

By: Gary Cooke, Cabinet Member for Corporate and Democratic Services  
Geoff Wild, Director of Governance and Law

To: Standards Committee – 29 November 2013

Subject: Kent Code of Conduct for Members

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Summary: This report follows up the concerns expressed by the Committee at its last meeting relation to ‘anonymity’ and ‘confidentiality’

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## **1. Introduction**

- (1) At the Committee’s last meeting, when considering the operation of the Kent Code of Conduct for Elected Members (the Code) in the past year and some minor consequential amendments to the Code recommended by the Kent Secretaries, concerns were expressed over two provisions within the Code which it asked to be reviewed. These related to the ability of a complainant to:
  - (a) make a complaint anonymously; and
  - (b) maintain their confidentiality
- (2) The report also addresses a small anomaly raised by Mr George, the Independent Person, concerning the Code and the operational procedures.

## **2. Code of Conduct for Elected Members – Other Local Authorities**

- (1) The Code is operated by ten of the twelve Kent district councils and the Kent Fire and Rescue Service.
- (2) Following discussions at the last meeting, the opportunity has been taken to look at a number of other local authorities to see how they deal with the two provisions on which the Committee has expressed its concern.
- (3) The result is that none of Kent’s nearest neighbour authorities makes reference to confidentiality or anonymity within their Member Code of Conduct, but reference is made to these issues within the guidance notes and procedures for investigating complaints.
- (4) The Committee’s attention is particularly drawn to the Code provisions of Devon, Suffolk, West Sussex and Worcestershire County Councils:
  - (a) Devon

*“Anonymous complaints will be rejected unless the complainant requests confidentiality...The Monitoring Officer will also write to the*

*subject member with details of the complaint, the decision made and the reasons for the decision. The name of the complainant will be disclosed to the subject member unless confidentiality has been requested and the Monitoring Officer considers a request to be justified.”*

(b) Suffolk

*“In the interests of fairness and natural justice, we believe members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the details of your complaint unless you have good reason to believe that:*

- you have reasonable grounds for believing that you will be at risk of physical harm if your identity is disclosed; or*
- you are an officer who works closely with the subject member and have reasonable grounds for being afraid of suffering a disadvantage to your employment or of losing your job if your identity is disclosed; or*
- you suffer from a serious health condition and there are medical risks associated with your identity being disclosed.*

*Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Monitoring Officer will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.*

*However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.”*

(c) West Sussex

*“A member will usually be informed as to who has made an allegation against them. Exceptionally, however, the Assessment Sub-Committee may accede to a request for confidentiality by the person making the allegation. The sub-committee will consider any such request alongside its consideration of the substance of the allegation. In deciding whether to accede to the request, the sub-committee shall have regard to all relevant considerations including whether:*

- (a) the person making the allegation has a reasonable belief that they will be at risk of harm if their identity is disclosed;*
- (b) that person is an officer who has a reasonable belief that they will be adversely affected in their employment if their identity is disclosed;*

*(c) that person suffers from a serious medical condition (of which medical evidence has been provided) and there are medical risks associated with their identity being disclosed.*

*If the Assessment Sub-Committee decides that there are reasonable grounds for acceding to the request it will also consider whether it is possible to investigate the allegation without disclosing the identity of the person making it.*

*If the sub-committee refuses to accede to the request, it may give the person making the allegation the opportunity to withdraw it unless the sub-committee concludes that the public interest in proceeding with the investigation outweighs the wishes of the person making the allegation to have their identity withheld.”*

(d) Worcestershire County Council

*“3.2 Except where he considers that it would be contrary to the public interest or would prejudice the ability of the Investigator to investigate the allegation, the Monitoring Officer will notify in writing the Member against whom the allegation is made, and the Chairman of the Committee:*

*3.2.1 that the allegation has been referred by him for investigation and determination by the Committee;*

*3.2.2 the identity of the person making the allegation (unless the Monitoring Officer agrees that identification of the complainant might prejudice the investigation, put the complainant at risk, or anonymity is in the public interest);*

*3.2.3 the conduct which is the subject of the allegation;*

*3.2.4 the section(s) of the Code of Conduct which appear to him to be relevant to the allegation;*

*3.2.5 the procedure which will be followed in respect of the allegation, and*

*3.2.6 the identity of the Investigator.*

*At the same time as notifying the Member, the Monitoring Officer will notify the person who made the allegation in writing of the matters set out in paragraphs 3.2.1 to 3.2.4 and 3.2.6 above.”*

### **3. Anonymity of Complainant and Confidentiality**

- (1) In light of the above, Members are asked to consider whether or not to remove the paragraphs from the Code relating to both anonymity and confidentiality.
- (2) Attached as an **Appendix** is a tracked change version of the Code and the procedures. These show the effect of removing the two paragraphs relating to anonymity and confidentiality from the procedures. They also reflect some minor changes to the Code recommended by the Kent Secretaries and the Independent Person (see paragraph 4, below).

- (3) The Committee is asked to consider the proposed changes and recommend the Code to the County Council on 12 December 2013.

#### **4. Anomaly identified by Mr M George – Independent Person.**

- (1) An alleged complaint of misconduct, which was referred to the Independent Person earlier this year, gave rise to Mr George drawing attention to a small anomaly in the Code and the operational procedures, which he felt was open to differing interpretation.
- (2) The anomaly is as follows. In the Code it says:

*"This code applies whenever you act in your capacity as a Member"*

Whereas in the operational procedures, on receipt of an alleged complaint, the Monitoring Officer first applies a legal jurisdiction criteria test, one of which refers to:

*"Was the person complained of acting in an official capacity at the time of the alleged conduct?"*

- (3) Mr George is of the opinion that "official capacity" suggests the undertaking of council business, whereas "act...as a Member" is much wider and, for instance, would include invoking the fact of being a Member in the course of non-council business.
- (4) We therefore recommend for clarity that in the code the word "official" is inserted in front of the word "capacity" in the Code.

#### **5. Recommendations**

The Committee is asked to recommend changes to the Kent Code of Conduct for Members for approval by the County Council on 12 December 2013.