B R O M S G R O V E D I S T R I C T C O U N C I L

MEETING OF THE STANDARDS COMMITTEE

WEDNESDAY, 21ST MARCH 2012 AT 6.00 P.M.

PRESENT: Independent Members: Mr. N. A. Burke (Chairman) and Ms. K. J. Sharpe (Vice-Chairman)

Councillors: Mrs. S. J. Baxter, S. R. Colella, L. C. R. Mallett and Mrs. M. A. Sherrey JP

Parish Councils' Representatives: Mr. J. Cypher and Mr. I. A. Hodgetts

Officers: Mrs. C. Felton, Mrs. S. Sellers and Ms. D. Parker-Jones

37/12 **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Mrs. G. Bell (Independent Member), and Mrs. K. May (Deputy Parish Councils' Representative - observer).

The Chairman advised Members that Mrs. Bell had specifically asked that it be noted that she was particularly sorry to have missed the meeting given that the Committee would be looking at the new standards regime, and that she had not felt able to comment on the report given that she would not be present for the discussion on this. She therefore looked forward to noting the outcomes of the Committee's discussions in this regard.

38/12 **DECLARATIONS OF INTEREST**

Mr. N. A. Burke and Ms. K. J. Sharpe each declared a personal interest in agenda item 7 - Localism Act 2011 - New Standards Regime. They did so for transparency reasons, on the basis that the Independent Members were more affected by the aspect of the report to be debated in relation to the possible establishment of a pool of Independent Persons under the new regime, who may or may not be appointed by the County Council to support all of the Districts Councils and the County Council, and which they, as current Independent Members, may or may not be eligible to apply for membership of.

It was queried whether the interest was also pecuniary and therefore prejudicial, by virtue of the fact that Independent Members received payment for certain of their duties. The Monitoring Officer advised that she had spoken with the Independent Members on this and that she did not take the view that it was also a prejudicial interest. This was on the basis that all current Independent Members would have to go through a recruitment and selection process should they wish to seek to become an Independent Person, and that

she therefore felt that they were sufficiently detached from the process to participate in the discussion.

Mr. Cypher also brought to the Committee's attention the fact that an update in relation to Councillor David Matthews, a fellow Alvechurch Parish Councillor, appeared later in the agenda (Monitoring Officer's Report).

39/12 **MINUTES**

The minutes of the meetings of the Standards Committee held on 21st September 2011 and 18th October 2011 were submitted.

RESOLVED that the minutes be approved as correct records.

40/12 **PARISH COUNCILS' REPRESENTATIVES' REPORT**

Mr. Cypher advised that at the last meeting of the Bromsgorve Area Committee of the Worcestershire County Association of Local Councils (CALC) the Parish Representatives had reported on the proposed changes to the Code of Conduct. Officers from Bromsgrove were leading on the proposed County model Code and had consulted separately with both the CALC Executive Officer and the Parish Representatives on the Committee on this and the proposed new arrangements for dealing with councillor complaints. Mr Cypher thanked Officers for the opportunity to engage in prior discussions in this regard.

RESOLVED that the position be noted.

41/12 **MONITORING OFFICER'S REPORT**

The Committee noted the contents of the Monitoring Officer's (MO's) report and the issues detailed below were raised during the consideration of this.

(i) Complaint References 07/11, 08/11 & 09/11
Further to paragraph 3.4 of the report, the Deputy Monitoring Officer (DMO) advised that at the Assessment Sub-Committee meeting on 2nd March 2012 it had been decided that linked Complaint References 07/11, 08/11 and 09/11 against a District Councillor Whittaker be referred to the MO for local investigation.

(ii) Complaint References 03/10 & 04/10
The DMO advised that Parish Councillor Matthews's appeal to the First-tier Tribunal - General Regulatory Chamber (Local Government Standards in England) against the Standards Committee's decision was the first appeal to the Tribunal against a decision of the Committee.

It was noted that Councillor Matthews had raised points in his appeal which he had not raised during the Final Determination Hearing, and that the Tribunal had been prepared to consider those points. She went on to explain the appeal process and that the Tribunal had ultimately allowed Councillor Matthews's appeal, the effect of which

was that the decision made by the Standards Committee had been quashed as the Tribunal did not agree with the Committee's finding that there had been a breach of the Code of Conduct.

The Tribunal agreed with the Standards Committee's view that Councillor Matthews would benefit from receiving training on the Code of Conduct, which could therefore still be undertaken by Councillor Matthews on a voluntary basis. The DMO advised that she had written to Councillor Matthews to establish whether he was willing to complete such training. It was noted that whilst Councillor Matthews had not replied to the DMO directly, he had replied to a separate communication from the Ethical Standards Officer indicating that he wished to attend a training session which was taking place for the parishes in the summer on the new Code of Conduct under the Localism Act 2011.

The DMO highlighted that the reason why the Tribunal had come to a different view to the Committee was based on the interpretation of the definition of a family member. The Committee had followed the guidance given by Standards for England on this, which was that the definition should be interpreted "widely", and which was therefore applied in Councillor Matthews's case. However, the Tribunal had responded that they did not agree with Standards for England's guidance on this, and that the interpretation of family should be based on the Oxford Dictionary meaning. The DMO stated that guidance issued by Standards for England would, as a first port of call at least, normally be followed at local level, and that in this instance a higher authority had decided that the guidance was perhaps not appropriate.

The DMO stated that the Committee did have a right of appeal against the Tribunal's decision but that from a legal point of view there was not a strong case for pursuing an appeal.

The Committee noted the Tribunal's ruling and expressed concern that guidance issued by Standards for England was not in accordance with the Tribunal's viewpoint. Members queried whether, if accepting the Tribunal's ruling, there was a specific need for clarity to be given to Members on the definition of family interests. The DMO stated that, if continuing under the current regime that might be something to which attention would need to be given, but in reality the current definitions would very shortly come to an end. She added that during consultation which had taken place on the new Code of Conduct it had been made clear that there would be a need for clarity on any references within the Code to family and/or close associations, and as to precisely how those were defined.

The Committee took as a positive the fact that Councillor Matthews was willing to attend training on the new Code of Conduct, and no views were expressed by Members in support of any appeal against the Tribunal's decision.

(iii) Member Training

A Member queried why the Code of Conduct training sessions scheduled for June 2012 were non-mandatory. The MO explained that, historically, the view had been taken that the mandatory requirements for training would be for Members themselves to decide and that Officers had not made such decisions on Members' behalf. The general view of Members previously had been what would be done should Members fail to attend particular sessions. Whilst it was mandatory for Members to attend training specific to any committees on which they sat, realistically unless there was complete 'buy-in' from all Members to attend other training then it would be very difficult for Officers to police. She added that if the Committee were minded, Members could be asked to look at whether they themselves would wish to impose a mandatory requirement to attend Code of Conduct training, and that Officers would support this.

It was queried whether this would also extend to Parish Councillors, which it was noted would be difficult given that a large part of the new regime under the Localism Act would depend on the relationship that could be built up between the Parish and District Councils, and the faith the parishes had in the District Council administering their standards processes. Parishes generally appeared to be keen to attend training sessions offered by the District Council and Officers were working closely with the Parish Council Clerks to encourage more attendance at training events.

At district level it was felt that the political Group Leaders had an important role to play in encouraging Members to attend training. It was noted that this might further be considered as part of a Member-Member Protocol, including whether Members themselves identified Code of Conduct training as a specific need. The Member Development Group (MDG) currently met to discuss Member training and development issues. Whilst the Group had not previously received cross-party support there were indications that it might do so moving forward. The MO stated that she would be happy to raise this matter at the MDG, and that were the Group at some stage to include membership from all of the political groups then there could be a clear agreement as to what levels of training would be appropriate in each committee regard. It was noted that mandatory Code of Conduct training might also be particularly useful at the point of Member induction, and that the issue of Code of Conduct training also linked with Agenda Item 7 on the new standards regime.

The MO added that Officers were currently looking at the overall programme of training and development for Members for the 2012/13 Municipal Year. As much information as possible on upcoming training events would be given to Members to ensure that they could commit to particular sessions. The MO stated that there had been some ambiguities in relation to aspects of previous training which were mandatory and those which were not, and to those Members who were and were not duly trained. She added that it was a complicated

process which caused some controversy and that it was not something which Officers wished to greatly police, meaning that there would be significant benefits to be gained from cross-party working on this.

(iv) Parish Council Matters
The MO stated that the Monitoring Officer Liaison Meetings for the Parish Council Clerks/Executive Officers were continuing and were proving to be very successful. It was her understanding that the parishes were generally grateful to receive this support and, so far as resources allowed, it was proposed that these meetings would continue for the foreseeable future.

(v) Standards for England
In relation to paragraph 3.17 of the report, the DMO reported that the statutory instrument formally disbanding Standards for England had now been passed, meaning the organisation would cease to exist with effect from 1st April 2012.

RESOLVED
(a) that the contents of the report be noted; and
(b) that any required actions arising from the points detailed in the report and the preamble above be acted upon and reported back to Committee, as appropriate.

42/12 **REVIEW OF OPERATION OF THE COMMITTEE, WORK PROGRAMME AND CALENDAR OF MEETINGS 2012/13**

Members considered a report which provided opportunity to review the general operation of the Committee and its Sub-Committee over the previous twelve months, and which set out the position in relation to the Committee's current Work programme and the dates for future meetings of both the current Committee and any successor committee to be introduced as part of the new standards regime under the Localism Act 2011.

RESOLVED that the position be noted.

43/12 **LOCALISM ACT 2011 - NEW STANDARDS REGIME**

The Committee received a report on changes to the system of regulation of the standards of conduct for elected and co-opted Councillors which were due to be implemented under the Localism Act 2011. Members were asked to consider various proposals for recommendation to Full Council on how the new regime might be implemented.

The Monitoring Officer (MO) stated that Officers were not, at that stage, in a position to report to members as to exactly what the final regime would look like as certain information was still awaited from Government, with work on the new Code of Conduct for Members being ongoing. In view of the proposed 1st July 2012 implementation date however Officers had produced as much information as possible at that point, including a draft process for how

complaints against Members for alleged breaches of the Code of Conduct might be dealt with under the new regime.

The Committee considered the report recommendations and, in doing so, were advised by the MO of the changes which would apply to both the make-up and operation of any successor standards committee. It was queried whether Members would be bound by the findings of any new committee. The MO confirmed that as standards would be a non-executive function it would be for Full Council to determine what it wished to delegate to the committee in decision-making terms.

Members noted that a new category of Independent Person was being introduced under the Localism Act, with Independent Members no longer forming part of the membership of any successor committee. The MO explained the background to, and role of, the new Independent Person and added that, historically, non-elected Members had been able to have voting rights on the Standards Committee as the committee had existed as a committee in its own right, with separate statutory requirements, which would no longer be the case under the Localism Act.

The position in relation to the jurisdiction that any new committee would have over the parish councils was noted, with the District Council being the principal authority for the purpose of Member complaints. It was proposed that the parish councils would be involved at various stages in the complaints process, with there being the option of mediation between the MO and relevant parties in relation to complaints, which it was hoped would provide for a better solution than the current highly prescriptive and sometimes disproportionate regime. Whilst the MO hoped that the proposals would enable the District Council to work with the parish councils to achieve a process that would work it was noted that, ultimately, any successor committee would only be able to make a recommendation to a parish council, which the parish council concerned could in turn then opt not to implement.

One of the Parish Councils' Representatives highlighted the fact that voting Parish Representatives on the committee were no longer provided for under the new regime. He noted that the District Council and any future standards committee would have certain duties with regards to parish councils in upholding standards and investigating complaints, but that that was the extent of the requirements in relation to parish councils, which he felt put the District Council in an impotent position.

He personally was very keen on the Parish Councils signing up fully to the Worcestershire Code of Conduct, and to the Parish Councils agreeing to their being fully subject to whatever investigation sanctions might be in place. Part of that view however was based on the new committee having Parish Representatives who were fully able to be part of the Standards Committees deliberations. However, the report explained that the legislation was such that it was not possible for Parish Councillors to be co-opted as members of any new standards committee with voting rights. He felt that this might be something that the government might need to look at again, in terms of enabling all councillors to be expected to uphold the Nolan principles and for

effective mechanisms to be in place to ensure that those principles were upheld. His concern was that the parish councils might not want to sign up to the Code if they were not able to be fully part, in terms of being voting members, of standards committees in the new form. It was his understanding that there were other objectors to the position within the county who would be taking the matter forward to the next County Association of Local Councils (CALC) Executive Committee. The MO agreed with the comments made and highlighted the process changes which it was hoped would take place under the new regime for local resolution and mediation. She added that this would hopefully result in there being much less emphasis on the committee decision-making environment and much greater opportunity to work with the parishes to encourage better Member behaviour, with her seeing whole-committee environments as being very limited under the new regime.

Members noted that the key element within the new process appeared to be the greater degree of discretion for the MO in dealing with complaints, particularly at the early stages, which it was hoped would allow for better early local resolution. In hand with this was the fact that the available sanctions were limited and the new Disclosable Pecuniary Interests (DPIs) category would be a criminal offence, which would be looked at by the Police. On the latter point, the MO advised that notwithstanding the fact that DPI related matters would have to be reported to the Police, these may also be looked at internally as well. The issue for the Council was that the bar in relation to what action the Police might take from an evidential point of view would be set very high, as it quite rightly needed to be for a criminal process, and that whilst the Police might deem a Member's behaviour not sufficiently serious to warrant criminal action, it might well not be the type of behaviour which was appropriate from the public's perspective and which the Council would therefore still wish to address.

One of the District Councillors stated that he would welcome clarity and assistance on the new DPI element of the Code and sought clarification as to whether a Member would be able to claim back any costs were an appeal to the High Court to be successful. The Deputy Monitoring Officer highlighted the fact that under the new system the sanctions that any successor committee could apply would be less significant, and that an appropriate ground for appeal would first need to be established in order to bring a claim under judicial review. The MO added that the Council would probably not fund a Member in seeking any High Court appeal in view of the costs involved. She added that, in the majority of situations, she hoped that the new process and opportunity for early discussions with relevant parties would mean that matters would hopefully not progress that far. There would also be a major emphasis throughout the process on Group Leaders and the way in which they managed their Groups would be of key importance. Early discussions with the Group Leaders had indicated that they held the standards with which their Members were viewed by the public in high esteem. Early indications were that the opportunities which would be availbale under the new regime to work with the Groups on any matters would assist in achieving a successful outcome.

The MO stated that the parishes were not to be underestimated as the ability for the new regime to work very much depended on the relationship that the District Council managed to secure with the parishes and through CALC moving forward. Fortunately, all of the parishes within the district were signed up to and supported by CALC. Officers would listen to what the parishes were saying to try to ensure that the processes that were put in place acknowledged the parishes views, as far as was possible. She added that she had managed to secure CALC's agreement to work with her to bridge any gaps that might exist in the short term, whilst working through any teething issues with the new process.

Members agreed that there should be a successor standards committee of some form, that there should be Parish representation on the committee as non-voting co-opted members, and that any committee be similar in size to the current Standards Committee.

The content of the Draft Code of Conduct at Appendix 1 to the report was approved in principle, it being noted that the draft Code still needed to be approved by the other authorities within the district and that there were gaps in the current draft in view of the information that was still awaited from government. It was also noted that Bromsgrove intended to retain the original ten Nolan principles, notwithstanding the fact that the new legislation had reduced the principles to seven, given that Members were both familiar with the principles and there appeared to be no logical reasons for the removal of the additional three principles.

Members considered the draft process for managing standards complaints and were presented with a slightly updated and more detailed visual flowchart which mapped out the proposed process. The Ethical Standards Officer presented the flowchart and highlighted the key changes to this, which included:

- the Subject Member being notified, subject to any relevant confidentiality and/or data protection issues including possible criminal matters, at the outset of receipt of a complaint against them;

- the ability for the MO to throw out, following consultation with the Independent Person, a complaint at the initial review stage if the complaint was clearly been found to be factually incorrect; and

- that if following investigation and in the event of a finding of failure to comply with the Code, the MO opted for local resolution and the complainant stated following local resolution that they were unhappy with the proposed action offered, the MO, in consultation with Independent Person, could opt not to refer the matter to a hearing and to close the matter should it not be deemed to be in the wider public interest to proceed any further. This meant that a complainant would not be able to assist on a hearing taking place in such circumstances, it also being noted that a complainant still had the opportunity to complain to the Local Government Ombudsman where they felt a matter had been handled in an unsatisfactory way by the authority.

It was noted that where the Police might become involved in possible criminal cases then Officers would need to ensure that any Police investigation were not prejudiced by notifying relevant parties of the complaint too early in the process. The MO stated that she would shortly be meeting with Police representatives and that she would be willing to run a process which the Police were happy with.

The Committee agreed that where complaints related to a parish councillor and contact needed to be made with the relevant parish council, then the Clerk, as the appropriate Responsible Officer of the parish council, would normally be the first point of contact, with a suitable parish councillor also to be included to progress the matter as appropriate. The MO advised that Richard Levett of the Worcestershire CALC had advised that he would also be happy to assist with any parish matter where either the Clerk and/or other councillors were conflicted out of matters. The Parish Representatives on the successor committee would not be notified separately of parish complaints as Officers would report back periodically to the committee and Full Council, as necessary, on relevant actions undertaken by the Monitoring Officer.

Regarding the proposal contained in the report to establish a pool of Independent Persons to support all of the District Councils within the county and the County Council, the MO stated that she was wavering on the pool option as she felt this may not be beneficial for Bromsgrove as Independent Persons with specific knowledge of the area might be best. She added that there was a clear message coming across from both district and parish councillors that they wished to have something independent of the county. Members agreed therefore that the Council should advertise independently for its own Independent Persons. The differences in the role of Independent Person from the current Independent Member were noted, and it was requested that Officers strive to get as diverse a representation as possible in terms of the Independent Persons.

The MO stated that it was proposed that there be smaller panels established to conduct hearings and not the whole committee as at present, which would provide opportunity for greater parish involvement on parish-related matters.

The loss of the Independent Members on the Committee was noted with regret, and in response to a question raised the MO advised that whilst it was possible to co-opt non-voting members onto any committee to give their views on matters under consideration, they could not vote or influence a committee's decision. Whilst she saw very clearly the role of the new Independent Person who would advise and support her in making her decisions, she felt it would be difficult for the committee to identify what role non-voting co-opted Independent Members would play on the committee. Also, in view of the proposed non-voting co-opted parish representatives on the committee it might become difficult to reach a consensus with the non-voting members. The Ethical Standards Officer highlighted the fact that the Independent Person's views would have to be sought and taken into account on a matter which the authority had decided to investigate and before a final decision was

made, which would involve the Independent Person being present at any final hearing.

In response to an issue raised regarding matters which might fall outside of the Code of Conduct but which might still be deemed inappropriate behaviour, the MO stated that she felt that there was an absolute need, in addition to the Code of Conduct, to encourage Members at both parish and district level to look at establishing separate protocols for what was deemed to be appropriate behaviour, either in a decision-making environment or when working with each other or members of the public. That was a piece of work which the MO would be undertaking separately to the Code, with any such protocols the running alongside the Code.

It was noted that the existing provisions on dispensations would change significantly under the Localism Act and the proposals contained in the report for how dispensations should be dealt with in the future were supported.

The MO stated that she would be liaising with Group Leaders on the report proposals before final decisions were made at Full Council. This would ensure that what was being proposed was fully understood in view of the normal business conducted at the Annual Meeting and that agreement was reached in advance on the broad principles proposed under the new regime.

The Committee felt that the proposed process was fair and equitable and that the role of the Independent Person was crucial to the process. It was agreed that there be a general review of the arrangements after 12 months to monitor effectiveness.

RECOMMENDED:

(a) that an appropriate way of discharging the Council's duty to promote high standards of behaviour in public life would be through the setting up a new Standards Committee, it being noted that such a committee would operate as a normal committee of the Council and would therefore be governed by the normal rules relating to political proportionality, and that the size of any successor Standards Committee be similar in size to the current Standards Committee and ideally no larger than the current Committee;

(b) that the content of the Draft Code of Conduct at Appendix 1 to the report be approved in principle;

(c) that, subject to the comments detailed in the preamble above, the process for managing standards complaints at Appendix 2 to the report be approved;

(d) that co-opted non-voting Parish Representatives be appointed to any newly created Standards Committee, that those Representatives be involved in any hearings relating to Parish Councillors and that the arrangements for parish involvement, as well as the arrangements generally, be reviewed after 12 months of implementation to monitor effectiveness;

(e) that the Council appoint two Independent Persons, following advertisement and application and in accordance with the rules governing the category of person who are eligible to fill such a role, with

the preference being for the appointment of local Independent Persons who have a good knowledge of the district of Bromsgrove; and

(f) that the process for managing dispensations be as set out in paragraphs 3.34 to 3.37 of the report.

The meeting closed at 8.21 p.m.

Chairman