

8 October 2012

I hereby summon you to attend the meeting of the Sevenoaks District Council to be held in the Council Chamber, Council Offices, Argyle Road, Sevenoaks commencing at 7.00 pm on 16 October 2012 to transact the under-mentioned business.



Chief Executive

AGENDA

Apologies for absence

1. To approve as a correct record the minutes of the meeting of the Council held on 24 July 2012 (Pages 1 - 8)
2. To receive any declarations of interest not included in the register of interest from Members in respect of items of business included on the agenda for this meeting.
3. Chairman's Announcements
4. To receive any petitions submitted by members of the public.
5. Matters considered by the Cabinet and/or other committees:
 - a) Shared Service Environmental Health Enforcement Policy (Pages 9 - 26)
6. To consider the following reports from the Chief Executive or other Directors on matters requiring the attention of Council:
 - a) New Standards Arrangements - Appointment of Independent Person (Pages 27 - 30)
 - b) New Standards Arrangements - Appointment of Standards Committee (Pages 31 - 36)
7. To consider any questions by Members under paragraph 19.3 of Part 2 (The Council and District Council Members) of the Constitution, notice of which have been duly given.

8. To receive any questions from members of the public under paragraph 17 of Part 2 (The Council and District Council Members) of the Constitution.
9. To receive the report of the Leader of the Council on the work of the Cabinet since the last Council meeting. (Pages 37 - 38)
10. To receive a report from the Chairmen of the Select Committees on the work of the Committees since the last Council meeting. (Pages 39 - 42)
11. To receive a report from the Chairmen of the Performance and Governance Committee on the work of the Committee since the last Council meeting. (Pages 43 - 44)
12. 10 Year Budget Savings Options (Pages 45 - 48)

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)

DISTRICT COUNCIL OF SEVENOAKS

Minutes of the Meeting of the Sevenoaks District Council
held on 24 July 2012 commencing at 7.00 pm

Present: Cllr. Mrs. Morris (Chairman)

Cllr. Pett (Vice-Chairman)

Cllrs. Abraham, Mrs. Ayres, Ayres, Ball, Bosley, Mrs. Bosley, Mrs. Bracken, Brookbank, Brown, Ms. Chetram, Clark, Mrs. Clark, Mrs. Cook, Mrs. Davison, Davison, Dickins, Edwards-Winser, Eyre, Firth, Fittock, Fleming, Gaywood, Mrs. George, Grint, Hogarth, Horwood, Mrs. Hunter, Maskell, McGarvey, Orridge, Mrs. Parkin, Piper, Mrs. Purves, Ramsay, Mrs. Sargeant, Miss. Thornton, Towell, Underwood and Walshe.

Apologies for absence were received from Cllrs. Mrs. Bayley, Butler, Cooke, Mrs. Dibsall, London, Ms. Lowe, Neal, Raikes, Scholey, Searles, Miss. Stack and Williamson.

11. To approve as a correct record the Minutes of the meeting of the Annual Council meeting held on 15 May 2012

The Chairman proposed that the Minutes of the meeting of the Council held on 15 May 2012 be approved and signed as a correct record.

Resolved: That the minutes of the Annual Council Meeting held on 15 May 2012 be approved and signed by the Chairman as a correct record.

12. To receive any additional declarations of interest from Members in respect of items of business included on the agenda for this meeting

No additional declarations were made.

13. Chairman's Announcements

On Friday 20th July 2012, the Olympic Torch passed through the District. The Torch itself was in the District for over an hour and the event passed without incident. The Chairman thanked all the Staff and Volunteer Stewards who had contributed to making the day such a great success.

The Chairman reported that a past member, Ron Bailey had passed away on 17th June 2012. He had been elected as a Member for Fawkham and Hartley and was both Leader of the Council from May 1992 to May 1995 and Chairman of the Council from May 2002 to May 2003.

14. To receive any petitions submitted by members of the public.

No petitions were received.

15. To appoint representatives on outside organisations.

Cllr. Fleming proposed and Cllr Mrs Davison seconded that Cllr. Miss Stack and Cllr. Raikes be appointed to the Local Democracy and Accountability Network for Councillors for 2012/13.

Resolved: That Cllr. Miss Stack and Cllr. Raikes be appointed to the Local Democracy and Accountability Network for Councillors for 2012/13.

15b. MEMBERSHIP OF COMMITTEES 2012/13

Cllr Fleming proposed and Cllr. Mrs Davison seconded that (1) Councillor Hogarth be removed from the Services Select Committee, Performance and Governance Committee and Licensing Committee; and (2) Councillor Miss Stack be removed from the Membership of the Social Affairs Committee and added to the Membership of the Services Select Committee.

Cllr. Fleming reported that Councillor Hogarth was being removed from the Committees to enable him to undertake the newly created role of Portfolio Holder for Economic Development and Partnerships.

Resolved: That (1) Councillor Hogarth be removed from the Services Select Committee, Performance and Governance Committee and Licensing Committee; and (2) Councillor Miss Stack be removed from the Membership of the Social Affairs Committee and added to the Membership of the Services Select Committee.

16. Matters considered by the Cabinet and/or other Committees:

(a) The Localism Act 2011 - The New Standards Regime

Members considered a report outlining proposals for a new Code of Conduct and new arrangements for dealing with Member complaints following implementation of the relevant provisions of the Localism Act 2011, the Localism Act 2011 (Commencement No.6 and Transitional, Savings and Transitory Provisions) Order 2012 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. The Localism Act 2011 made fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. The existing Standards regime ceased to operate on 30th June 2012 with transitional arrangements being limited and not allowing for the old arrangements to continue. From 1st July, the Council was required to adopt a new Code of Conduct and put in place arrangements for investigating allegations of breaches and for making decisions in respect of those allegations.

Cllr. Fleming proposed and Cllr. Mrs Bracken seconded that the recommendations outlined on pages 25-26 of the agenda be agreed.

Cllr. Fittock welcomed the new procedure which enabled Members accused of breaching the Code of Conduct to have a right of reply and highlighted that the Independent Person, appointed by the three Leaders of the main political groups within the Council, would have the ability to review complaints prior to

consideration at Committee. Cllr Fittock expressed concerns that there was no right of appeal built into the process.

Cllr. McGarvey commended the work that had been undertaken to develop the new Code of Conduct, but expressed fundamental concerns surrounding the new requirements regarding declarations of interests, especially the requirements that interests relating to the employment of spouses needed to be declared.

Responding to the debate, Cllr. Fleming highlighted that the old Standards regime had become uncontrollable and unfit for purpose. What was in front of the Council was a simple regime that was transparent and easy to understand. Importantly, the public would also be able to understand the new Code of Conduct for Members. Cllr Fleming stressed that the District Council retained responsibility for reviewing and investigating all complaints within the District, including those relating to Town and Parish Councils. In terms of right of appeal, Members did have a right of appeal, as cases could be referred to the Ombudsman. Turning to the issues to declarations relating to the interests of spouses, representations were being made to Government as this was an issue that had been highlighted nationally.

Resolved: That

- (a) the Department for Communities and Local Government Code, as recommended by the Task Group, be adopted as the new Code of Conduct for the District Council as attached at Appendix 2a of the report.
- (b) a Standards Committee be established with the Terms of Reference and Delegations to the Standards Committee as set out at Appendix 3.
- (c) 7 Members be appointed in accordance with the political balance rules to serve on the Standards Committee.
- (d) the revised procedures for dealing with misconduct complaints including arrangements for the investigation of complaints alleging a breach of the Member's Code of Conduct be adopted as set out in Appendix 4.
- (e) the Monitoring Officer be authorised to advertise for no less than 1 Independent Person and that a panel comprising the leaders of the political groups be set up to set the allowances and expenses for the Independent Person and to short-list and interview candidates, and to make a recommendation to Council for appointment as set out in Appendix 5, subject to the amendment outlined above.
- (f) the new Register of Interest Form for District Council Members be adopted and the definition for interests other than pecuniary interests called non pecuniary interests (NPI's) as set out in the Form and as attached to this report at Appendix 6 be agreed.
- (g) Council agrees to amend its standing orders to provide that a Member or Co-opted Member of the Authority must withdraw from the meeting

room, including the public gallery, during the whole consideration of any item of business in which he/she has a DPI, except where he/she is permitted to remain as a result of the grant of a dispensation. The power to amend the Council's standing orders in this way is given by virtue of s.31(10) of the Localism Act . This amendment to be incorporated into the Council's chosen new Code of Conduct.

- (h) powers to grant dispensations be delegated to the Monitoring Officer in relation to section 33(2)(a) and(d) of the Localism Act and delegate powers to grant dispensations to the Standards Committee in relation to section 33(2) (b), (c) and (e) of the Localism Act as set out in Appendix 7.
- (i) that the Monitoring Officer be authorised to make the necessary changes to the Constitution by deleting those parts of the Constitution as set out as follows:
- Part 3 – Standards Committee
 - Appendix O – Member's Register of Interests
 - Appendix Q – Member's Code of Conduct
 - Appendix S – Procedure for Local Assessment of Complaints about Allegations of Member Misconduct
 - Appendix T – Sub-Committees of the Standards Committee
 - Appendix U – Guidance on Applying the Appropriate Sanction when a Member has breached the Code of Conduct
 - Appendix V – Process and Procedure for Interviewing and Appointing (Independent and Town/Parish Council Representative) Applicants for the Standards Committee
 - Appendix X – Procedure for Referrals to the MO for Investigation and Determination

and inserting within the Constitution the new Appendices as approved by this report and any necessary consequential changes including any reference in the Constitution to personal and prejudicial interests being changed to Disclosable Pecuniary Interests (DPI's) and interests other than Pecuniary Interests called Non Pecuniary Interests (NPI's).

- (j) that the Standards Committee and or Modern Local Government Group keeps the Code and Arrangements under review and reports further to the Council as is considered necessary. The Standards Committee will consider setting up a sub-committee for this purpose.

(b) Amendments to the Constitution

Members considered a report outlining two amendments to the Council's Constitution: one relating to the number of meetings of the Select Committees and one relating to the delegated powers of the Community and Planning Director.

Part 1, paragraph 2.4 of the Council's constitution required that except for changes required by statute, changes to the Constitution would only be approved by the full Council after consideration of the proposal by the Modern Local

Government Group. The amendments to the Constitution outlined in Appendix A to the report would bring the number of meetings referred to in the Constitution in line with the new working practice of the Leader of the Council electing Chairman and Vice-Chairman of the Select Committees at the Annual Council meeting.

The amendment outlined in Appendix B to the report related to specific circumstances where planning permission had been refused under delegated powers, an appeal lodged and new information being received that led Officers to conclude that refusal of permission could not be substantiated at appeal. Under these circumstances the matter would be referred back to Members to enable the original delegated refusal to be reviewed.

Councillor Fleming proposed and Cllr. Mrs Bracken seconded that the amendments to the Constitution outlined in the report at pages 121 to 127 of the agenda be agreed.

Resolved: That the amendments to the Constitution outlined in the report be adopted.

(c) Localisation of Council Tax Support

Cllr. Fleming proposed and Cllr. Ramsey seconded that (a) That the Council consult with its community on the proposal to reduce the council tax support payable to working age claimants by a standard percentage amount that delivers a local support for council tax scheme within the funding provided by Government; and (b) Members approve the principles of broad-based consultation and delegate authority to the Leader of the Council and the Portfolio Holder for Value for Money to approve the information and questions provide to the community within the consultation questionnaire.

Cllr. Fittock proposed and Cllr. Underwood seconded the following amendment to the motion:

That the following be added as point c):

c) that this Council explains how it will provide support for the most vulnerable families and how the proposal will lift people off benefit and support them into work.

Cllr. Fittock noted that paragraph 12 of the report outlined that the two underlying principles behind the localisation of council tax benefit were that 1) Localised schemes should provide support for the most vulnerable, including vulnerable pensioners; and 2) Localised schemes should assist with lifting the poorest off benefits and supporting them into work. These were the two basic principles that had to be worked to however, there was nothing in the report to explain how this support would be provided.

Cllr. Fleming responded that these issues would be covered in the proposed consultation. The only groups specifically covered within the legislation were elderly vulnerable groups. The District Council needed to ensure that a sustainable scheme was developed for the future. It was inevitable that some

groups would fall outside of the support that would be available in the future as there would not be enough funding.

Following a vote, the amendment was LOST.

Members returned to debating the original motion, following a vote it was

Resolved: That

- (a) the Council consult with its community on the proposal to reduce the council tax support payable to working age claimants by a standard percentage amount that delivers a local support for council tax scheme within the funding provided by Government; and
- (b) the principles of broad-based consultation be approved and that authority be delegated to the Leader of the Council and the Portfolio Holder for Value for Money to approve the information and questions provide to the community within the consultation questionnaire.

(d) Community Right to Challenge

Members considered a report setting out the duty placed on local authorities in the Localism Act 2011 to administer the Community Right to Challenge. The Community Right to Challenge allowed relevant bodies to express an interest in running Council services and placed a duty on local authorities to consider expressions of interest. Where expressions of interest were accepted a full tender process for future delivery of that service would have to be conducted.

The report proposed that Members adopted a policy that aligned the management of the Community Right to Challenge within existing budget setting processes and ensured the Council placed a priority on the cost to the District and the quality of service delivered when drawing up any tender document required as a result of an expression of interest under the Community Right to Challenge.

Cllr. Fleming proposed and Cllr. Mrs Davison seconded that (a) the Sevenoaks District Council Community Right to Challenge Policy be approved; and (b) that authority be delegated to the Portfolio Holder for Planning and Improvement to agree any final adjustments to the Community Right to Challenge Policy that may result from the finalisation of Government policy and statutory guidance.

Resolved: That

- (a) the Sevenoaks District Council Community Right to Challenge Policy be approved; and
- (b) authority be delegated to the Portfolio Holder for Planning and Improvement to agree any final adjustments to the Community Right to Challenge Policy that may result from the finalisation of Government policy and statutory guidance.

17. To consider any questions by Members under Paragraph 19.3 of Part 2 (the Council and District Council Members) of the Constitution, notice of which have been duly given.

No questions were received.

18. To receive any questions from members of the Public under Paragraph 17 of Part 2 (the Council and District Council Members) of the Constitution.

No questions were received.

19. To receive the report of the Leader of the Council on the work of the Cabinet since the last Council meeting.

The Leader of the Council reported on the work that he and the Cabinet had undertaken in the period 7 April 2012 to 12 July 2012.

In June, Cllr. Fleming attended the South East England Councils (SEEC) All Member Meeting. The new Chairman of SEEC was a District Council Leader and as a result of this it was anticipated that there would be a greater focus on the work of district Councils.

In July, the Leader had attended the Memorial Service of Mark Worrall OBE, Leader of Tonbridge and Malling Borough Council. Over 500 people had attended the Service including 3 Secretaries of State.

A new Portfolio for Economic Development and Partnerships had been created. In the future, the grant that the District Council received from Central Government would be based on the business rates collected by the Council and therefore Economic Development was increasingly important for the Council. Councillor Hogarth, the Portfolio Holder for Economic Development and Partnerships had a background in business and would be well placed to lead the Portfolio through the challenges ahead.

20. To receive a report from the Chairmen of the Select Committees on the work of the Committees since the last Council meeting.

The Council received the reports from the Chairmen of the Select Committees as follows:

- Environment Select Committee – 29 May 2012
- Services Select Committee – 19 June 2012
- Social Affairs Select Committee – 21 June 2012

21. To receive a report from the Chairman of the Performance and Governance Committee on the work of the Committee since the last Council meeting

The Council received the report from the Chairman of the Performance and Governance Committee on the work undertaken by the Committee at its meeting on 12 June 2012.

THE MEETING WAS CONCLUDED AT 7.35 pm

Chairman

ENVIRONMENTAL HEALTH PARTNERSHIP – DARTFORD AND SEVENOAKS – APPROVAL OF REVISED ENFORCEMENT POLICY

Council – 16 October 2012

Report of the: Deputy Chief Executive and Director of Community and Planning

Status: For Decision

Also considered by: Cabinet – 11 October 2012

Key Decision: No

Executive Summary:

The Environmental Health teams of Dartford and Sevenoaks have revised their Enforcement Policy to reflect changes created by Government guidance and the new Environmental Health Partnership arrangements that commenced in April 2012. The proposed revised policy ensures that Environmental Health enforcement actions are fair, consistent and transparent.

This report supports the Key Aims of the Community Plan priority to help communities to be safe and feel safe in that it ensures a policy is in place that will be followed ensuring appropriate enforcement action is taken in all Environmental Health related legislation. The Enforcement Policy relates to the Clean and Healthy Environment priority in that it relates to legislation used to control and monitor public health nuisance, air pollution and land contamination. It also relates to the Health and Wellbeing priority in that comprehensive enforcement ensures that food is safe to eat, and home and work environments are safe and healthy

Portfolio Holder Cllr. Elaine Bracken

Head of Service Head of Operational and Environmental Services – Richard Wilson

Recommendation Council:

It be resolved to recommend to Full Council that the proposed revised Environmental Health Enforcement Policy be approved.

Reason for recommendation: The Enforcement Policy for the Environmental Health Partnership was reviewed as part of the shared service review process. Following advice from both Sevenoaks and Dartford Legal teams, a single policy has been created to create consistency of enforcement for the residents of both districts. The existing Sevenoaks Enforcement policy required revising and as such, the Shared EH Enforcement Policy has included updates required by regulation and amendments made as a result of the Equality Action point review.

Agenda Item 5a

Introduction

- 1 Local authorities are required to publish a policy setting out their approach to compliance and enforcement by the Regulators Compliance Code. This is an important document for regulators in meeting their responsibility under the statutory principles of good regulation to be accountable and transparent about their activities.
- 2 The Council has signed up to the Enforcement Concordat and its environmental health officers will seek to secure compliance with the law informally by information, advice and support but where appropriate will use enforcement powers.
- 3 This policy is intended to provide guidance on the principles and processes that will apply when enforcement action is taken.
- 4 The Council believes in firm but fair enforcement of environmental health legislation. This policy is based on the following five guiding principles:-
 - Consistency: to ensure that similar issues are dealt with in the same way
 - Proportionality: to ensure that the action taken relates directly to the actual or potential risk to health and safety
 - Targeting: to ensure that resources are targeted where activities give rise to the most serious health risks
 - Transparency: to ensure that people easily understand the action expected of them and that clear distinctions are made between legal requirements and guidance
 - Accountability: officers are accountable to citizens, Parliament and the Council for their actions and the Council has an effective mechanism for dealing with complaints and comments.
- 5 The purpose of this Policy is to secure effective compliance with legislation while minimising the burden to the Council, individuals, organisations and businesses.
- 6 We are committed to the principles of good enforcement and continually seek to improve our standards. This policy is subject to regular review.

Key Implications

Financial

As previously has been the case, the Policy in itself does not create any financial implications.

Community Impact and Outcomes

The Enforcement Policy ensures that public health in the community meets minimum legal requirements. E.g. that restaurants are safe to eat in, that public places are not hazardous, and that industry does not emit harmful pollutants.

Legal, Human Rights etc.

Decisions in relation to a prosecution are likely to amount to consideration of civil rights and obligations with the result that Article 6(1) of the Human Rights Act 1998 is engaged.

Resource (non-financial)

No additional resource required.

Value for Money and Asset Management

No impact on value for money and asset management.

Equality Impacts

Does the activity have the potential to cause adverse impact or discriminate against different groups in the community?

No, it is written specifically to ensure it meets the requirements of the EH equality impact assessment as produced in 2008.

Does the activity make a positive contribution to promoting equality?

Yes, by ensuring all enforcement action taken by council officers is fair, legally correct and consistent in all cases.

Conclusions

This Policy document updates a document that has previously been approved by Council. (2002) Members are asked to approve the revised Policy that will ensure consistency of enforcement within the new shared service.

RISK ASSESSMENT STATEMENT

By having an up to date published Enforcement policy, the Council will ensure that it is operating legally and within accepted national guidelines. It reduces risk of costs to the Council from losing legal cases and any legal action against the council for damages/ compensation claims for inappropriate enforcement action.

Appendices

Appendix A – Environmental Health Partnership –
Dartford and Sevenoaks Enforcement Policy.

Agenda Item 5a

Sources of Information:

- Legislative and Regulatory Reform Act 2006
- Food Law Code of Practice
- Standard for Health and Safety Enforcing Authorities
- HSC Enforcement Policy Statement
- The Regulatory Enforcement and Sanctions Act 2008
- Regulator's Compliance Code

Contact Officer

- Richard Wilson Ext 7262
- Annie Sargent Ext 3085

**COMMUNITY AND PLANNING SERVICES DIRECTOR
KRISTEN PATERSON**

October 2012

Environmental Health Partnership – Dartford & Sevenoaks
Enforcement Policy

1.0 Introduction

In October 2011, Dartford Borough Council and Sevenoaks District Council both agreed to a Shared Service Business Case for their individual Environmental Health Teams. It was agreed that the two services would work as one, based at a central office (Dartford), whilst utilising a satellite office in Sevenoaks. The Service has become known as the “Environmental Health Partnership – Dartford and Sevenoaks working together.”

This Enforcement Policy will be applied by the Environmental Health Partnership in relation to the services it provides on behalf of these Authorities and it has been adopted by each of them. It is distinct from any general Enforcement Policy of the individual Local Authority, which applies to any other service provided by them. In the event of conflict this policy will take precedence.

The primary aim of the Environmental Health Partnership is to ensure compliance with the legislative framework within which the Environmental Health functions operate so that, consumers, businesses, employees, individuals and the environment are protected. Fair, proportionate, targeted and effective enforcement is essential to protecting the health, safety and economic interests of all concerned, and there is a range of tools available to the Partnership to achieve this.

Generally we will provide advice and support those seeking to comply and, at the same time, deal with those who choose not to comply, using proportionate action. The detail on how and when action may be taken is outlined in the body of this policy.

The Partnership must also have regard to the various general duties imposed on the partner authorities e.g. section 17 of the Crime and Disorder Act 1998. We are obliged to comply with the Human Rights Act 1998, so we will take its provisions into account when taking decisions relating to enforcement action.

This enforcement policy is a statement of how the Partnership will carry out its enforcement duties and what business and citizens in Dartford and Sevenoaks can expect from our enforcement staff. Enforcement staff shall have regard to this policy and demonstrate how they have complied with it. This policy will be reviewed annually.

2.0 Policy Scope

The relevant legislation must always be adhered to by an officer whilst carrying out all Environmental Health related enforcement and investigation work, such as:

- Human Rights Act 1998
- Regulatory Enforcement and Sanctions Act 2008

- Legislative and Regulatory Reform Act 2006
- Police and Criminal Evidence Act 1984
- Regulation of Investigatory Powers Act 2000
- Criminal Justice Act 2003
- Criminal Procedure and Investigation Act 1996
- Criminal Justice and Police Act 2001
- Equalities Act 2010
- Data Protection Act 1998

We are committed to providing an effective service with officers carrying out their duties in an equitable, proportional, practical and consistent manner. To achieve this we have adopted the principles of the following:

- The Department for Business, Innovation and Skills' (BIS's) Regulators Compliance Code.
- The Enforcement Concordat.
- Local Better Regulation's Priority Regulatory Outcomes.
- BIS's Code of Practice on Guidance on Regulation.
- Health and Safety Executive/Local Authorities Enforcement Liaison Committee's (HELA's) Guidance to Local Authorities on Priority Planning.
- HELA's Incident Selection Criteria Guidance.
- Local Government Regulation's Home Authority Principle.
- Local Better Regulation Office's Primary Authority Principle and Guidance.
- The Crown Prosecution Service Code for Crown Prosecutors (as amended.)
- The Food Law Code of Practice.
- Health and Safety Executive Enforcement Management Model (EMM).
- The Health and Safety Commission's Enforcement Policy Statement
- European Convention on Human Rights.

We will also comply with any statutory requirement placed upon us and seek to align our procedures with best practice, including any codes introduced subsequent to the adoption of this Policy.

The Policy applies to actions in relation to all of the legislation enforced by the Partnership. Enforcement action includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law and goes beyond formal enforcement action such as prosecution.

3.0 General Principles

Prevention is better than cure. Therefore, our role involves actively working with businesses and the public to advise on and assist with compliance. Where we consider that formal action is necessary, each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy.

October 2012

The majority of cases involving regulatory matters will relate to businesses, however, there will be some cases put before the Courts that relate to individuals, particularly those involving statutory nuisance. These cases will be treated in the same way as those involving businesses and the general principles outlined around proportionality of action, for example where appropriate trying informal approaches, before resorting to formal action and the Courts, will be followed.

Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender or gender identity, religion or belief, political views, disability, age or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source. Where applicable, we will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision whether to take formal action.

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. We recognise the positive impact that the Partnership can have on economic progress and growth in the local economy and see it as part of our role to encourage and support the growth of legitimate business activity within the legal framework provided by central government.

4.0 Risk Based Enforcement for Businesses

We will ensure that our resources are targeted where they will be most effective. We will ensure that intelligence and risk assessment inform all aspects of our approach to business regulatory activity, including:

- Data collection and other information requirements;
- Inspection programmes;
- Advice and support programmes;
- Enforcement activity and sanctions.

We will normally use the appropriate Government risk assessment scheme to inform any inspection programme, but, where these do not exist, we will consult and involve businesses and other interested parties in developing risk methodologies, and will publish the details on both Council websites. In the absence of other factors, when determining risk, we will consider:

- Compliance history and potential future risks.
- The existence of effective management systems.
- Evidence of recognised external accreditation.
- Management competence and willingness to comply.

We will also use intelligence to direct inspection based projects or business where there are known issues. Obviously, a complaint may also trigger a visit or inspection, if that is the most appropriate response. We will review our approach to regulatory

activities from time to time, in order to remove any unnecessary burdens from businesses.

Currently neither local authority operates any food businesses in their district. In the event that either authority does begin to operate a food business then the policy shall be reviewed to take account of this.

4.1 Advice and Guidance for Businesses

We will provide general information, advice and guidance to make it easier for businesses to understand and meet their obligations. This will be provided promptly, in clear, concise and accessible language, using a range of appropriate formats and media. Information will cover all legal requirements relating to our regulatory activities, as well as changes to legal requirements. Where changes are of great significance, we will look at the best ways of informing businesses of the changes e.g. through newsletters, mail-shots or seminars.

We will provide targeted and practical advice through personal visits, telephone and promote self service via our website. We will try to maximise the accessibility and effectiveness of advice to ensure efficient use of resources and we will involve businesses in developing both the content and style of regulatory guidance to help ensure that it meets their needs.

When offering advice, we will clearly distinguish between statutory requirements and advice or guidance aimed at improvements above minimum legal standards. We seek to provide proportionate advice, the content of which will help achieve compliance but impose the minimum burden required on the business concerned. Advice will be confirmed in writing, a full typed report can be provided if requested.

Where a business identifies a problem and seeks advice to remedy the situation, it will not normally trigger enforcement action. Where appropriate we will seek to support the remedial action to prevent future problems, however, we reserve the right to take enforcement action where applicable.

Generally, we will provide our advisory services free of charge however we reserve the right to charge a reasonable fee for services beyond the basic advice and guidance necessary to help ensure compliance. We would take account of the needs and circumstances of smaller businesses and others in need of help and support in deciding whether or not to charge. Charging will be in line with any guidance issued by the Local Better Regulation Office in relation to the Primary Authority principle and will be set out in the Fees and Charges schedule published annually by each Council on their website.

4.2 Inspection of Businesses

We will ensure inspections and other visits to businesses only occur in accordance with a risk assessment methodology, except where visits are requested by businesses, following receipt of complaints, or where we act on relevant intelligence. We will focus our efforts on businesses where intelligence and risk assessment

October 2012

shows there is a higher likelihood of non-compliance or which pose a more serious risk to regulatory outcomes. Some processes by their nature present a greater risk to health or the environment, or due to their complexity, may make it more difficult to ensure compliance. These are the areas where we will focus our inspection resources.

When we visit or carry out inspections, we will give feedback to businesses to encourage and reinforce good practice. We will also share information about good practice amongst businesses, and with other regulators.

Where we and another regulator have a shared interest in a business we will work together to rationalise our activities to minimise the burden on the business, providing this is of benefit to the business and does not harm the standard of enforcement for either regulator.

We will also take account of the circumstances of small businesses, including any difficulties they may have in achieving compliance.

4.3 Information Requirements

The Environmental Health Partnership does not routinely require large quantities of information from businesses. When determining what data we may require, we will consider the costs and benefits of data requests to businesses and:

- Limit the data that we request to that which is either appropriate, or required by statute e.g. food registration, licensing applications, etc.
- Minimise the frequency of collection and seek the information from other sources where relevant and possible.

We will work with our fellow local regulators to minimise the information we request from businesses, and we will seek to maximise our data sharing within the provisions of the Data Protection Act. We will seek to use compatible collection methods to give consistency.

We will involve businesses in vetting data requirements and form design for clarity and simplification. We will also ensure that, where possible, data can be returned electronically.

5.0 Enforcement Action

In accordance with good practice, we will:

- Publish our Enforcement Policy;
- Report on our enforcement activities year on year to interested parties through an Annual Report;
- Follow-up enforcement actions where appropriate;
- Be transparent in the way in which we enforce requirements and, apply and determine penalties (when such powers are made available.)

When considering what action should be taken, we will look to:

- Be proportionate to the nature of the offence and the harm caused,
- Change the behaviour of the offender;
- Eliminate any financial gain or benefit from non-compliance;
- Address the harm caused by regulatory non-compliance, where appropriate;
- Deter future non-compliance,
- Be responsive and consider what is appropriate for the particular offender and regulatory issue, and
- Avoid perverse incentives that might influence the choice of sanctioning response.

When considering formal enforcement action, we will, when appropriate, discuss the circumstances with those suspected of a breach. We will take any comments made into account when deciding on the best approach, (unless immediate action is required to prevent or respond to a serious breach or where to do so would be likely to defeat the purpose of the proposed enforcement action).

We will ensure that clear reasons for any formal enforcement action are given to the person or entity at the time the action is taken. These reasons will be confirmed in writing at the earliest opportunity. Complaints and relevant appeals procedures for redress will also be explained at the same time.

5.1 Deciding what enforcement action is appropriate.

In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- The seriousness of compliance failure;
- The business's past performance and its current practice;
- In the case of new businesses, an assessment of the operator's willingness to undertake the work identified by the Officer;
- The risks being controlled;
- Legal, official or professional guidance;
- Act in the interest of Public Health.

The Partnership recognises that where a business has entered into a Primary Authority Partnership, the primary authority may provide compliance advice and support and the Partnership will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that can be considered, if specifically permitted by legislation, are shown below:

- No action;

October 2012

- Informal Action and Advice;
- Fixed penalty Notices;
- Statutory Notice;
- Formal closure
- Seizure of goods/equipment;
- Injunctive Actions;
- Refusal/revocation of a licence;
- Simple Caution;
- Prosecution.

5.2 No Action

There will be circumstances where a contravention may not warrant action, or it may be inappropriate. Many minor contraventions can be dealt with via advice and/ or assistance.

5.3 Informal Action and Advice

For certain minor breaches of the law we will give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance. Where the advice required is detailed, or there are potentially serious implications from the failure, the advice will be provided in writing. Failure to comply could result in an escalation of enforcement action.

Wherever possible we will advise offenders about 'good practice', but we will clearly distinguish between what they *must do* to comply with the law and what is recommended best practice.

5.4 Fixed Penalty Notices

Certain offences are subject to fixed penalty notices where prescribed by legislation. These notices are recognised as a low-level enforcement tool and avoid the defendant obtaining a criminal record. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning. They will be used in appropriate circumstances to give a fast and measured response to the situation.

If a fixed penalty is paid in respect of a breach, the Partnership will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches. If a fixed penalty is not paid the Partnership may commence criminal proceedings or take other enforcement action in respect of the breach.

5.5 Statutory Notices

Officers of the Environmental Health Partnership have the power under various pieces of legislation to issue notices that:

- Prohibit the sale or distribution of food where relevant provisions may have been breached,
- Require a business to take specific actions to remedy an identified problem,
- Require a business to desist from particular activities that may not comply with legal requirements.
- Require any person to take action to ameliorate or stop nuisances being caused by their actions.

Notices may require immediate action where, for example, there are risks to public health or safety, or an immediate risk of environmental damage or serious nuisance. In other circumstances, a reasonable amount of time will be given, depending on the circumstances, to rectify the problem.

Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with (a breach of the notice) we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person/business served with the notice for any cost we incur in carrying out the work.

In certain limited circumstances e.g. under the provisions of food safety legislation, where an authorised officer is satisfied that there is an imminent risk of injury to health from the condition of the premises, the officer may serve notice to close the premises. This would be immediately followed by an application to a Magistrates Court to confirm the closure.

Failure to comply with a statutory notice can be a criminal offence. Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges. All notices issued will contain details of any Appeals process that may be available to the recipient.

5.6 Seizure of Goods/Equipment

The right to privacy and respect for personal property are key principles of the Human Rights Act 1998. Powers of entry, search and seizure should be fully and clearly justified before use because they may significantly interfere with the occupier's privacy. Officers should consider if the necessary objectives can be met by less intrusive means.

In all cases authorised officers should:

October 2012

- exercise their powers courteously and with respect for persons and property; and
- in circumstances where a warrant has been obtained and is appropriate, only use reasonable force when this is considered necessary and proportionate to the circumstances.

5.7 Injunctive Actions

In some circumstances the Partnership may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

The Partnership is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, the Partnership will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

5.8 Refusal/Revocation of a Licence

The Partnership issues a number of licences and permits. The Partnership also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, each Partner Authority may take previous breaches and enforcement action into account.

5.9 The Use of Simple Cautions

Where the public interest justifies it, we will consider offering a Formal (Simple) Caution (or Reprimand/ Final Written Warning if the offender is under 18.) In offering a Formal Caution, we will take account of the Home Office Guidelines in relation to the cautioning of offenders, and the Code for Crown Prosecutors. Where the offender is under 18 and a formal approach is being considered, appropriate bodies such as the Youth Offending Team will be consulted.

A Formal Caution requires an admission of guilt on behalf of the offender, however there is no sentence and there is no recorded conviction. A caution will remain on record for a period of 2 years and may be cited in Court should a further offence be committed and prosecuted during that time.

Where a simple caution is offered and declined the Partnership is likely to consider prosecution

6.0 Institution of Legal Proceedings

Once an officer has completed his/ her enquiries, they will submit a case report to an officer authorised to institute legal proceedings, independent of the investigation, who will decide, using the criteria below, the most appropriate course of action.

Where the law has been broken, there is a range of enforcement options available to seek compliance with the law. Under normal circumstances, a process of escalation will be used until either compliance is reached or there is no option other than to instigate proceedings. Exceptions would be where there is a serious risk to public safety or the environment, or the offences have been committed deliberately or negligently or involve deception. Each case is unique and will be considered on its own facts and merits.

The officer authorised to institute legal proceedings will take into consideration the requirements of the Code for Crown Prosecutors and other relevant codes before deciding whether or not to authorise the institution of legal proceedings.

Firstly this officer will have to be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each defendant on each charge (i.e. That a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged). To this end, the officer authorised to institute legal proceedings will look at all the available evidence, reliability of witnesses, supporting documentation and any other matters relating to the investigation. They must consider what the defence case may be and how it is likely to affect the prospects of conviction [Code for Crown Prosecutors]. Only when this evidential test has been satisfied will the public interest to proceed with the prosecution be considered.

In deciding whether a prosecution will serve the public interest, this officer will balance factors for and against the prosecution carefully, fairly and impartially. Some factors may increase the justification to prosecute whereas others may militate against. Below are some of the matters to be taken into consideration for and against criminal proceedings. This is not an exhaustive list and, as such, each case is considered strictly on its own individual merits:

Factors in favour of prosecution

- The offender was in a position of control within the business,
- The offender acted dishonestly, wilfully, premeditatedly or negligently.
- The product or service was aimed at a vulnerable group or person.
- The product or service has caused or had the potential to cause physical or mental injury or suffering, significant harm or loss.

October 2012

- The offender has received advice or a warning concerning the circumstances of the offence or similar matters.
- The offender has failed to comply with the requirements of a formal notice.
- The offender has received previous formal warning or a caution from an enforcement officer.
- The offender has previous convictions that are relevant.
- The offence, though not serious in its self, is widespread in the area where it was committed.
- A conviction is likely to result in a significant sentence.
- There are grounds to believe that the offence is likely to be continued or repeated, for example by a history of recurring conduct.
- The outcome of a prosecution might serve an important, informative purpose or establish a legal precedent.

Factors which might mitigate against the need for a prosecution

- The offence was minor in nature and as a result of a genuine mistake or misunderstanding, which did not involve significant negligence.
- The offender is elderly, or was at the time of the offence suffering from significant mental or physical ill health, which contributed to the commission of the offence, and the offence was neither serious nor likely to be repeated.
- A prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence and the views of the victim about the effect of a prosecution on his or her physical or mental health;
- The loss or harm could be described as minor and was as a result of a single incident, particularly if it was caused by a failure of judgment.
- The offender put right the loss or harm caused prior to the intervention of the Environmental Health Partnership.
- Prior to the Partnership's intervention, the offender had introduced adequate steps to prevent further similar offences.
- The defendant was a youth at the time of the offence.
- There has been a long delay between the offence and any potential court action, unless either:
 - The offence is serious,
 - The delay has been caused by the defendant or his/ her legal representatives,
 - The offence has only recently come to light, or
 - The complexity of the offence meant that there has been a long investigation.

7.0 Anti-Social Behaviour Orders and Criminal Anti-Social Behaviour Orders

This is a civil process. Where the non-compliance identified during an investigation amounts to antisocial behaviour such as persistent targeting of an individual or a group of individuals in a particular area then, following liaison with the relevant

partner Council's Anti-Social Behaviour team where appropriate, an ASBO or CRASBO will be sought to stop the activity.

8.0 Additional Information

The Senior Managers involved in making the more serious decisions will also have regard to legal advice from the relevant partner Head of Legal Services. Once the Environmental Health Partnership reaches a decision to prosecute, the relevant Partner Authority's Legal Services Department must authorise the action before implementation.

9.0 Standards and Accountability

We will, in consultation with businesses and other interested parties, set and publish on each Council's website clear standards and targets for our service and performance. These will include:

- Regulatory outcomes (e.g. proportions of businesses that comply);
- Performance standards for contact with residents, visitors and businesses;
- A commitment to ensuring costs to businesses of regulatory interventions are proportionate; and
- A commitment to dealing with any negative perceptions of businesses and other interested parties relating to these issues.

We will create effective consultation and feedback opportunities to ensure we have continuing cooperative relationships with businesses and other interested parties. We will ensure our officers provide courteous and efficient services to businesses. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice/information from us. We will enable our officers to interpret and apply relevant legal requirements and ensure that they enforce requirements fairly and consistently between like-businesses in similar situations. We will take account of comments from businesses and other interested parties regarding the behaviour and activity of our staff.

If you would like to make a complaint against an officer please follow the complaints procedure for the appropriate Council:

Dartford Borough Council

Details of the Council's Council's Corporate Complaints Procedure can be found either through the Council's website ([Dartford Borough Council – Our Formal Complaints Procedure](#)) or you may telephone our Customer Services on 01322 343434 and ask for a complaint form to be sent to you.

Sevenoaks District Council

October 2012

You may either find more details through the Council's website ([Sevenoaks District Council – Making a Complaint](#)) or contact the Complaints Co-ordinator directly

Complaints Co-ordinator
Sevenoaks District Council
FREEPOST SEA 6448
Argyle Road
Sevenoaks
Kent
TN13 1BR
Tel: 01732 227000
E-mail: feedback@sevenoaks.gov.uk

10.0 Liaison with other regulatory bodies and enforcement agencies

Where appropriate, enforcement activities within the Environmental Health Partnership activities will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement. The Partnership will respect advice that has been provided by other regulators and enforcement agencies.

Where an enforcement matter affects a wide geographical area beyond the Partnership's boundaries, or involves enforcement by one or more other local authorities or organisations; where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

The Environmental Health Partnership will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, and examples include:

- Government Agencies
- Police Forces
- Fire Authorities
- Other Statutory Bodies
- Local Authorities

11.0 Further Information

Anyone requiring further information on this policy should contact the Environmental Health Partnership – Dartford and Sevenoaks by writing to:

Environmental Health Partnership – Dartford and Sevenoaks
Civic Centre
Home Gardens
Dartford
DA1 1DRO by e-mail to:
Environmentalhealth@dartford.gov.uk

This page is intentionally left blank

APPOINTMENT OF THE INDEPENDENT PERSON

COUNCIL – 16 October 2012

Report of the: Monitoring Officer

Status: For Decision

Key Decision: No

Executive Summary: This report seeks appointments to be made for the roles of Independent Person and reserve Independent Person for the new regime on Members Standards introduced by the Localism Act 2011.

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

Head of Service Head of Legal and Democratic Services and Monitoring Officer – Mrs Christine Nuttall

Recommendation: The Recruitment Panel recommends to the Council that:

(a) Mr John Henderson be appointed as the Independent Person.

(b) Mr Andrew Smith be appointed as the reserve Independent Person

for the purposes of the Localism Act 2011 and these appointments be effective forthwith.

NOTE: Any appointment must be made by a majority of the Members of the Council.

Reason for recommendation: To comply with the requirements of Section 28 of the Localism Act 2011.

Introduction

- 1 At its meeting on 24 July 2012, Full Council considered a report on the new arrangements relating to Member's conduct required as a result of the provisions of the Localism Act 2011. The legislation requires that the views of the Independent Person must be sought on a complaint referred for investigation before the outcome of the complaint is determined. Also, the Member who is the subject of a complaint may discuss the matter with the Independent Person. In addition, Full Council adopted procedures for dealing with misconduct complaints which requires the Monitoring Officer to consult the Independent Person as part of the Assessment Process.
- 2 Council authorised the Monitoring Officer to advertise for no less than one Independent Person. In addition to this, a panel comprising the Leaders of the Political Groups was established to set the allowances and expenses for the

Agenda Item 6a

Independent Person and to short-list and interview candidates, and to make a recommendation to Full Council.

- 3 The Panel agreed that an allowance of £1,000 for the Independent Person and £500 for a reserve Independent Person should be paid in addition to the usual travel expenses.
- 4 Section 28(8)(c)(iii) of the Act requires any appointment to be approved by a majority of the members of the Council (i.e. at least 28 members in favour)

Application Process

- 5 In accordance with the requirements of the Act, applications for the position of Independent Person were invited by advertisement on the Council's website and via a press release which resulted in articles in at least one local paper. Following this advertisement, five applications were received by the closing date of 5pm on 27th August 2012 and interviews were held over two days on 10th September 2012 and 5th October 2012.
- 6 The Independent Persons Interview Panel comprised Councillor Peter Fleming (Leader of the Conservative Group), Councillor Mark Fittock (Leader of the Labour Group) and Councillor Roger Walshe (Leader of the Liberal Democrat Group). The Democratic Services Manager was also in attendance to take notes on behalf of the Panel.
- 7 The following candidates submitted applications and were interviewed by the Panel:

Mr David Bonner

Mr Bonner, a resident of Sevenoaks, is a retired Civil Servant who worked in the Ministry of Defence for more than 33 years. Mr Bonner had experience of dealing with disciplinary and ethical issues with the Civil Service.

Mr John Henderson

Mr Henderson, a resident of Leigh and a former Police Officer, is a part-time Office Manager for a Publication Company. Mr Henderson has been a Member of the Governing Body of Leigh School since 2004 and is currently Chairman of the Governors. Mr Henderson was an independent member of the Sevenoaks District Council Standards Committee under the previous arrangements.

Mr Patrick Michaels

Mr Michaels, a resident of Sevenoaks, is a retired Postal Executive. Since retiring, Mr Michaels had been working at Sevenoaks Magistrates Court supporting witnesses involved in the Court process. Mr Michaels has also trained as a mediator with West Kent Mediation, assisting in the resolution of conflict.

Mr James Reece

Mr Reece, a resident of Bexhill-on-Sea, is a Trustee of the East Sussex Disability Association, Chairman of Kent Ambulance Patient and Public Forum and a Magistrate, sitting at the Central Kent Branch. Mr Reece was an independent

member of the Sevenoaks District Council Standards Committee under the previous arrangements.

Mr Andrew Smith

Mr Smith, a resident of Sevenoaks and a retired Management Consultant, is Chairman of Citizen Rights for Older People. Mr Smith was independent Vice-Chairman of the Sevenoaks District Council Standards Committee under the previous arrangements.

Interview Process

- 8 Interviews were conducted over two days. Four candidates were interviewed on Monday 10th September and one candidate was interviewed on Friday 5th October.
- 9 All five candidates were scored against the same assessment criteria drawn from the job description and person specification. The Interview Panel asked the same questions to all of the candidates to ensure consistency.
- 10 The interview Panel, after thorough examination of the job description, person specification, application forms and interviews have recommended that the Council appoint Mr Henderson as the Independent Person and Mr Smith as the Reserve Independent Person. The Panel felt that both candidates had a good knowledge and understanding of Standards. The Panel recognised that, from his work with the Police Service, Mr Henderson had previous experience of both roles required of the Independent Person – that of instigator of an investigation and supporter of an individual with a complaint against them. The Panel expected that the Independent Person and Reserve Independent Person would communicate regularly to ensure continuity in decision making.

Key Implications

Financial

In accordance with the process approved by Council on 24th July 2012, the Interview Panel agreed that the position of Independent Person should attract an allowance of £1000 per annum and the position of reserve £500. These sums can be contained within the existing Members Allowances budget that includes provision for payments to the Independent and Town/Parish Members of the previous Standards Committee.

Community Impact and Outcomes

As the legislation sets out clearly that an authority must promote and maintain high standards of conduct by Members and Co-opted Members of the Authority, the Community should not be aware of any impact or outcomes as it is anticipated that a seamless transfer to the new system will take place.

Legal, Human Rights etc.

The Council is required by the Localism Act 2011 to appoint at least one Independent Person as part of the arrangements in place to demonstrate the promotion of good ethical governance. It provides an opportunity to retain confidence in the ethical

Agenda Item 6a

governance of the District, Town and Parish Councils and demonstrates a commitment to public accountability for the actions of the Members.

Equality Impacts

It is suggested that there are no specific equality implications arising from these proposals. These proposals do not have any particular implications regarding one “protected group” over another. The appointment followed an open recruitment process ensuring that the recommended candidates were selected on merit.

Background Papers:

The Localism Act 2011 – The New Standards Regime (Monitoring Officer’s Report to Council – 24 July 2012)

Candidate Application Forms (The recruitment documents contain personal information and, as such, are exempt under paragraph 1 of Schedule 12A of the Local Government Act 1972 as amended.)

Contact Officer(s):

Philippa Gibbs, Democratic Services Manager (Ext. 7247)

Christine Nuttall

Monitoring Officer

MEMBERSHIP OF THE STANDARDS COMMITTEE

COUNCIL – 16 October 2012

Report of the: Monitoring Officer

Status: For Decision

Key Decision: No

Executive Summary: This report seeks appointments to be made for the Sevenoaks District Council Standards Committee.

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

Head of Service Head of Legal and Democratic Services and Monitoring Officer – Mrs Christine Nuttall

Recommendation: That the following Councillors be appointed to the Standards Committee:

Cllr Ball, Mrs Bracken, Mrs Dibsall, Dickins, Firth, Gaywood and Mrs Purves.

Reason for recommendation: To enable the Council to put in place effective arrangements for dealing with Member complaints following the implementation of the relevant provisions of the Localism Act 2011.

Introduction

- 1 At its meeting on 24 July 2012, Full Council considered a report on the new arrangements relating to Member's conduct required as a result of the provisions of the Localism Act 2011. The Council resolved to establish a Standards Committee with Terms of Reference and Delegations as set out at Appendix 1. It was also resolved that seven members would be appointed in accordance with the political balance rules to serve on the Standards Committee.
- 2 The new Standards Committee will discharge all functions associated with the new standards regime which have not been delegated to the MO or ascribed by statute.
- 3 In order to consider reports into any allegations which are investigated it is envisaged that the Standards Committee will need to establish a hearing panel from amongst its membership.
- 4 Whilst there is no longer any statutory provision for co-opted Parish/Town Council representatives or for co-opted Independent Members the Terms of Reference for the Sevenoaks District Council Standards Committee allow for up to two co-opted

Agenda Item 6b

Members of a parish or town council. Any Co-opted Parish or Town Council representatives would not have voting rights.

Key Implications

Financial

There are no financial implications to this report.

Community Impact and Outcomes

As the legislation sets out clearly that an authority must promote and maintain high standards of conduct by Members and Co-opted Members of the Authority, the Community should not be aware of any impact or outcomes as it is anticipated that a seamless transfer to the new system will take place.

Legal, Human Rights etc.

The proposals contained within this report comply with the provisions of the Localism Act 2011.

Equality Impacts

It is suggested that there are no specific equality implications arising from these proposals. These proposals do not have any particular implications regarding one "protected group" over another.

Background Papers:

The Localism Act 2011 – The New Standards Regime (Monitoring Officer's Report to Council – 24 July 2012)

Contact Officer(s):

Philippa Gibbs, Democratic Services Manager (Ext. 7247)

Christine Nuttall

Monitoring Officer

PART 3 –STANDARDS COMMITTEE

1. Establishment

1.1 The Council will establish a Standards Committee.

2. Composition

2.1 Standards Committees have to comply with the political balance rules under the Local Government Act 1972.

3. Membership

3.1 The Standards Committee will be composed of:

- Seven Members other than the Leader of the Council and no more than one Member selected from a particular Parish Boundary.
- Only one Member out of the above seven Members to be an Executive Member without being a Chair of the Committee as Standards is a Council function as opposed to an Executive function (s.27(8), Part 1, Chapter 7 of the Localism Act 2011.
- Up to two co-opted Members of a parish or town council (a parish/town council member)

4. Voting

4.1 All Sevenoaks District Council members of the Committee will be entitled to vote at meetings of the Committee.

4.2 Any Co-opted Parish or Town Council representatives would not have voting rights.

5. Quorum

5.1 The quorum of the Standards Committee will be three voting members.

6. Number of meetings

6.1 At least one meeting will be held each year.

7. Role and Function (Terms of Reference)

7.1 To discharge the functions as set out in Part 1, Chapter 7 of the Localism Act 2011 including:

- (a) To promote and maintain high standards of conduct by Members and Co-opted Members of the District Council and to make recommendations to Council on improving standards.

Agenda Item 6b

- (b). To advise and assist Parish/Town Councils and Parish/Town Councillors to maintain high standards of conduct and to make recommendations to Parish/Town Councils on improving standards.
- (c) To advise the District Council on the adoption of or revisions to its Code of Conduct.
- (d) To advise, train or arrange to train Members, Co-opted Members of the District Council on matters relating to the Code of Conduct.
- (e) To assist the Members and Co-opted Members of the District Council to observe their respective Codes of Conduct.
- (f) To monitor and assess the operation and effectiveness of the District Council Code of Conduct and to review and manage the Arrangements for dealing with Code of Conduct Complaints.
- (g) To advise on local ethical governance protocols and procedures.
- (h) To maintain oversight of the District Council's arrangements for dealing with Code of Conduct complaints.
- (i) To act as an advisory body in respect of any ethical governance matter.
- (j) To monitor and review the procedures for the Register of Members' Interests including reviewing interests other than Disclosable Pecuniary Interests (DPI's) called Non Pecuniary Interests (NPI's).
- (k) To receive reports from the Monitoring Officer on the number and nature of complaints received and action taken as a result in consultation with the Independent Person.
- (l) To receive the Monitoring Officer's annual report which includes a summary of the District Council's ethical governance arrangements.
- (m) To appoint a Sub-Committee being a Standards Assessment Working Party to consider complaints of an extremely serious nature or other similar exceptional circumstance that may exist as set out within the procedures entitled "Arrangements for dealing with Code of Conduct Complaints under the Localism Act 2011".
- (n) To appoint a Sub-Committee being a Standards Hearing Sub Committee following an investigation and finding that a breach of the Code of Conduct has occurred and no informal resolution can be found in accordance with "Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011".
- (o) Delegated authority to grant dispensations pursuant to S33(2) of the Localism Act 2011 only if, after having had regard to all relevant circumstances, it is considered that:

- without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business (s.33(2)(b) of Part 1, Chapter 7 of the Localism Act 2011.
- granting the dispensation is in the interests of persons living in the authority's area (s.33(2)(c) of Part 1, Chapter 7 of the Localism Act 2011.
- It is otherwise appropriate to grant a dispensation (s.33(2)(e) of Part 1, Chapter 7 of the Localism Act 2011.

8. Standards Assessment Working Party (Terms of Reference)

- 8.1 It is recognised that complaints may be received which are of an extremely serious nature or other similar exceptional circumstances exist as set out within the procedures entitled "Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011". In such a situation the Monitoring Officer can set up a Working Party comprising three members of the Standards Committee.
- 8.2 The Working Party will examine thoroughly the contents of the complaint and after consultation with the Independent Person make recommendations to the Monitoring Officer on whether an investigation should take place.
- 8.3 The Working Party will produce a written summary of its consideration of the complaint to include the main points considered, its conclusion on the complaint and the reasons for that conclusion.

9. Standards Hearings Sub Committee (Terms of Reference)

- 9.1 A Sub Committee comprising three voting Members of the Standards Committee having a quorum of three established to conduct Hearings into allegations referred to it by the Monitoring Officer that a Member or Co-opted Member (the Subject Member) has failed to comply with the relevant Code of Conduct appertaining to that Subject Member.
- 9.2 To hold a hearing and make a determination in relation to a complaint referred to it by the Monitoring Officer alleging a breach of the Code of Conduct appertaining to the Subject Member.
- 9.3 Where the Sub Committee determines that a Subject Member has failed to comply with the Subject Member's Code of Conduct to determine what action to take in respect thereof including the power to make recommendations to the Subject Member's Council and power to instruct the Monitoring Officer to publicise its decision on the District Council's web site and/or newspaper circulating in the locality.
- 9.4 To give notice in writing of any of its determinations including the reasons for such determination.

Agenda Item 6b

10. Standards Sub Committee for Granting Dispensations

- 10.1 The Sub Committee can be summoned by the Monitoring Officer to grant dispensations in accordance with its delegated powers referred to above at paragraph 7.1 (n).
- 10.2 The Sub Committee will comprise three voting Members of the Standards Committee having a quorum of three.
- 10.4 A written record of the Sub-Committee decision will be made and given to the Monitoring Officer. The written record will specify the reasons for the Sub-Committee's decision and if a dispensation is granted the written record will evidence the name of the Member or Co-opted Member receiving the dispensation and the period for which it has effect.

11. Codes and Protocols

- 11.1 High standards lie at the root of the Council's activities and the work of the Standards Committee is supported by policies and protocols including:

Members' Code of Conduct

Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011

Procedure for Making a Recommendation for the Appointment of an Independent Person

Protocol on Gifts and Hospitality

Members' Register of Interest Form

Powers to Grant Dispensations

Guidance of Disclosure of Confidential Information by Members



COUNCIL – 16 October 2012

Report by Leader of the Council

This is my report to Council on the work undertaken by the Leader and the Cabinet in the period 13 July 2012 to 12 October 2012. I am listing below the agenda items discussed since Members will have received the minutes of those meetings.

Modern Local Government Group – 11 July 2012

- The Localism Act 2011 – the new Standards Regime
- Amendments to the Constitution

Council – 24 July 2012

- Standard items only

Electoral Arrangements Committee – 11 September 2012

- Community Governance Review

Cabinet – 13 September 2012

- Financial Prospects report
- Business Rate Retention
- Planning Policy Team Leader (Maternity Cover): Appointment of Consultant
- Strategy for Under-Occupation in the Social Sector
- London Road, Sevenoaks – Update

The work of the Leader – Meetings held and attended:

13 – 31 July

- Meeting of Shadow Police and Crime Panel
- Altered Art Exhibition for Sevenoaks Area Mind
- Sevenoaks Town Forum
- West Kent Partnership
- Meeting with Voluntary Action West Kent

August

- Roundtable Local Government Association, Solace and LGcomms
- Media briefing Council Tax Benefit Localisation

Agenda Item 9

- Meeting with IRP
- Olympic Touch Relay thank you event

September

- Stewarding Paralympics Road Cycling at Brands Hatch
- Ambition Board 2 meeting Kent County Council
- Improvement & Innovation Board Meeting Local Government Association
- District Council Network Executive meeting
- Local Government Association Executive
- Chaired "Doing the Duty" - using the Equality Framework conference
- Visit Kent 10th anniversary
- Meeting with Auditors
- Kent Leaders away day

October

- Sevenoaks Rail Traveller Association Annual General Meeting
- Bradbourne Riding for the Disabled Association (RDA) 50th Anniversary
- West Kent Debt Advice
- South East Local Enterprise Partnership (SELEP) Executive

Environment Select Committee

4 September 2012.

There were no declarations of interest.

The Cabinet response to our recommendation on the CIL was noted.

The work plan was adjusted to spread the work more evenly and allow for government timetable.

A discussion about Fly Tipping followed and KCC was represented by JULIAN COOK who explained the different type of waste and the agencies involved in dealing with the problem. He highlighted their detection methods and explained that they do have successful prosecutions. He then expounded KCC's plan for adjustment in household waste.

The Committee suggested that an additional column be included in the statistics to show the number of reported incidents of fly tipping that were on private land.

It was also agreed that KCC would be asked to return in May 2013 and focus on the KCC review of household recycling centres.

The KCC discussion document BOLD STEPS FOR AVIATION was introduced and outlined various airport options. After discussion the report was noted

The LOCAL LISTING update was given by the Development Control Team Manager and mainly focused on the feasibility of such a list over the whole District. After discussion the report was noted.

EDENBRIDGE CONSERVATION APPRAISAL & MANAGEMENT PLAN was discussed and it was pointed out that it meets the local Best Value, and would contribute to the LDF

RESOLVED TO RECOMMEND it to Cabinet for adoption as an informal planning guidance

The Principal Planning Officer presented an updated ALLOCATION & DEVELOPMENT REPORT which will become a DPD. The latest report took into account the the Government's new National Planning Policy Framework and also considered the Green Belt supplementary planning document. This would also be considered by the LDF group. Procedural errors would be reviewed to ensure that members have information before the public at large.

It was moved that a site in Swanley be reverted back to its previous proposed split of 115 residential units and mixed use. This was motion was lost.

It was resolved that the ALLOCATION & DEVELOPMENT PLAN be noted and RECOMMENDED TO CABINET AND FULL COUNCIL for pre submission publication.

Councillor Ian Bosley
Chairman, Environment Select Committee

This page is intentionally left blank

SERVICES SELECT COMMITTEE.

A meeting of the committee took place on 25th September at which the following items were discussed.

Minor changes to the Work Plan were proposed which included a future scheduled report from the IT Steering group, and updates on Universal Credit and Under Occupation of Social Housing.

Universal Credit – Final Report.

The Group Manager – Financial Services introduced the report. He advised how much work had been put in the Members Working Group by producing a report of such clarity and containing a robust action plan.

The Chairman and the Vice Chairman of the Working Group presented a comprehensive and well received report covering the key areas of the subject. The Leader of the Council offered his congratulations to the Group. He confirmed that Universal Credit had as a principle to make work pay but the Council Tax benefit changes could negate the desired effect.

It was resolved that the report subject to the conditions discussed should be recommended to Cabinet.

The Head of Housing and Communications presented an update review of the Affordable Housing programme.

The Group Manager – Financial Resources gave a verbal update on the benefits performance indicators. As activity levels had risen by 70% since April 2011, various factors had led to an increase in the number of days to process claims. In the uncertain climate keeping and employing new staff was proving most challenging. Various remedial measures have been put in place and these are showing improvement in the last two months and it is hoped that the trend will continue.

The Group Manager – Financial Resources gave a report setting out the new Business Rated Retention Scheme and outlined its possible effect on initial and future funding streams. It was resolved that the report be noted.

R.J.Davison

Committee Chairman.

This page is intentionally left blank

Performance and Governance Committee - 18 September 2012

The Committee received the Statement of Accounts for 2011/12 and the outcome of the external audit which were presented by representatives from the Audit Commission. Taking account of the changes recommended by the Finance Advisory Group and some points of explanation identified by the Committee the Statement of Accounts for 2011/12 were approved.

The Committee noted the response from the Services Select Committee meeting on 19 June 2012 on the number of working days lost through long term sickness and received the minutes of the Finance Advisory Group meeting held on 13 June 2012. Members also agreed a future Work Plan for 2012/13.

A report was received providing the Committee with a summary of Council performance and through exceptions report all details of "Red" performance indicators for the period ended July 2012. It was agreed that the Community Safety Partnership Target be referred back to the Social Affairs Select Committee to consider if a more appropriate target, that better measured this Council's contribution to the Partnership, could be identified.

A report on the financial prospects and budget strategy for 2013/14 and beyond which had already been considered by Cabinet was endorsed. Officers were requested to carry out a further review and update once the government grant settlement has been finalised. The budget setting timetable for 2013/14 was noted.

The Committee undertook an annual review and revision of the its terms of reference and recommended to Full Council that the revised terms of reference be adopted. The progress made by the internal audit team in delivering the 2012/13 Annual Internal Audit Plan was noted. The progress made against the Asset Management Plan and further improvements to be undertaken were noted and the Committee made a recommendation to Cabinet that capital reserves be used to provide office accommodation for Moat Housing and Kent County Council within the Argyle Road offices.

The budget monitoring financial position for July 2012 was received and the overall favourable variance for the first four months noted. The Annual Treasury management Report for 2011/12 was commended to Cabinet.

Mark Fittock
20 September 2012

This page is intentionally left blank

CABINET 11 October 2012

COUNCIL 16 October 2012

Introduction

1 The Chief Executive and I have been discussing options for the achievement of the £300,000 per annum savings scheduled for Year 3 of our 10 year budget, i.e. with effect from April 2013. It was agreed by Council in December 2010 that these savings would be found either through shared senior management or from further savings within Sevenoaks District Council's management.

2 It should be noted that the Council has already identified additional savings of £60,000 pa towards this target from Corporate Resources and Community & Planning Services departments, some 6 months ahead of budget.

3 To assist in clarifying our options the Chief Executive has helpfully notified me well in advance, of his personal intention to retire at the beginning of September 2013, as clearly this decision has a major bearing on the options available, and shields the Council from what could otherwise be significant redundancy, etc costs.

4 In considering the Chief Executive role, I think our basic options are as follows:

A straight replacement through external advertisement;

B approach another District and ask to share their Chief Executive; or

C adopt the "Wiltshire" model i.e. delete the Chief Executive post and manage the authority through Leader/Cabinet/Directors;

D decide to make an internal appointment.

5 In the context of meeting the required budget savings, I think our options in practice are more limited.

Option A (external replacement)

6 This would make no financial savings and would run counter to Central Government's approach, and would presumably limit our future management options for some time to come.

Option B (Sharing another Council's Chief Executive)

7 This is also difficult from a financial point of view in that it would mean sharing 50% of the savings with another authority. When we originally considered the project of saving £300,000 pa, this was not on the basis of sharing a single post, but on a more comprehensive merger of management teams, senior management and consequential savings from shared services.

Agenda Item 12

8 As Members are aware, whilst we have already made substantial savings from shared services, shared management on a large scale has proved problematic. Whilst it may still be an option in the future, I do not think it is a realistic option at present.

Option C (Deletion of Chief Executive post)

9 In considering the restructuring options, I do not favour the “Wiltshire” model. Deleting the post would obviously save costs associated with the Chief Executive’s post, but in talking to political colleagues, I am not satisfied that it is a long-term sustainable model.

Option D (Internal Appointment)

10 In conclusion, my proposal is to make an internal appointment from the current Directors, through a normal Appointments Panel Selection process, combining the role of Chief Executive with that of the successful Director, deleting that Director post and restructuring accordingly. The Council is extremely fortunate in having officers in post of outstanding quality who are more than qualified to take on the Chief Executive role.

11 This would make a major contribution to our savings target (at least £140,000 pa with on-costs). We would be secure in ensuring the appointment of an officer with a proven track record and we would still be in a favourable position to take advantage of future opportunities for shared management, should they arise.

Process and timescale

12 As mentioned earlier, the savings are built into our ten year budget with effect from April 2013. Obviously this means that the savings need to be identified and built into our budget preparation process during this Autumn.

13 Robin Hales has kindly volunteered that he would be prepared to give early notice of his retirement to enable these preparations to take place. This would give certainty to us all, and would help other senior officers, who will understandably become increasingly concerned as to how these savings are to be made.

14 This approach will mean that the year 3 savings will be made slightly later than envisaged (September instead of April) but as I said earlier, we have already saved £60,000 6 months ahead of schedule, and by taking advantage of this opportunity we will avoid potentially significant redundancy costs.

15 Subject to Council approval of this proposal at its meeting on 16 October, this would enable the Appointment Panel to convene and for its recommendations to be confirmed at full Council on 27 November, which would be within the necessary time scale.

16 Once appointed, the new Chief Executive Designate can then work with Robin and myself to identify the remaining, comparatively lesser, savings which will still need to be found.

Conclusion

17 The Council's four year savings plan, and the initiatives contained in our 10 year budget, place us in a comparatively strong financial position. However, the impending changes in Government funding for local authorities, and the combination of a number of other factors (e.g. Welfare Reform and Council Tax benefit reform) mean that we will continue to be faced with challenging issues. The option we select therefore needs to ensure a balanced approach, which maximises our savings opportunity, whilst allowing the Council to continue to deliver high quality services.

18 I recommend that the internal appointment proposal outlined in Option D above provides the right combination of significant savings and succession planning from high calibre officers of outstanding track record.

Cllr Peter Fleming
September 2012

This page is intentionally left blank