

## **COUNCILLOR CONDUCT COMMITTEE**

**24 JUNE 2015**

### **CONDUCT OF COUNCILLORS**

Report from/Author: Perry Holmes, Monitoring Officer

#### **Summary**

This report provides an update on the work being carried out following a motion agreed at Full Council on the legislation related to the conduct of individuals in elected office.

#### **1. Budget and Policy Framework**

- 1.1 Upholding high standards of conduct are a matter for the Councillor Conduct Committee.

#### **2. Background**

- 2.1 At the Full Council meeting on 23rd April 2015 Members passed a motion which read:

“Local communities in Medway should be given a stronger democratic voice on Councillor conduct issues;

Council therefore resolves to ask the Councillor Conduct Committee to review the Member Code of Conduct and legislation related to the conduct of individuals in elected office. Council further resolves for the Committee’s report to be considered by Medway Council and for any recommendations to be submitted to Government for the new Secretary of State to consider.”

#### **3. Code of Conduct**

- 3.1 The Councillor Code of Conduct which meets the Council’s obligations under the Localism Act 2011 provides a framework for appropriate behaviours by Councillors when elected.
- 3.2 Following specific case law it cannot and does not apply to Councillors when they are not acting in their capacity as Councillors. So it would not cover conduct in the private life of a Councillor. It also provides for a limited number of sanctions for those Councillors found to have broken the code whilst on duty. Without changes in primary legislation it does

not present as a means to cover situations such as a Councillor who commits a minor criminal offence whilst “off duty” for example. It is not relevant either to the way a councillor carries out their role as a councillor such as the frequency of meeting attendance.

#### **4. Legislation**

- 4.1 The Localism Act 2011 provides the framework for Councillor conduct matters. What is contained in the 2011 Act is a legal requirement to have a code of conduct and a process for investigating breaches of it. One then has to look at caselaw decided before the Local Government Act 2000, which introduced the original “standards framework” to see the kinds of sanctions such as censure that can be discerned as appropriate if a breach is found. Again this does not cover wider concepts of the quality of democratic representation or the broader idea of the image of public servants.
- 4.2 The other relevant legislation is the Local Government Act 1972. Section 80 provides that conviction of an offence by a serving councillor where imprisonment of not less than three months imprisonment has been passed would prevent them from remaining a councillor. Offences which attract fines or community sentences would not trigger this provision. Section 85 provides that a councillor who does not attend meetings for six months or more will cease to be a councillor. A sustained period of absence of less than six months or regular periods of absence of shorter periods would not trigger this provision.

#### **5. Analysis**

- 5.1 The broader standards expected of councillors by their constituents have arguably changed in the years since the 1972 Act was passed. Sentencing guidelines have changed in that period for both Magistrates and Crown Court cases. However the three month rule in section 80 has remained the same. A relatively serious case of assault or dishonesty could now attract a sentence lower than three months and that would not trigger the provision ceasing a councillor’s period of office.
- 5.2 The concept of the so called “right of recall” would supplement the relatively limited provisions that currently apply to elected councillors. Councillors may be aware that Kingston Council is seeking to introduce this provision to allow citizens to “sack” their serving local councillors for example if their attendance at Council meetings falls below 20%, if they are convicted of any crime attracting any prison sentence or if they move their residence outside of the Borough.
- 5.3 It is accepted that these measures would in essence be voluntary, if adopted, and would require primary legislation to be passed to be enforceable. This may however be a catalyst for the Government to consider primary legislation which is something that can be monitored.

## 6. Risk management

- 6.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

<b>Risk</b>	<b>Description</b>	<b>Action to avoid or mitigate risk</b>
Reputation	To introduce measures now that the Council cannot enforce would be premature and could lead to adverse publicity	The Monitoring Officer maintains a watching brief on national moves to introduce a right of recall through legislation

## 7. Financial and Legal Implications

- 7.1 This report contains no specific financial implications.
- 7.2 The legal implications are contained in the body of the report.

## 8. Recommendation

- 8.1 The Committee notes the current legal framework relevant to the conduct of councillors and instructs the Monitoring Officer to maintain a watching brief on national developments.

### **Background Papers:**

None

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