

<b>Council</b>	<b>Agenda Item: 6</b>
<b>Meeting Date</b>	<b>16 May 2012</b>
<b>Report Title</b>	<b>The Localism Act 2011 – the Amended Standards Regime</b>
<b>Portfolio Holder</b>	<b>The Leader</b>
<b>SMT Lead</b>	<b>Director of Corporate Services as Monitoring Officer</b>
<b>Head of Service</b>	
<b>Lead Officer</b>	<b>Monitoring Officer</b>
<b>Key Decision</b>	<b>No</b>
<b>Classification</b>	<b>Open</b>
<b>Forward Plan</b>	<b>Reference number:</b>
<b>Recommendations</b>	1. It is proposed that the recommendations of the General Purposes Committee be adopted by Council, including the adoption of the new Code of Conduct as set out in Appendix I.

## **1. Purpose of Report and Executive Summary**

- 1.1 This report sets out the issues that need to be considered as a result of the introduction of the Localism Act 2011, which amends the standards regime.
- 1.2 It recommends actions required by the Council to implement the new regime. In particular, the authority needs to consider arrangements for:
- establishing a new style Standards Committee;
  - what should be included in a Code of Conduct;
  - what arrangements it will adopt for dealing with standards complaints and for taking action where a Member is found to have failed to comply with the Code of Conduct;
  - the number of Independent Persons required;
  - preparation of the Registers;
  - Standing Orders the Council should adopt for withdrawal from meetings for interests and excluding single Members from attending meetings while the matter in which they have a DPI is being discussed or voted upon; and
  - granting dispensations.
- 1.3 The arrangements required to ensure compliance with the Localism Act will result in changes to the Constitution. The Standards Committee and General Purposes Committee have considered the matter in detail and the recommendations to Full Council are set out in the report.

## **2. Background**

- 2.1 At the General Purposes Committee the recommendations from Standards Committee were considered and the approach that they recommend is set out below in Paras. 2.2 - 2.8.
- 2.2 **Issue 1:** the Council must decide to whether to set up a Standards Committee, and how it is to be composed.
- 2.3 **Recommendation 1:**
- a. that the Standards Committee comprises of 11 Members, and have three non-voting co-opted Parish representatives to be nominated in a similar way to the current representatives of existing Standards Committee. The terms of reference are set out in Appendix II; and
  - b. that a Hearings Panel be appointed comprising three members drawn from the membership of the Standards Committee. The terms of reference are set out in Appendix II.
- 2.4 **Issue 2:** the Council has to decide what it will include in its Code of Conduct.
- 2.5 **Recommendation 2:**
- a. that the Council adopt the Code of Code of Conduct as set out in Appendix I with effect from 1 July 2012; and
  - b. that, when the Disclosable Pecuniary Interests (DPI) Regulations are published, the Monitoring Officer, after consultation with the Chair of Standards Committee and the Leader, add to that draft Code those provisions which he considers to be appropriate for the registration and disclosure of interests other than DPIs.
- 2.6 **Issue 3:** the Council has to decide what arrangements it will adopt for dealing with standards complaints and for taking action where a Member is found to have failed to comply with the Code of Conduct.
- 2.7 **Recommendation 3:** that the Monitoring Officer be instructed to prepare and submit to Council for approval arrangements as follows:
- a. that the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;
  - b. that the Monitoring Officer be given delegated power, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation. He be instructed to seek resolution of complaints without formal investigation wherever practicable, and that he be given discretion to refer decisions on investigation to the Standards Committee where he believes that it is inappropriate for him to take the decision, and to report regularly to Standards Committee on the discharge of this function;
  - c. that where the investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer be instructed to close the matter, providing a copy of the report and findings of the investigation to

the complainant and to the Member concerned, and to the Independent Person, and reporting the findings to the Standards Committee for information;

- d. that where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person, be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Committee. Where such local resolution is not appropriate or not possible, he is to report the investigation findings to a Hearings Panel of the Standards Committee for local hearing; and
- e. that Council delegate to Hearings Panels such of its powers as can be delegated to take decisions in respect of a Member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include:
  - reporting its findings to Council [*or to the Parish Council*] for information;
  - recommending to the Member's Group Leader (or in the case of ungrouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
  - recommending to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
  - instructing the Monitoring Officer to [*or recommend that the Parish Council*] arrange training for the Member;
  - removing [*or recommend to the Parish Council that the Member be removed*] from all outside appointments to which he/she has been appointed or nominated by the authority [*or by the Parish Council*];
  - withdrawing [*or recommend to the Parish Council that it withdraws*] facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or
  - excluding [*or recommend that the Parish Council exclude*] the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

2.8 **Issue 4:** the Council has to decide how many Independent Persons are required.

2.9 **Recommendation 4:**

- a. that the initial allowances and expenses for the Independent Person and any Reserve Independent Persons are set on a travelling and subsistence expenses only basis and this function subsequently be delegated to the Standards Committee;

- b. that the Monitoring Officer advertises a vacancy of the appointment of one Independent Person and two Reserve Independent Persons; and
  - c. that an Interview panel comprising the Leader and the Monitoring Officer be set up to shortlist and interview candidates, and to make a recommendation to Council for appointment.
- 2.10 **Issue 5:** the Council has to consider the preparation of the Registers.
- 2.11 **Recommendation 5:**
- a. that the Monitoring Officer prepare and maintain a new register of Members' interests to comply with the requirements of the Act and of the Council's Code of Conduct, once adopted, and ensure that it is available for inspection as required by the Act;
  - b. that the Monitoring Officer ensures that all Members were informed of their duty to register interests;
  - c. that the Monitoring Officer prepare and maintain new registers of Members' interests for each Parish Council to comply with the Act and any Code of Conduct adopted by each Parish Council, and ensure that they are available for inspection as required by the Act; and
  - d. that the Monitoring Officer arranges to inform and train Parish Clerks on the new registration arrangements.
- 2.12 **Issue 6:** the Council has to decide what Standing Order should the Council adopt in respect of withdrawal from meetings for Interests.
- 2.13 **Recommendation 6:** that the Monitoring Officer be instructed to recommend to Council a Standing Order which equates to the current Code of Conduct requirement that a Member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a DPI, except where he is permitted to remain as a result of the grant of a dispensation.
- 2.14 **Issue 7:** the Council has to decide in what circumstances should Procedure Rules exclude single Members from attending meetings while the matter in which they have a DPI is being discussed or voted upon.
- 2.15 **Recommendation 7:** that in respect of single Member decisions, the Monitoring Officer be instructed to recommend to Council a Standing Order which equates to the current Code of Conduct requirement that a Member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a DPI, except where he is permitted to remain as a result of the grant of a dispensation.
- 2.16 **Issue 8:** the Council has to decide what arrangements would be appropriate for granting dispensations.
- 2.17 **Recommendation 8:** that Council delegate the power to grant dispensations as follows.

- a. On the grounds that:
  - i. so many Members of the decision-making body have DPs in a matter that it would impede the transaction of the business. In practice this means that the decision-making body would be inquorate as a result; or
  - ii. without a dispensation, no Member of the Cabinet would be able to participate on this matter (so, the assumption is that, where the Cabinet would be inquorate as a result, the matter can then be dealt with by an individual Cabinet Member. It will be necessary to make provision in the Scheme of Delegations from the Leader to cover this, admittedly unlikely, eventuality) to the Monitoring Officer with an appeal to Standards Committee.
- b. On the grounds that:
  - iii. without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. This assumes that Members are predetermined to vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate; or
  - iv. the authority considers that the dispensation is in the interests of persons living in the authority's area; or
  - v. the authority considers that it is otherwise appropriate to grant a dispensation to the Standards Committee, after consultation with the Independent Person.

### **3. Proposal**

- 3.1 It is proposed that the recommendations of the General Purposes Committee be adopted for by Council, including the adoption of the new Code of Conduct as set out in Appendix I.

### **4. Alternative Options**

- 4.1 Where appropriate, alternative options have been incorporated into the recommendations following consideration by both the Standards Committee and the General Purposes Committee. It is important to note that these are statutory provisions.

### **5. Consultation Undertaken or Proposed**

- 4.1 The Standards and General Purposes Committees have been consulted and their recommendations are set out above. Informal discussions have taken place with the Chairman of Swale KALC. A survey has been conducted of authorities to establish their approach to parish representation.
- 4.2 Discussions have also been held with experts, Kent Secretaries, and ACSes on appropriate arrangements.

## 6. Implications

Issue	Implications
Corporate Plan	Currently this relates to the 'High Performing Organisation' corporate plan priority.
Financial, Resource and Property	Revising the constitution will be accommodated within existing budgets. Advertising costs will be incurred for the Independent Person recruitment process. Resources required for investigations will depend on the number of case to be dealt with. Resources for registration of interests will depend on the variety of local codes adopted by the Parish Councils
Legal and Statutory	The arrangements outlined in the report are required to satisfy the provisions of the Localism Act 2011.
Crime and Disorder	None identified at this stage
Risk Management and Health and Safety	Risks of not complying with the legal requirements will be mitigated by the actions suggested in the recommendations to the report.
Equality and Diversity	No adverse equality or diversity implications, procedures apply equally.
Sustainability	None identified at this stage.

## 7. Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Swale Borough Council Code of Conduct
- Appendix II: Suggested Terms of Reference

## 8. Background Papers

8.1 The Localism Act 2011

8.2 Report to General Purposes Committee, 1 May 2012

## Swale Borough Council Code of Conduct

As a member or co-opted member of *Swale Borough Council* I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority:

**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.

The Act further provides for registration and disclosure of interests. In *Swale Borough Council* this will be done as follows.

### Registering and declaring pecuniary and non-pecuniary interests

You must, within 28 days of taking office as a member or co-opted member, notify your authority's Monitoring Officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's Monitoring Officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.

If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'<sup>1</sup>.

Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure.

Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non-pecuniary interest as defined by your authority.

*[NOTE REGULATIONS STILL NOT RECEIVED - likely to cover:*

- *Employment, office, trade, profession or vocation*
- *Sponsorship*
- *Contracts*
- *Land*
- *Licences*
- *Corporate tenancies*
- *Interests in securities*
- *Plus spouse's interests]*

As a Member of *Swale Borough Council*, my conduct will in particular address the statutory principles of the code of conduct by:

- championing the needs of residents - the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first;
- dealing with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially;
- not allowing other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework, the interests of the borough's area, or the good governance of the authority in a proper manner;

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<sup>1</sup> A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.



- exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a member/co-opted member of this authority;
- listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit;
- being accountable for my decisions and co-operating when scrutinised internally and externally, including by local residents.;
- contributing to making this authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other members to account, but restricting access to information when the wider public interest or the law requires it;
- behaving in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the authority's resources;
- valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government;
- always treating people with respect, including the organisations and public I engage with and those I work alongside; and
- providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.

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## ***Explanatory Notes***

When acting as a Member under the code of conduct the following notes should be considered:

### **You must treat others with respect**

In politics, rival groupings are common, either in formal political parties or more informal alliances. It is expected that each will campaign for their ideas, and they may also seek to discredit the policies and actions of their opponents. Criticism of ideas and opinion is part of democratic debate, and does not in itself amount to bullying or failing to treat someone with respect.

Ideas and policies may be robustly criticised, but individuals should not be subject to unreasonable or excessive personal attack. This particularly applies to dealing with the public and officers. Chairs of meetings are expected to apply the rules of debate and procedure rules or standing orders to prevent abusive or disorderly conduct.

Whilst it is acknowledged that some Members of the public can make unreasonable demands on Members, Members should, as far as possible, treat the public courteously and with consideration. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

**When behaving in accordance with our legal obligations you must:**

- not do anything which may cause your authority to breach any equality laws;
- not disclose confidential information, or information which you believe to be of a confidential nature, except in any of the following circumstances;
  - you have the consent of the person authorised to give it;
  - you are required by law to do so;
  - the disclosure is made to a third party for the purposes of obtaining professional advice (for example, your lawyer or other professional adviser), provided that person agrees not to disclose the information to any other person; or
  - the disclosure is in the public interest ( further advice should always be sought from the Monitoring Officer or legal team before considering disclosure);
- not prevent anyone getting information that they are entitled to by law;
- only use or authorise the use of the resources of the authority in accordance with its requirements' and
- make sure you use the authority's resources for proper purposes only. It is not appropriate to use, or authorise others to use, the resources for political purposes, including party political purposes.

**When valuing your colleagues and staff and engaging them in an appropriate manner you must:**

- treat others with respect;
- not bully any person including other councillors, council officers, or Members of the public;
- not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the authority; and
- have regard to advice from your Monitoring Officer or Chief Finance Officer where they give it under their statutory duties.

You should not approach or pressure anyone who works for, or on behalf of, the authority to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality.

Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try to force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

**When listening to the interests of all parties you must have regard to advice from your monitoring officer or chief finance officer where they give it under their statutory duties.** Where Members disagree with officer recommendations in making a decision, Members will need to take particular care in giving clear reasons for the decision.

(Please note that this is not mandatory for parish councils. However, your parish may choose to include an obligation to take account of your Clerk's advice in the Code your authority adopts.)

**When exercising independent judgment and not compromising my position you must not use or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else.** You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss.

## Suggested Terms of Reference with effect from 1 July 2012

### Standards Committee

1. To promote and maintain promote and maintain high standards of conduct by members and co-opted members of the authority and parish councils within the Borough.
2. To adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity.
3. To ensure that Parish Councils have in place a Code of Conduct consistent with the principles contained in Chapter 7 of the Localism Act.
4. To monitor and review the Code of Conduct as appropriate to ensure it is consistent with the following principles: selflessness, integrity, objectivity, accountability openness, honesty and leadership.
5. To ensure that the Code of Conduct includes the provision that the authority considers appropriate in respect of the registration in its register, and disclosure, of (a) pecuniary interests, and (b) interests other than pecuniary interests which the authority thinks appropriate.
6. To put in place (a) arrangements under which allegations can be investigated, and (b) arrangements under which decisions on allegations can be made. Such arrangements to include provision for the appointment by the authority of at least one independent person and to cover parish councils.
7. To consider applications for the grant of dispensations in accordance with the provisions contained within S.33 (b) (c) and (d) of the Localism Act 2011.
8. To set the allowances and expenses for the Independent Person and any Reserve Independent Persons.

### Hearings Panel (constituted as a Sub-Committee of the Standards Committee)

1. To consider any matter referred for investigation in accordance with the Council's agreed arrangements under Term of Reference 5 of the Standards Committee.
2. To conduct a hearing and take decisions in respect of a Member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include:
  - reporting its findings to Council [*or to the Parish Council*] for information;
  - recommending to the Member's Group Leader (or in the case of ungrouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
  - recommending to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
  - instructing the Monitoring Officer to [*or recommend that the Parish Council*] arrange training for the Member;

- removing [*or recommend to the Parish Council that the Member be removed*] from all outside appointments to which he/she has been appointed or nominated by the authority [*or by the Parish Council*];
- withdrawing [*or recommend to the Parish Council that it withdraws*] facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or
- excluding [*or recommend that the Parish Council exclude*] the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.