- Drafting minutes for publication within nine working days.
- Publishing a record of all decisions including key decisions taken by Cabinet within 48 hours (2 working days) after the meeting.
- Ensuring that petitions are handled in accordance with the Council's Constitution including e-petitioning.
- Ensuring that meetings are accessible.

10. STATUTORY MEETINGS ANALYSIS

One of the explicit aims of the Council has been to try and streamline the decision making process to allow Councils to focus on service delivery.

Between the 1st December 2010 and 1st December 2011 the following were serviced:

Full Council Meetings (including 1 annual meeting)	7
Cabinet	11
Performance and Governance Committee	5
Electoral Arrangement Committee	1
Environment Select Committee	6
Services Select Committee	6
Social Affairs Select Committee	5
Modern Local Government Group	1
Development Control Committee	13
Standards Committee	2
Sevenoaks Joint Transportation Board	4
Licensing Committee	4

Other meetings serviced include 6 Licensing Committee hearings and 5 Assessment Sub-Committee and 2 Review Sub-Committee meetings of the Standards Committee

The volume of meetings represents a substantial commitment of both Councillors' and Officers' time and resources. It is of great importance that meetings constitute an effective use of time and resources; that they add value to corporate effectiveness and help in meeting the aims and objectives of the Constitution and the Community Plan.

The Localism Act 2011 will allow District Councils to move to the Committee System of Governance from any annual meeting of Council, provided that the Council has previously secured a resolution of Council to do so. This part of the Localism Act has not yet been implemented although it is the Government's intention is for this part of the Act to be in place by April 2012. The committee system was abolished by the Local Government Act 2000 which required all councils with a population of 85,000 or

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more to choose either an elected mayor and cabinet or a leader and cabinet. Prior to the 2000 Act, local authorities could take all decisions to council or delegate decision-making to committees, sub-committees, other authorities or officers.

10.1 The Forward Plan

The co-ordination and maintenance of the Forward Plan is central to meeting the requirements of good governance as it enhances open and transparent decision making.

In compliance with Access to Information Procedure rules and the Constitution, the Forward Plan sets out key decisions which the Council plans to take in the next four months. A key decision is one which would result in expenditure or savings in excess of 50,000 pounds or which is significant in terms of its effects on communities living or working in two or more wards. The Forward plan sets out the date/period within which the decision will be taken. The Forward Plan is published and updated on a monthly basis.

10.2 Call-In requests

There were no call-in requests within 2010/11.

10.3 Overview and Scrutiny

The Council is required by Law to discharge certain overview and scrutiny functions. These functions are an essential component of local democracy. Overview and Scrutiny Committees are powerful committees that contribute to the development of Council policies and also hold the Executive to account for its decisions. Another key part of the overview and scrutiny role is to review existing policies, consider proposals for new policies and suggest new policies. The Council has three Scrutiny Committees, Services Select, Social Affairs and Environment Select that look at a wide range of issues within their terms of reference.

10.4 MEMBER TRAINING AND DEVELOPMENT

The Standards Committee oversees the provision of training to Members within the District and the Parish/Town Councils on the Code of Conduct. A training development programme for Members is also organised by the Democratic Services Team.

As 2011 was the year of the local authority elections an extensive programme of training took place as follows:

- On Saturday 9th April 2011 an informal session for Candidates for Election took place at the District Council Offices.
- On Monday 9th May 2011 there was an Induction Session for Newly Elected and Re-Elected Members which was repeated in the evening.
- On the 16th May 2011 there was specialist Code of Conduct training carried out in conjunction with Dartford Borough Council. Those Members who could

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not attend the training at Sevenoaks were able to attend a similar training session at Dartford on the 23rd May 2011.

- Development Control Training for Members took place on the 2nd June 2011. For those Members who could not attend a further Planning seminar took place at Dartford Borough Council on the 26th May 2011.
- Finance Training took place on the 13th June 2011.
- Licensing Training took place on the 16th June 2011.
- Scrutiny Training for Environment Select took place on the 7th June 2011, Social Affairs on the 16th June 2011 and Services Select on the 21st June 2011.

Training for new Standards Committee Members took place as follows:

- 8th March 2011
- 16th March 2011
- 18th July 2011
- 27th July 2011
- 26th October 2011

On the 14th March 2011 conciliation and training took place at Brasted Parish Council.

Training for a Member of Knockholt Parish Council took place on the 20th October 2011.

Training for Shoreham Parish Council took place on the 6th December 2011.

There are 30 Parish and Town Councils within the District of Sevenoaks and the Monitoring Officer with Members of the Standards Committee often undertake training and or conciliation out of hours.

Training feedback forms are an essential part of the arrangements for training and are evaluated by the Standards Committee. This year those that have undertaken the training have agreed or strongly agreed the following:

- That the objectives of the session were met
- Attending was worth the effort
- They learnt something new and useful that they could apply to their position as Councillor or Clerk
- They are likely to recommend the training session to others
- The course material was helpful and informative.

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The Monitoring Officer employs an open door policy allowing Members to call in at any time to receive advice. This facility is extensively used by Members of the District, Town and Parish Councils to try to resolve issues at an early stage.

The Standards Committee works as a cohesive group to promote high standards across the whole district. The drive and enthusiasm of the Committee is reflected by the fact that the Independent Chairman now chairs the Kent Association of Independent Members.

11 CONCLUSION

The Monitoring Officer's role in conjunction with the Standards Committee encompasses both proactive and reactive elements. The proactive role centres on raising standards, encouraging ethical behaviour, increasing awareness and utilisation of the elements of good governance and ensuring that robust procedures are in place.

The reactive role focuses on taking appropriate action to deal with issues and potential problems as they arise. The Monitoring Officer together with the Standards Committee's effectiveness in this role is in turn dependent on effective systems and procedures being in place to identify problems and ensure that Members, Officers and Public are aware of appropriate channels to raise concerns.

Christine Nuttall
Monitoring Officer

STANDARDS COMMITTEE – 26 JANUARY 2012

THE NEW CODE OF CONDUCT

Report of the: Monitoring Officer

Status: For Information and discussion

Executive Summary: The new standards provisions are set out in the Localism Act 2011. These provisions apply amongst others to all District Councils and Parish and Town Councils. Every authority will be under a duty to promote and maintain high standards of conduct by elected and co-opted member of the authority. Each authority is required to adopt a Code of Conduct. The powers of the Secretary of State to specify general principles and issue a model code are revoked, along with the current 10 General Principles of Conduct and the Model Code. The Act requires an authority's Code to be consistent with the seven Nolan principles of conduct in public life.

This report supports the Key Aim of effective management of Council resources

Head of Service Mrs. Christine Nuttall – Head of Legal and Democratic Services

Recommendation: The contents of this report be noted

Introduction

- 1 Each authority is required to adopt a Code of Conduct, which can only apply to members and co-opted members when acting in their capacity as a member or co-opted member. Private life is not covered. The powers of the Secretary of State to specify general principles and issue a model code are revoked, along with the current 10 General Principles of Conduct and the Model Code, but the Localism Act 2011 (the Act) requires an authority's Code to be consistent with the seven Nolan principles of conduct in public life.

The New Code

- 2 The seven Nolan principles that the new Code must reflect are Selflessness, Integrity, Honesty, Objectivity, Accountability, Openness and Leadership. Apart from these principles Authorities are free to determine what they put in or leave out of a Code though section 28(2) of the Act does require the inclusion of the provisions the authority considers appropriate in respect of the registration in its register and disclosure, of interests. Any decision to adopt a local Code must be taken at full Council, and all standards matters are to be non-executive functions.

Consequences of Abolition

- 3 The abolition of the Model Code means that different authorities may have different Codes. A Member who is a Member of more than one authority is likely to be subject to different Codes, according to which authority he/she is currently acting on. Members who are on joint committees could be subject to the varied Codes of their different parent authorities.
- 4 The requirement for Members to give an undertaking to comply with the Code of Conduct is removed although it will be considered reasonable to expect compliance from responsible Members of a public body.
- 5 The Association of Council Secretaries and Solicitors (ACSeS) are working on a draft Model New Code a copy of which is set out within the Appendix. However, this Code cannot be finalised until it is known from Regulations to be issued by the Secretary of State what is covered by the new criminal provisions. Assuming the descriptions of interests regulations are a month or so away, work on the ACSeS model Code will not be completed until February or, perhaps, March.
- 6 From the draft Model Code set out in the Appendix, Members are referred to paragraphs 9 and 10 under the heading Pre-determination or bias. The predetermination section (section 25) of the Localism Act is in force from 15 January 2012. Members can now say in public their legitimate views on issues yet to be decided although caution is still recommended in relation to any action taken that may be perceived as bias.
- 7 There are some advantages in adopting a Code that has the backing of a national organisation who have committee resources and expertise to its creation. Such a Code is likely to be widely adopted which will have the benefit of creating consistency.

Key ImplicationsFinancial

- 8 No financial implications are arising from this report.

Community Impact and Outcome

- 9 The community will expect the Council to operate to the highest ethical standards as envisaged by the Act.

Legal, Human Rights etc.

- 10 It is anticipated that there will be case law emerging in relation to s.25 of the Act this being predetermination.

Conclusions

- 11 There is a legitimate concern that different Codes of Conduct across authorities will give rise to confusion in their application and understanding.

Risk Assessment Statement

- 12 There is concern that the Act does not provide a clear and cohesive framework for local government to work to. Further regulations are awaited which may help to clarify the position and ACSeS are working to try and produce uniform recommended code provisions.

Appendices

Appendix – Draft Code of Conduct

Background Papers:

The Localism Act 2011

AcseS Bulletins

Draft Code of Conduct

Eversheds' Local Government Briefing Note 83/2011

The Local Government Law an article entitled "All in the Mind" by Graeme Creer, a partner at Weightmans

Contact Officer(s):

Christine Nuttall – Ext. 7245

Christine Nuttall

Monitoring Officer

APPENDIX A

ACSeS Draft CODE OF CONDUCT

Introduction

This Code applies to you as a member of this authority when you act in your role as a member and it is your responsibility to comply with the provisions of this Code.

You are a representative of this authority and the public will view you as such therefore your actions impact on how the authority as a whole is viewed and your actions can have both positive and negative impacts on the authority.

This Code is based upon the "Nolan Principles – the seven principles of public life" which are set out at Appendix 1.

This Code does not cover matters in respect of which the Secretary of State may, under the Localism Act (when in force), specifically provide that criminal sanctions will apply.

Interpretation

In this Code—

"meeting" means any meeting of—

- (a) the authority;
- (b) the executive of the authority;
- (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

whether or not the press and public are excluded from the meeting in question by virtue of a resolution of members

"member" includes a co-opted member and an appointed member.

General Obligations

1. When acting in your role as a member of the authority:
 - 1.1 **Do** treat others with respect.
 - 1.2 **Do not** conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct of members.
 - 1.3 **Do** ensure that you are aware of and comply with the requirements which the Bribery Act 2010 places on you in your role as a Member and on the Council as a whole.
 - 1.4 **Do not** disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;

- (iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is—
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; and
 - (cc) you have consulted the Monitoring Officer prior to its release.
- 1.5 **Do not** prevent another person from gaining access to information to which that person is entitled by law.
2. When using or authorising the use by others of the resources of the authority—
- 2.1 **Do** act in accordance with the authority's reasonable requirements including the requirements of the authority's ICT policy and the policies listed at appendix 3 [to be added by the authority], copies of which have been provided to you and which you are deemed to have read;
- 2.2 **Do** make sure that such resources are not used improperly for political purposes (including party political purposes); and
- 2.3 **Do** have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

Interests [Subject to Localism Act provisions]

3. As a public figure, your public role may, at times, overlap with your personal and/or professional life and interests however when performing your public role as a member, **Do** act solely in terms of the public interest and **Do not** act in a manner to gain financial or other material benefits for yourself, your family, your friends, your employer or in relation to your business interests.
4. There will be no requirement for you to declare or register any gifts and hospitality; however **Do not** accept any gifts or hospitality in excess of £50.00 (Fifty Pounds).

Disclosure and participation [Dependent on contents of interests provisions above]

5. At a meeting where any such issues arise, **Do** declare any personal and/or professional interests relating to your public duties and **Do** to take steps to resolve any conflicts arising in a way that protects the public interest.
6. Certain types of decisions, including those relating to a permission, licence, consent or registration for yourself, your friends, your family members, your employer or your business interests, are so closely tied to your personal and/or professional life that your ability to make a decision in an impartial manner in your role as a member may be called into question and in turn raise issues about the validity of the decision of the authority. **Do not** become involved in these decisions any more than a member of the public in the same personal and/or

professional position as yourself is able to be and **Do not** vote in relation to such matters.

7. There are some decisions that your authority will need to make that could affect every member. A list of these is set out at Appendix 2. **You may** take part in these decisions *unless* you fall into one of the exceptions set out in the list.
8. **Do not** improperly use knowledge gained solely as a result of your role as a member for the advancement of yourself, your friends, your family members, your employer or your business interests.

Pre-determination or bias

9. Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life you should not be prohibited from participating in a decision in your political role as member, however **Do not** place yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
10. When making a decision, **Do** consider the matter with an open mind and on the facts before the meeting at which the decision is to be taken.

Interests arising in relation to overview and scrutiny committees [Subject to Localism Act provisions]

11. In relation to any business before an overview and scrutiny committee of the authority (or of a sub-committee of such a committee) where—
 - 11.1 that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
 - 11.2 at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph 11.1 and you were present when that decision was made or action was taken;
or
 - 11.3 that business relates to a decision made (whether implemented or not) or action taken by you (whether by virtue of the Council's constitution or under delegated authority from the Leader);

You may attend a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

APPENDIX 1

THE SEVEN PRINCIPLES OF PUBLIC LIFE

SELFLESSNESS

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP

Holders of public office should promote and support these principles by leadership and example.

APPENDIX 2

Where the decision referred to in Clause 7 above relates to one of the functions of the authority set out below, and the condition which follows that function does not apply to you when making that decision, you may participate in the decision:

- (i) housing, where you are a tenant of your authority *unless* those functions relate particularly to your tenancy or lease;
- (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, *unless* it relates particularly to the school which the child attends;
- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

Agenda Item 4

STANDARDS COMMITTEE – 26 JANUARY 2012

WORKING TOWARDS ESTABLISHING THE NEW STANDARDS REGIME UNDER THE LOCALISM ACT 2011

Report of the: Monitoring Officer

Status: For Consideration and Decision

Executive Summary: The purpose of this report is to create a Task and Finish Group of Members and Officers to formulate behaviour and conduct requirements that are fit for purpose and appropriate to the requirements of the Localism Act 2011 in line with the resolution passed by this Committee on 2 August 2011.

This report supports the Key Aim of effective management of Council resources

Head of Service Mrs. Christine Nuttall – Head of Legal and Democratic Services

Recommendation: That

- (a) the contents of this report be noted; and
 - (b) the composition and Chairman of a Task and Finish Group be appointed by this Committee in order that the Task and Finish Group examine the existing Constitution and formulate behaviour and conduct requirements in line with the Localism Act 2011 for consideration by the Modern Local Government Group and Full Council.
-

Reason for recommendation: The Task and Finish Group is necessary in order to formulate proposals for Council to consider and put in place new local standards arrangements to comply with the requirements of the Localism Act 2011.

Introduction

- 1 The Localism Act 2011 received Royal Assent on 15 November 2011 and the scope of the work, and the key issues it raises, have therefore become clearer. This report sets the scene by providing an outline of the current ethical framework and suggests a scoping proposal for the Task and Finish Group's work in terms of key issues it will need to address in seeking to identify revised standards and procedures to replace the existing regime which are largely being swept away by the Localism Act 2011.
- 2 It is the Government's intention to bring the new provisions into force in April 2012 so that a new system can be put in place at the Annual Meetings in May 2012. However, it should be mentioned that the DCLG have recently advised that they envisage that the current regime will now be abolished on 1 July 2012 as no draft Regulations have yet been published. Despite the envisaged

delay it is considered prudent that this Committee still works toward sign off by full Council on 15 May 2012. As a result It is anticipated that the Task and Finish Group will require to meet on a number of occasions over the coming months in order to be in a position for the Monitoring Officer to present a final report to this Committee for sign off before presenting it to the Modern Local Government Group for consideration and recommendation to the Annual Meeting of Council on 15 May 2012. It is the intention of the Monitoring Officer to keep this Committee fully informed on the progress of the Task and Finish Group as work progresses in order that sign off from this Committee can take place relatively quickly although an extra meeting of the Standards Committee will be needed for such sign off to take place.

- 3 On 2 August 2011 the Standards Committee passed a resolution which was as follows:

“the Chairman discuss with the Leader of Sevenoaks District Council and the Portfolio Holder for Safe Community their interest in the Standards Committee proposing new simplified structures following the abolition of the existing regime; and pending such discussions, a Task and Finish Group be formed to investigate recommendations to Sevenoaks District Council following the abolition of the existing regime.”

Discussions took place on 18 October 2011 and, as can be seen from the above timetable there is now a pressing need for this Committee to select members to sit on the Task and Finish Group.

- 4 It is anticipated that the Task and Finish Group will require references to a number of existing key documents such as Part 3 of the Constitution entitled “Standards Committee” and the following Appendix to the Constitution:

- Appendix K – Protocol on Gifts and Hospitality
- Appendix O – Members’ Register of Interest Form
- Appendix Q – Members’ Code of Conduct
- Appendix S – Procedure for Local Assessment of Complaints relating to Allegations of Member Misconduct
- Appendix T – Sub-Committees of the Standards Committee
- Appendix U – Guidance on Applying an Appropriate Sanction
- Appendix X – Procedure for referrals to the Monitoring Officer for Investigation and Determination

A pack of these documents will be provided to the Task and Finish Group.

The Current Arrangements

- 5 The current ethical framework is viewed as complex, detailed and bureaucratic. The key elements of the current system are as follows:

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A model Code of Conduct which places an obligation on Members to conduct themselves according to certain standards which cover:

- To treat others with respect
- Not to bully any person
- Not to disclose confidential information
- Not to bring their office or authority into disrepute
- Not to use their position as a member to improperly confer an advantage or disadvantage
- Use resources of the authority reasonably and not for political purposes
- Rules on registration of certain personal interests and disclosure of personal and prejudicial interests
- Leave the meeting room and not take part in any vote on a matter in which they have a prejudicial interest

Statutory Standards Committees

- 6 The Committee is supported and advised by the Monitoring Officer and oversees the ethical framework. The Standards Committee must be chaired by an “Independent Member”.

A Statutory Regime for handling formal complaints in relation to Members breaching the Code of Conduct

- 7 Each complaint is filtered by an Assessment Sub-Committee of the Standards Committee which decides whether the complaint should be formally investigated or other action taken. Panels are guided by advice from the Monitoring Officer and Assessment Criteria in reaching their decisions.
- 8 A Review Sub-Committee considers appeals by complainants if an Assessment Sub-Committee decides to take no further action on a complaint.
- 9 A Determination Hearing Sub-Committee holds hearings into complaints following any formal investigations.
- 10 There is a range of sanctions available to the Determination Hearing Sub-Committee and all the Sub-Committees have the power to refer matters to Standards for England which is due to be abolished on 31 March 2012 although the regulatory role in handling cases and issuing guidance is anticipated to stop from 31 January 2012.
- 11 Very few complaints are referred for formal investigation and hearings. When cases are referred to the Monitoring Officer for “other action” this usually involves training and or conciliation. The Monitoring Officer’s advisory role

extends to regular day to day queries not only from District Councillors but also from Parish/Town Council Members including Clerks.

The Localism Act 2011 – the new regime

- 12 The Government's intention to abolish the Standards Board regime has now been enacted in Chapter 7 and Schedule 4 to the Localism Act 2011. The existing system will continue until this part of the Localism Act comes into force. There will be transitional provisions in Regulations but it is likely that all cases already in the system when the law changes will be taken to their conclusion, although the transitional provisions will remove the power to disqualify and suspend councillors in the existing system.
- 13 The key provisions of Chapter 7 of the Localism Act provide that:
- The Standards for England, formally the Standards Board will be abolished
 - The national model Code of Conduct and all the existing procedures and powers to enforce that Code will be abolished
 - The duty to appoint statutory Standards Committees will be abolished although there will still be a discretion to appoint a Standards Committee to deal with standard matters under the Local Government Act 1972
- 13 In place of the existing regime the main elements of the new framework are as follows:
- A new statutory duty to promote and maintain high standards of conduct
 - In discharging this duty, full Council must adopt a new revised Code of Conduct. The Code will not cover Members acting in their private capacity. The Code must be consistent with seven statutory principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. In addition the Code must include appropriate provisions on registration and declaration of pecuniary and non-pecuniary interests.
 - There are specific statutory provisions as to disclosable pecuniary interests and the registration of such interests as well as the registration of interests other than pecuniary interests which will be held by the Monitoring Officer in relation to the District Council and all the Parish/Town Councils within the District. What is a disclosable pecuniary interest and what are interests other than pecuniary interests has been given no definition yet but Regulations on this are awaited. Interests will not only include interests of Members themselves but also their spouse or partner.
 - Disclosable pecuniary interests which are not registered or in the process of being registered must be disclosed at meetings where relevant. A Member with a disclosable pecuniary interest in a matter cannot participate in discussion of the matter or vote upon it unless a

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dispensation has been granted. The Act creates a number of criminal offences in relation to non compliance with the statutory rules on interests. Prosecutions will take place through the Police and DPP.

- The power to create dispensations to participate and vote despite the existence of a pecuniary interest in a matter have been widened.
- In relation to handling complaints the Act allows a considerable amount of discretion as Councils are required to have in place “arrangements under which allegations can be investigated and decisions on allegations can be made”. Such arrangements must include provision for the appointment of at least one “Independent Person” whose views must be taken into account before the authority takes a decision on any allegation it has decided to investigate. The Independent Person may be consulted by a Member against whom an allegation has been made. In addition the Independent Person may be consulted by a Parish Councillor against whom an allegation has been made. The Independent Person cannot be appointed as an Independent Person if they have within the past 5 years been a co-opted voting member of a Committee of the authority. This could mean that all existing independent co-opted Members of Standards Committees are ineligible to be appointed as Independent Persons at the authority they have been serving on. This has become an issue with local government lawyers who are debating whether this result was intended or even achieved by the wording of the Act. The Association of Secretaries and Solicitors are taking legal advice on the point.
- If a breach of the Code of Conduct is found the Council may have regard to that breach in deciding what action to take. However, there are no statutory sanctions available. Censure by naming and shaming appears to be the only available action, other than administrative measures such as withdrawal of facilities, political group discipline, removal of Members from positions of responsibility such as from Committees.
- In relation to Parish/Town Councils a late amendment to the Bill has created the situation where District Councils still have the responsibility for the ethical conduct of Parish/Town Members although no powers have been given to District Councils to enable them to undertake the task. Parish/Town Councils are free to adopt their own Code although they can just agree to adopt the same Code as their District Council and the District Council’s arrangements for handling complaints will also apply to complaints received by the District Council in relation to Parish/Town Members.

Key Issues for the Task and Finish Group

- 14 The key issues that the Task and Finish Group needs to consider in order to put in place new local standards arrangements can be summaries as follows:
- What kind of Code does the Council want? Professional bodies and local government organisations are actively working on possible Code models to recommend to local authorities. This work will assist and there will be

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advantages in formulating a Code which is widely adopted in order to create consistency.

- To what extent should the Code of Conduct be supplemented by separate voluntary non-statutory protocols such as our existing Protocol on “Gifts and Hospitality”.
- What body should best discharge the new functions? The Act states that it cannot be a Cabinet function and it would be impractical for full Council to carry out the functions. There is the general duty of promoting high standards of conduct which implies information, publicity and training which are matters currently within the remit of the Standards Committee. There will also be the procedural and legal arrangements for dealing with and filtering complaints, making decisions to investigate and making decisions on what action to take in the event of Code breaches. How far should the existing arrangements of Assessment Sub-Committees be retained bearing in mind that the same basic set of decisions and processes as under the existing system will have to be covered under the new system. What elements of any process should be delegated to officers in consultation with a Member and the Independent Person? How far could or should the processes be undertaken in private as some are at present.
- What range of actions are realistically available when Members are found to have breached the new Code of Conduct? In this respect Members are referred to a report presented to the Standards Committee dated 2 December 2010 entitled “Self-Regulation Following Abolition of the Standards Regime” that sets out what powers may be available to local authorities once the present Standards Regime is abolished as confirmed in the Court of Appeal in R v Broadland District Council ex p. Lashley (2001). The Association of Council Solicitors and Secretaries (ACSeS) is obtaining a Counsel’s opinion on the sanctions available to authorities under the new arrangements.
- What role, if any, would non-voting co-opted Members have in relation to any proposed procedure?
- What arrangements should be put in place for appointment of and role of the statutory Independent Person? The Independent Person has to be appointed by advertisement and application. They can be paid a fee and/or expenses and the Act provides that a person does not cease to be independent merely because such payments are made. As the Independent Person is not a Member of the authority or of its Committees or Sub-Committees, the remuneration of the Independent Person would not come within the scheme of Members’ Allowances, and can therefore be determined without reference to the Independent Remuneration Panel.
- What arrangements should be made for making decisions on applications for dispensations to participate/vote despite the existence of prejudicial interests? Could some of the decisions be delegated to officers?

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- What local arrangements should be made with the police in the event that complaints are received which allege or disclose criminal offences under the Act's interest provisions?
- What local IT arrangements will need to be put in place as all Registers for Disclosable Pecuniary Interests and Non Pecuniary Interests will need to be displayed on the District Council's website for our own Members as well as the Members of the 30 Parish/Town Councils within our District?
- Should the Monitoring Officer and council staff continue to provide an "on demand" advisory role for Parish/Town Clerks and Parish/Town Members?
- What training arrangements for Members, Officers and Parish/Town Clerks and Members will be required in order to facilitate a smooth transition to the new systems?

Key Implications

Financial

- 15 The Localism Act should allow a far less bureaucratic process to be put in place which should enable savings to be made. However, many changes were made to the Government's initial Bill provisions in relation to Standards and the final form of the Act includes a number of late concessions which may prove problematic in practice. A late amendment to the Bill means that District Councils must continue to have a statutory duty towards the conduct of Parish/Town Members. As this is a statutory responsibility District Councils will be unable to make a charge for this under the new Local Authority's General Power of Competence.

Community Impact and Outcomes

- 16 The authority will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted Members and the community will expect the Council to operate to the highest ethical standards. However, in place of the existing regime, the Localism Act allows a good deal of local choice for Councils within an overall framework.

Legal, Human Rights etc.

- 17 The Localism Act implements a statutory regime and duty. Some of the provisions appear problematic and a legal advice is already being sought by the Association of Secretaries and Solicitor in relation to the provisions surrounding who can be the Independent Person and whether existing Independent Members of Standards Committees are ruled out. In addition, the functions of the Independent Person would appear to create conflicts of interest in that an Independent Person who has been consulted by the Member against whom the complaint has been made, may as a result be regarded as prejudiced on the matter and thereby conflicted out when involved in the determination of the complaint.

Conclusions

- 18 The report sets out the need for a Task and Finish Group to help implement the extensive changes required by Chapter 7 and Schedule 4 of the Localism Act 2011.
- 19 Each relevant authority will be under a duty to promote and maintain high standards of conduct by elected and co-opted Members of the authority.
- 20 Each authority will be required to adopt a Code of Conduct and this authority will be under a duty to deal with complaints relating to breaches of the Code. In addition this duty will extend to the 30 Parish/Town Councils within the District.
- 21 Robust procedures are needed to be worked through as quickly as possible in order for proposals to be put forward for final authorisation by full Council.

Risk Assessment Statement

- 22 The need to establish a Task and Finish Group as soon as possible is essential in order to meet the ambitious anticipated time line for when implementation of the Chapter 7 of the Localism Act 2011 is to take place.
- 23 Failure to have robust systems in place which are fit for purpose could result in reputational damage to this Council and to individuals together with a failure by this Council to abide by statutory requirements. The risks increase as not only are District Councils responsible for putting systems in place for themselves but for Parish/Town Councils within their Districts.

Background Papers:

Localism Act 2011

What have the Lords Bequeathed us on Standards? Bevan Brittan

A plain English guide to the Localism Act

Managing Major Change Corporate Governance
ACSeS Conference 2011**Contact Officer(s):**

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