

# STANDARDS COMMITTEE

## 23 MARCH 2012

*Present :-* Mr D. Coe (Independent Member) Chairman  
Councillor Anderson  
Councillor Arnold  
Councillor Bartier  
Mr Fitton (Deputy Chairman) (Independent Member)  
Councillor Gamble  
Councillor Spyvee

### 15. Minutes

The minutes of the meeting held on 25 November 2011 were confirmed as a correct record.

### 16. Standards After The Localism Act 2011

The Committee considered a report from the Monitoring Officer setting out the provisions of the Localism Act 2011 as it related to the standards regime and proposing a new framework for standards and governance issues in line with the provisions of the Localism Act 2011.

The Monitoring Officer explained that the proposals in the report had the support of the Leaders of the political groups on the Council. It was anticipated that the new framework would come into effect on 1 July 2012, but it was possible that this date may slip. Therefore if the new framework were adopted, at the Council's Annual Meeting the Council would need to reappoint the existing Committee and also appoint the new Standards Committee. The Monitoring Officer also stressed that not all the regulations on which the new framework would be based had yet been published. There would be no consultation on the outstanding regulations. However, the Council could not afford to wait until the regulations were published before preparing for the new framework.

#### **Standards Committee**

The Committee noted the proposals for a new Standards Committee, which would be a normal Committee of Council and politically balanced. The loss of independent members and voting parish members seemed contrary to the principles of localism and also would mean the loss of considerable expertise. Some concern was expressed by some members that the proposals risked introducing a political element into the determination of complaints. However it was anticipated that Group Leaders would take account of the need for the Standards Committee to determine complaints non-politically when considering appointments to the Committee. The Monitoring Officer explained that the Group Leaders had agreed to sign a protocol to work together to avoid politically based complaints. In addition the new system would be more flexible and would allow for complaints to be dealt with informally, where appropriate, with the aid of Group Leaders.

In respect of parish council representation, it was noted that it would have been open to the Council to proceed without any parish council representation, but that it was recommended that up to three parish councillors be co-opted as non-voting members. In addition, many borough councillors were also parish councillors and would be able to bring a parish perspective to the work of the Standards Committee.

The Committee considered that, in view of the sensitive and complex nature of the work of the Standards Committee, all Councillors sitting on the Committee or acting as substitutes should have received appropriate training.

*RESOLVED* that:-

- (a) The Council establish a Standards Committee comprising 7 elected members of the Borough Council, appointed proportionally and with draft terms of reference as attached to the Monitoring Officer's report;
- (b) That the Leader of the Council be requested to nominate to the Committee only one member who is a member of Cabinet;
- (c) That the Parish and Town Councillors be invited to nominate a maximum of three Parish Councillors to be co-opted as non-voting members of the Committee;
- (d) All members of the Standards Committee, including co-opted members and those acting as substitute members, to have undertaken appropriate training on the work of the Standards Committee and the Standards framework. The frequency and content of such training to be determined by the Monitoring Officer.

### **Code of Conduct**

In respect of the Code of Conduct, the Committee noted the current ten General Principles and Model Code of Conduct would be repealed. The new Code of Conduct proposed would include provisions equating to paragraphs 3 to 7 of the current Code of Conduct, so in respect of behaviours the Code of Conduct would be much the same as the existing Code. However, the Code would also have to cover the registration and disclosure of interests; both disclosable pecuniary interests and other interests. However, in the absence of the necessary regulations, the appropriate part of the Code to cover interests could not be drafted. Therefore authority needed to be delegated to the Monitoring Officer, following consultation with the Leader of the Council and the Chair of the Standards Committee, to draft appropriate code provisions once the regulations were published. In the interim, the Code would require the registration and disclosure of interests which would currently constitute personal and/or prejudicial interests.

*RESOLVED* that:-

- (a) The Monitoring Officer be instructed to prepare and present to Council for adoption a draft Code of Conduct. The draft Code of Conduct should:-
  - (i) Equate to paragraphs 3 to 7 of the current Code of Conduct applied to member conduct in the capacity of an elected or co-opted member of the Council or its

Committees and Sub-Committees; and

(ii) Require registration and disclosure of interest which would today constitute personal and or prejudicial interests, but only require withdrawal as required by the Act in relation to Disclosable Pecuniary Interests.

(b) That, when Disclosable Pecuniary Interest Regulations are published, the Monitoring Officer, after consultation with the Chair of the Standards Committee and the Leader of the Council, add to that draft Code provisions which he considers appropriate for the registration and disclosure of interests other than Disclosable Pecuniary Interests.

### **Dealing with Misconduct Complaints**

The Committee noted the proposed new arrangements for dealing with complaints of breaches of the Code of Conduct. It was for the Monitoring Officer, in consultation with the Independent Person, to decide whether a complaint should be pursued. It noted that the system gave the Monitoring Officer the opportunity to seek to resolve more trivial complaints without further reference to the Committee and welcomed this increased flexibility. This should also reduce the costs of dealing with complaints. It was also noted that under the new arrangements, in terms of sanction, where a member had found to be in breach of the Code of Conduct, the Committee could only apply the powers of self regulation. There was no power to impose a sanction of suspension, exclusion from office or loss of allowance.

The Committee noted the contents of paragraph 8 of Appendix C to the Monitoring Officer's report which detailed the action the Standards Sub-Committee could take where a member has failed to comply with the Code of Conduct. As the Sub-Committee would meet in public and its findings would be in the public domain (unless the standard exemptions applied), paragraph 8.1.1 was superfluous and the Committee directed it should be removed. In addition, it also directed that the sanctions at paragraphs 8.1.7, 8.1.8 and 8.1.9 should be subject to Council approval.

*RESOLVED* that:-

1. The Monitoring Officer be instructed to prepare and submit to Council for approval "arrangements" as follows:

(a) The Monitoring Officer be appointed as the Proper Officer to receive complaints for failure to comply with the Code of Conduct

(b) 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 feels that it is inappropriate for him to take the decision, and to report quarterly to the Standards Committee on the discharge of this function;

(c) Where the investigation finds no evidence of a 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) 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 a resolution in appropriate cases, with a summary report for information to the Standards Committee. Where such resolution is not appropriate or not possible, he is to report the investigation findings to a Sub-Committee of the Standards Committee for a hearing;

(e) Council delegate to the Sub-Committee 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 Council that the member be issued with a formal censure or reprimand (or to the Parish Council)
- 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 Panels 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;
- Recommending to Council that the member be removed (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);
- Recommending to Council the withdrawal of (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
- Recommending to Council that it exclude (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 Panel meetings.

2. A meeting be arranged between the Chair of the Standards Committee and the Leader of the Council and representatives of Parish and Town Councils within the Borough to discuss how the new system can best be operated.

### **Independent Person(s)**

The Monitoring officer explained the role of the Independent Person in the process. The Independent Person would have an advisory role rather than the statutory role the current Independent Members held. As matters stood, current Independent members would be excluded from being appointed as an Independent Person. However, it was suspected that this may change before the new arrangements came into force.

The Committee noted that a single advert would be placed for all Councils in Essex. It was confirmed that if the Borough's Independent Person was unable to act on a particular occasion, the Council could delegate the function to another Council's Independent Person. Therefore it was not necessary to appoint reserve Independent Persons.

The Committee sought confirmation on the employment status of the Independent Person and the Monitoring Officer undertook to seek advice from the Public Law Partnership on this point.

*RESOLVED* that:-

(a) The Monitoring Officer, in consultation with the Chair of the Standards Committee and the Leader of the Council, and with the advice of the Head of Corporate Management be authorised to set the initial allowances and expenses for the Independent Person and this function subsequently be delegated to the Standards Committee.

(b) The Monitoring Officer advertise a vacancy for the appointment of 1 Independent Person.

(c) A Committee comprising four members of the Standards Committee be set up to short-list and interview candidates and to make a recommendation to Council for the appointment.

### **The Register of Members' Interests**

The Committee noted the proposals for a new Register of Members Interests. However, regulations on the nature of the interests to be registered were still awaited. There would be a requirement to publish the Register on the Council's website. The Committee also noted the extension of the requirement to register to cover not just the member's own interests, but also those of the of the member's spouse or partner.

*RESOLVED* that:-

(a) 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) The Monitoring Officer ensure that all members are informed of their duty to register interests;

(c) 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 it is available for inspection as required by the Act; and

(d) The Monitoring Officer arrange to inform and train Parish and Town Clerks on the

new registration arrangements.

### **Disclosure of Interests and Withdrawal from Meetings**

The Monitoring Officer highlighted the contents of paragraph 9.2 of his report which was a significant change in practice. He advised that whilst there would be no requirement for a member to disclose an interest to a meeting if that interest had already been included on the Register of Disclosable Pecuniary Interests, it would be good practice to continue to do so. The Committee noted that there was no provision for a member with a Disclosable Pecuniary Interest to make representations on a matter, as was currently allowed for a member with a personal and prejudicial interest. The Committee considered that this was a retrograde step.

*RESOLVED* that:-

(a) Subject to the requirements of the relevant regulations, 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 Disclosable Pecuniary Interest, except where he is permitted to remain as a result of the grant of a dispensation.

(b) Subject to the requirements of the relevant regulations, the Monitoring Officer be instructed to recommend to Council a Standing Order which equates to the current Code of Conduct requirement that a member acting alone 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 Disclosable Pecuniary Interest, except where he is permitted to remain as a result of the grant of a dispensation.

### **Sensitive Interests and Dispensations**

The Committee noted the provisions on dispensations were significantly changed by the Act. It noted the circumstances in which a dispensation could be granted and directed that the second sentence of paragraph of 12.3.2 be deleted

*RESOLVED* that the Monitoring Officer seek Council's agreement to delegate the power to grant the following dispensations:

(a) On the grounds set out in paragraphs 12.3.1 and 12.3.4 of the Monitoring Officer's report to the Monitoring Officer with an appeal to the Standards Committee, and

(b) On the grounds set out in paragraphs 12.3.2 (subject to the deletion of the second sentence), 12.3.3. and 12.3.5 of the Monitoring Officer's report to the Standards Committee, after consultation with the Independent Person.

The Committee stressed the need for Councillors to be informed of the new arrangements. The Monitoring Officer advised that there would be an all Councillor briefing once the details of the outstanding regulations were known. In terms of informing Parish Councils, it was suggested that the Monitoring Officer present

a briefing to the Colchester Association of Local Councils.

## **17. Standards Committee Annual Report 2011/12**

The Committee considered a report from the Monitoring Officer about the draft report of the Standards Committee for 2011/12.

*RESOLVED* that

(i) the draft report Annual Report for the Standards Committee for 2011/12 be approved;

(iii) the Monitoring Officer be authorised in consultation with the Chairman to make any necessary changes to the Annual Report to give effect to the Committee's activities up to the end of March 2012.

*RECOMMENDED TO COUNCIL* that the Standards Committee Annual Report for 2011-12 be noted.

## **18. Thanks**

As this was potentially the last meeting of the Committee in its present format, the Chairman expressed his gratitude to the members of the Committee and the officers who had supported it. He considered that it had been a privilege to serve as Chairman. In return, the Committee thanked the Chairman for the chairing the Committee so effectively.