

## BABERGH DISTRICT COUNCIL and MID SUFFOLK DISTRICT COUNCIL

<b>From: Monitoring Officer</b>	<b>Report Number: M45</b>
<b>To: Full Council</b>	<b>Date of meeting: 19 June 2012 (BDC) 21 June 2012 (MSDC)</b>

### LOCALISM ACT 2011 - ARRANGEMENTS FOR THE DISCHARGE OF STANDARDS FUNCTIONS

#### 1. Purpose of Report

- 1.1 To approve arrangements for the discharge of standards functions once the new standards regime is implemented under the Localism Act 2011.

#### 2. Recommendations

- 2.1 That upon the date of implementation of Chapter 7 of the Localism Act 2011 the Councils' standards functions be discharged by a newly constituted Joint Standards Committee between Babergh and Mid Suffolk
- 2.2 That the new Joint Standards Committee shall comprise of [6] elected members (3 from each Council, not politically balanced) plus such co-opted members as each Council may determine in accordance with recommendation 2.4 below.
- 2.3 That the Council nominates its elected members of the new Joint Standards Committee
- 2.4 That each Council has the option to appoint 1 non-voting independent member and/or 1 non-voting parish/town council representative to the Joint Standards Committee.
- 2.5 That the Articles of the Constitution and terms of reference at Appendix 1 be adopted for the new Joint Standards Committee and the Monitoring Officer be authorised to make any minor changes as may be necessary.
- 2.6 [That the Monitoring Officer be authorised to initiate a selection process for the appointment of co-opted members as set out in recommendation 2.2 with appointments to be made at a future meeting of Full Council.]
- 2.7 [That the allowances for any co-opted Members of the new Joint Standards Committee be reviewed and fixed at a future meeting of Full Council.]
- 2.8 That the Council participates in and approves the arrangements for a County wide pool of 'independent persons'
- 2.9 That the current independent members of the Joint Standards Committee be appointed as 'independent persons' pursuant to Chapter 7 of the Localism Act 2011 as a transitional measure pending the appointment by Full Council of the pool of 'independent persons' following the completion of a selection process
- 2.10 That the principle of a 'Suffolk Standards Board' to determine complaints following an investigation be approved and that the new Joint Standards Committee be delegated authority to determine complaints until the 'Board' is created.
- 2.11 That the Constitution be amended accordingly.

*N.B. Recommendations 2.6 and 2.7 only apply if Council wishes to appoint co-opted members*

### 3. Financial Implications

- 3.1 If standards functions are undertaken by an existing committee, then there are no additional costs implications.
- 3.2 If standards functions are undertaken by a new Joint Standards Committee there would be an allowance payable to the Chairman of the Committee. The current allowance provided in Babergh's Constitution for a Standards Committee Chairman is £1,824 pa whereas the Mid Suffolk Constitution provides for a Chairman's allowance of £2,763 pa. A single figure would need to be agreed between the Councils (with the cost being shared). Babergh's Chairman's allowance was set on the basis of quarterly meetings and Mid Suffolk's on monthly meetings. It is anticipated that a new Joint Standards Committee would only need to meet quarterly. Therefore the figure of £1,824 pa (which would then be divided between the two councils) would appear the more relevant figure. Babergh also currently allows for a Vice-Chairman allowance of £364 pa whereas Mid Suffolk does not. These would not be new costs because Babergh and Mid Suffolk already have a Joint Standards Committee with an allowance of £1,824 being paid to the independent Chairman.
- 3.3 If standards functions are undertaken by a new Joint Standards Committee with co-opted members then in addition to the Chairman's allowance, an allowance would need to be considered for each co-optee. Currently, Babergh pays its co-opted members £730 pa and Mid Suffolk £1,842 pa. Again, this would not be a new cost because there are currently 7 co-opted members on the existing Joint Standards Committee.
- 3.4 The amount of allowances must be considered by the Independent Remuneration Panel. The two councils will then be asked to consider and set allowances for the Chairman and members of the Standards Committee and in so doing is required to take account of the advice of the Independent Remuneration Panel. The amount of allowances would ultimately be a decision for Full Council.
- 3.5 The reduced role and responsibility of any new Standards Committee will be a relevant and significant consideration in considering appropriate allowances for committee members and its Chairman. Given the reduced role and responsibility it is reasonable to assume that the Independent Remuneration Panel will recommend a reduction in the level of allowance that is currently paid to the Mid Suffolk members and that the allowances paid to the Babergh members of the committee are more realistic in view of those allowances not having been reviewed in recent years. It is also notable that the Babergh allowances were set at a time when the Standards Committee did not handle complaints and met quarterly, as is now proposed.
- 3.6 Aside from any of the costs referred to above, the Council will need to pay a retainer and fee for an 'independent person' who must be consulted on complaints which are investigated. A county wide pool of independent persons is being proposed with each council paying for one independent person. It is proposed that the person will be paid a £300 pa retainer plus £50 per complaint considered on investigation.

### 4. Risk Management

- 4.1 Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
The Councils do not have adequate measures in place to fulfil its functions under the Localism Act 2011.	Medium	Critical	Report to Full Council in June 2012

## **5. Consultations**

- 5.1 Portfolio Holders at Mid Suffolk and Political Leaders Group at Babergh have previously considered this matter.
- 5.2 A report from the Monitoring Officer was brought forward to each Council recommending the continuation of a Joint Standards Committee comprising of 6 elected members (3 from each Council) and 4 co-opted members (1 parish and 1 independent representative for each Council). At the Full Council meeting at Babergh on 24 April 2012 Members decided to defer consideration of the report following an amendment having been put to the meeting that the standards function be undertaken by the Joint Scrutiny Committee. As a consequence, the same report to Mid Suffolk needed to be withdrawn at Full Council on 26 April. This report encompasses the various options and makes recommendations based upon feedback received.
- 5.3 The Joint Standards Committee met on 7 June 2012 and:-
- (1) recommends that a Joint Standards Committee be created
  - (2) urges retention of co-opted members to provide transparency and to maintain and promote public confidence in the Committee
  - (3) as an observation, at BDC rates a co-opted member of Joint Standards Committee is paid an allowance of £730 pa

## **6. Equality Analysis**

- 6.1 Not relevant to this report

## **7. Shared Service / Partnership Implications**

- 7.1 Babergh and Mid Suffolk District Councils currently have a Joint Standards Committee and Joint Monitoring Officer. This has delivered a consistent approach across the councils and reduced administration in servicing two committees and writing two sets of reports. If the councils were to revert to separate arrangements then some of those efficiency savings and aligned practices may be lost.
- 7.2 Clearly, the continued discharge of standards functions by any joint committee can only be delivered if both Councils are in agreement.

## **8. Key Information**

- 8.1 This report sets out the key changes affecting Member conduct under Chapter 7 of the Localism Act 2011 which are expected to come into effect on 1 July 2012. It further explains the options available to the Council in how its obligations are discharged.
- 8.2 Key changes are as follows:-
- Current Code of Conduct is abolished
  - Councils (including parish councils) must adopt a new Code of Conduct in accordance with the seven principles of public life - selflessness, integrity, objectivity, accountability, openness, honesty and leadership. A County wide Code is the subject of a separate report to Council.

- The current system of registering and declaring interests will be replaced by a requirement to disclose pecuniary and non-pecuniary interests. It will become a criminal offence to fail (without reasonable excuse) to disclose interests punishable by a fine of up to £5,000 and/or disqualification as a councillor for up to 5 years. Complaints will be made to the Police.
  - The current system of assessing, reviewing and hearing complaints will be abolished. In its place, the Police will handle complaints of failure to properly register and disclose interests and the District Council must adopt its own procedure to handle other alleged breaches of the Code.
  - The Act repeals the provisions requiring standards committees with independent and parish representatives who are entitled to participate fully e.g. vote. The Council cannot therefore retain a committee in its current form, with independent and parish members providing the full role they have done to date and with its current jurisdiction to handle complaints. That framework is now abolished.
  - There is now a requirement to have an independent person (who has no connection with the Council and who cannot have been an independent member of the former standards committee) who must be consulted on complaints. The proposal is for a Suffolk pool of independent persons to be established for this purpose.
  - The proposed complaints procedure will require the Monitoring Officer to assess complaints in consultation with an 'independent person' and to decide how complaints are handled.
  - If satisfied that there are grounds to believe that there is a breach of the Council's code of conduct, the Monitoring Officer has the option of referring the complaint for investigation. The independent person would then consider whether there is a breach of the Code and if the independent person concludes that there is, the matter would be referred to a committee to make a determination and decide whether to apply a sanction. It is proposed that a single 'Suffolk Standards Board' is established with Suffolk County Council and any other participating authorities to handle this stage of the process. This proposal is intended to deliver independence in the determination of complaints where a sanction may be imposed.
  - The intention is that other mechanisms such as advice and guidance from the Monitoring Officer, the political party disciplinary mechanisms etc. will be used to deal with misbehaviour (stopping short of criminal actions) in future.
  - Powers of sanction will be limited to censure and making recommendations e.g. training.
  - A local standards committee can be established, but it will not be dealing with complaints as at present and appointment of co-opted members (i.e. parish/independent members) will be optional. Any such co-opted members would not be able to vote.
  - Any new committee would be politically balanced unless there is unanimous agreement at Full Council that political balance rules do not apply.
  - The standards functions would be limited to those in Appendix 1.
  - Any new committee would only need to meet quarterly in view of its limited role.
- 8.3 Whilst we do not need a standards committee, there will be a statutory duty to promote and maintain high standards of member conduct. This duty ought properly to be a function discharged through a committee to ensure that a culture of high ethical standards is embedded within the Councils. The function could be undertaken by an existing committee or a newly created committee, as follows:-

Option	Committee	Advantages	Disadvantages	Costs
1	<b>Joint Scrutiny Committee</b>	<p>Continues joint working between BDC/MSDC</p> <p>No costs implications</p> <p>Standards functions are narrow enough to be encompassed within an existing committee</p>	<p>Not strictly a scrutiny function.</p> <p>Divergence of the committee's functions - established to scrutinise integration matters</p>	None
2	<b>O&amp;S Stewardship (BDC)</b> <b>Scrutiny Committee (MSDC)</b>	<p>No costs implications</p> <p>Functions narrow enough to be encompassed within an existing committee</p>	<p>Allocation to individual committees loses joint working arrangements &amp; could cause inconsistency across the Councils</p>	None
3	<b>Joint Standards Committee</b> <b>without co-opted members</b>	<p>Costs implication limited to Chairman's allowance</p> <p>Continuation of joint working. Size of committee can be reduced from present.</p>	<p>No parish council input</p> <p>No independent input</p> <p>Limited volume of business to be undertaken</p>	<p>Chairman's allowance</p> <p>Not a new cost</p> <p>Amount to be determined - £1,824?</p>
4	<b>Joint Standards Committee</b> <b>with co-opted members (e.g. independent &amp; parish representatives)</b>	<p>Continuation of current model. Size of committee can be reduced from present.</p> <p>Promotes a transparent approach.</p>	<p>Co-opted members are not permitted to vote</p> <p>Cost of allowances to co-opted members</p> <p>Limited volume of business to be undertaken</p>	<p>As per 3.</p> <p>Plus allowance for each co-opted member. Amount to be determined – £1,000 approx per co-opted member?</p> <p>If x 4 co-opted members = £2,000 per council</p> <p>Currently, BDC pays 5 x £730 = £3650</p> <p>Currently, MSDC pays 4 x £1842 = £7,368</p>

Option	Committee	Advantages	Disadvantages	Costs
5	<b>Individual Standards Committee with or without co-opted members.</b>	As per 3/4	Allocation to individual committees loses joint working arrangement for standards	Extra cost with x2 Chairman's allowance £1,824 pa – BDC £2,763 pa –MSDC  If there are co-opted members, allowances as per 4

## 9. Appendices

Appendix 1 – Terms of Reference & Articles of the Constitution for a new Joint Standards Committee

Appendix 2 - Flowchart

## 10. Background Documents

10.1 None

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## **Articles of the Constitution**

### **The Babergh and Mid Suffolk Joint Standards Committee**

#### **Joint Standards Committee**

Babergh and Mid Suffolk will together establish a committee known as the Babergh and Mid Suffolk Joint Standards Committee. Neither the Chairman of the Council nor the Leader of the Council/Chairman of Strategy Committee shall be entitled to be appointed as a Member of the Joint Standards Committee.

#### **Composition**

*The Committee is constituted pursuant to sections 101,102,103 and 111 of the Local Government Act 1972.*

*The political balance rules in section 15 of the Local Government and Housing Act 1989 will not apply.*

- (a) **Membership.** The Joint Standards Committee will be composed of:
- Six Councillors (three from each Council) (Elected Members);
  - Up to two persons (one for each Council) who are not Councillors or an Officer of the Council or any other local authority (Independent Members);
  - Up to two Members (one for each Council) of a Parish/Town Council in the Councils' areas (Parish Members)
- (b) **Independent Members.** Any Independent Member appointed by a Council to the Joint Standards Committee will not be entitled to vote at meetings.
- (c) **Parish Members.** Any Parish/Town Representatives appointed by a Council to the Joint Standards Committee will not be entitled to vote at meetings.
- (d) **Chairing the Committee.** The Joint Standards Committee will nominate the Chairman of the Committee, who must be an Elected Member, at its first meeting in each municipal year. Unless there is unanimous agreement of those present and voting, the Chairmanship will alternate between appointees of each Council.
- (e) The quorum is four, including at least three Elected Members.

#### **Role and Function**

The Joint Standards Committee will have the following roles and functions:

- (a) To design, monitor and review the ethical framework of the Councils. The Committee's powers shall include responding to consultation documents and the development of codes of conduct and guidance on standards related matters. The adoption and revisions to a code of conduct for councillors shall be reserved to the Full Council.

- (b) To promote a culture of openness, accountability and probity in order to ensure the highest standards of conduct.
- (c) To promote the values of putting people first, valuing public service and creating a norm of the highest standards of personal conduct.
- (d) To oversee and manage programmes of guidance, advice and training on ethics, standards and probity for Councillors.
- (e) To be responsible for the Council's public register of Councillors' interests and to receive reports from the Monitoring Officer on the operation of the register from time to time.
- (f) To be responsible for written guidance and advice on the operation of the system of registration of Councillors' interests and to receive reports from the Monitoring Officer on the operation of the system from time to time.
- (g) To establish, monitor and issue advice and guidance to Councillors on a system of dispensations to speak on, or participate in, matters in which they have interests and to grant dispensation in appropriate cases on matters relating to the Councils' Code of Conduct.
- (h) To exercise the functions of the Council in relation to the ethical framework and standards of conduct of Parish Councils, Joint Committees and other bodies.
- (i) To receive reports from the Monitoring Officer and any independent person appointed by the Council pursuant to the Localism Act 2011.
- (j) To consider and grant exemptions for politically restricted posts.
- (k) To determine appropriate action on matters referred to the Joint Standards Committee by the Monitoring Officer, Council or its Committees.
- (l) To support the Monitoring Officer in his or her statutory role and the issuing of guidance on his or her role from time to time.
- (m) To support the section 151 officer responsible for the administration of the Council's financial affairs in his or her statutory role in connection with financial probity and the issuing of national guidance on his or her role from time to time.
- (n) To establish and maintain a process to consider complaints against Councillors, including the issuing of sanctions, as appropriate (subject to statute, regulations and Government guidance).
- (o) To manage any resources assigned to the Committee subject to any framework set by Council or Committee.
- (p) To be responsible for securing equality in relation to the functions of the Joint Standards Committee.
- (q) To receive, consider and make decisions on reports received from the Strategy /Executive or Scrutiny Committees.
- (r) To refer any issue of standards and probity to the Scrutiny Committee for consideration as deemed appropriate by the Joint Standards Committee.

- (s) To establish and delegate to any Sub-Committee, as appropriate, and manage that Sub-Committee.
- (t) To receive, consider and make decisions on reports received from any Sub-Committees and to make recommendations to Council in relation to matters reserved to the Council by statute or Procedure Rules.
- (u) To make representations to the Local Government Association and central Government or other organisations about any matter relating to the general principles of conduct for Councillors.
- (v) To consider and determine any issues in connection with the Public Interest Disclosure Act 1998 or any other legislation which appears to the Committee to be relevant.
- (w) To be responsible for liaison between the Council and external agencies, in particular the District Auditor and the Local Government Ombudsman, in connection with any matter within the Committee's terms of reference.
- (x) To provide advice and guidance to Councillors and make arrangements for training in connection with any matters within the terms of reference of the Committee.
- (y) To review and make recommendations on Councillors' training to promote the ethical framework.
- (z) To oversee the Councils' protocols insofar as they relate to the promotion and maintenance of high standards of conduct.

### **Additional roles of Standards Committees**

The Council may assess the scope for further work for the Joint Standards Committee as events develop.

### **Terms of Reference**

The Babergh and Mid Suffolk Joint Standards Committee will have the Terms of Reference set out in this Constitution.

## Terms of Reference

### **The Babergh and Mid Suffolk Joint Standards Committee**

#### **1. Definitions**

In this Constitution:

“the Act” means the Local Government Act 1972

“the Councils” means

- (a) Babergh District Council
- (b) Mid Suffolk District Council

“Executive/Strategy Member” means a member of either the Executive Committee of Mid Suffolk District Council or the Strategy Committee of Babergh District Council

“Independent Member” means any person appointed to the Joint Standards Committee who is not a Member or Officer of the Councils or of any other local authority

“the Joint Standards Committee” means the Babergh and Mid Suffolk Joint Standards Committee

“Monitoring Officer” means the officer designated by the Councils under section 5 of the Local Government and Housing Act 1989 and any deputy nominated by them acting where they are unable to do so owing to absence or illness

“Proper Officer” has the same meaning as in the Act

“Scheme of Allowances” means any scheme of allowances made under the Local Authorities (Members Allowances) Regulations 2003

#### **2. Constitution and Terms of Reference**

- 2.1 The Councils, in exercise of their powers under sections 101, 102, 103 and 111 of the Act, have each determined to establish a joint standards committee, to be known as the Babergh and Mid Suffolk Joint Standards Committee to exercise those functions as set out in these Terms of Reference and in the Constitution.

#### **3. Functions to be exercised by the Joint Standards Committee**

- 3.1 The Joint Standards Committee may exercise the functions set out in the Articles of the Constitution.

#### **4. Membership of the Joint Standards Committee**

- 4.1 The Joint Standards Committee shall consist of
  - a) six members of the Councils, appointed by those councils in accordance with paragraph 4.2;
  - b) up to two members of parish/town councils for which either of the Councils is responsible, appointed in accordance with paragraph 4.5;

- c) up to two Independent Members, appointed in accordance with paragraph 4.6.
- 4.2 Subject to paragraphs 4.3 and 4.4, the Councils shall each appoint three members of their authorities to be members of the Joint Standards Committee:
- 4.3 **Appointment of Executive / Strategy Committee Members**
  - a) No more than one member from each Council appointed under paragraph 4.2 shall be a member of the Executive or Strategy Committee of the Councils.
  - b) If an Executive/Strategy Member has previously been appointed by a Council to and is still a member of the Joint Standards Committee then no further appointment of an Executive/Strategy Member by that Council will be valid.
  - c) Otherwise, if a Council seeks to appoint more than one Executive/Strategy Member then only one appointment will be valid and the Council will be required to make a new appointment.
- 4.4 None of the members of the Councils appointed under paragraph 4.2 shall be the Chairman of the Council or the Leader of the Council or Chairman of Strategy Committee of either Council.
- 4.5 Each Council (whilst responsible for considering complaints under the code of conduct adopted by parish/town councils) may appoint one member from a parish/town council in their districts, who are not also members of either Council, to be a member of the Joint Standards Committee.
- 4.6 Each Council may each appoint one Independent Member to be a member of the Joint Standards Committees:
- 4.7 A person who is disqualified under Part 5 of the Local Government Act 1972 shall be disqualified from membership of the Joint Standards Committee.
- 5. **Tenure of office and casual vacancies**
- 5.1 Any co-opted member of the Joint Standards Committee will hold office until one of the following occurs:
  - a) He or she resigns by giving written notice to the Proper Officer of the Council that appointed him or her;
  - b) Expiry of a period of four years from the date of appointment. A co-opted member may be re-appointed by Full Council.
  - c) He or she is removed or replaced by the Council that appointed him or her;
  - c) He or she is disqualified from membership of the Joint Standards Committee;
  - d) He or she ceases to be eligible for appointment to the Joint Standards Committee in the capacity in which he or she was appointed;
  - e) The functions of the Joint Standards Committee are allocated to another committee

- f) The Councils determine to reduce the size of the Joint Standards Committee and not less than one calendar month's notice is given to the Member to terminate his or her membership of the Joint Standards Committee
- g) The Council which appointed him or her ceases to participate in the Joint Standards Committee.
- h) A resolution of the Councils not to maintain a standards committee or not to continue with co-opted members of the Joint Standards Committee.

5.2 A casual vacancy may be filled as soon as possible by the Council which appointed the member of the Joint Standards Committee whose membership has ceased.

## 6. **Sub Committees**

6.1 The Joint Standards Committee may appoint Sub Committees for purposes in the exercise of its functions.

6.2 Each person appointed as a member of a Sub Committee must be a member of the Joint Standards Committee.

6.3 The Joint Standards Committee will determine the membership and terms of reference of the Sub Committee, and the quorum for its meetings, when it is appointed.

6.4 If the Joint Standards Committee appoints more than one Sub Committee to exercise one or more of its functions then it shall ensure that the Proper Officer of the Council/s providing support to the Joint Standards Committee allocates particular matters to a Sub Committee first on the basis of the availability of the members required to constitute the Sub Committee, and thereafter by rotation, and summonses meetings accordingly.

## 7. **Meetings and proceedings**

7.1 The regularity of meetings and rules for the conduct of proceedings of the Joint Standards Committee (and its Sub Committees) will be set by the Committee. The rules of procedure must be consistent with the requirements of the Act. They may provide for different procedures to be followed when the Joint Standards Committee or a Sub Committee is exercising different functions.

## 8. **Monitoring Officer**

8.1 The Monitoring Officer will agree and keep under review a protocol about how the Monitoring Officer will exercise their functions in relation to the matters dealt with by the Joint Standards Committee.

8.2 The Joint Standards Committee will be responsible for approving changes to the protocol.

## 9. **Support**

9.1 The Joint Standards Committee will alternate its meetings between the offices of the Councils and the Councils agree to provide accommodation and professional, technical, administrative and clerical support for meetings held on its premises.

9.2 The Proper Officer appointed by each Council for the time being providing such support will discharge the proper officer functions under the Act that relate to the meetings of the Committee. He or she will therefore prepare agendas and minutes and summaries of meetings and arrange for notices and other communications to and from the Joint Standards Committee to be given and received, save in so far as the Joint Monitoring Officer agrees to undertake this activity.

## 10. **Expenses of Joint Standards Committee**

10.1 The expenses of the Joint Standards Committee and of the discharge of functions relating to matters dealt with by the Joint Standards Committee will be defrayed equally by the Councils save that allowances/expenses payable to any co-opted member shall be borne by the appointing Council.

## 11. **Allowances**

11.1 The Councils will ensure that all co-opted members of the Joint Standards Committee of the same type and whose responsibilities are, in principle, the same, should have broadly the same entitlement:

11.2 An agreement reached under paragraph 11.1 shall not bind the Councils so as to prejudice the legality of their decisions, or compromise their decision-making processes, under the Local Authorities (Members Allowances) Regulations 2003.

## 12. **Withdrawal from the Joint Standards Committee**

12.1 A Council may cease to participate in the Joint Standards Committee by resolution to that effect taking effect on the date of the next annual meeting of that Council, and communicated in writing to the Proper Officer the time being at least three months before the date on which it is to take effect.

