

**Scrutiny – 17 December 2008**

## **REVIEW OF NEW PROCEDURES FOR STANDARDS INVESTIGATIONS**

### **Report of the Monitoring Officer**

**Statutory Powers:** Local Government Act 2000; Local Government and Public Involvement in Health Act 2007

**Financial Implications:** There are no financial implications in this report but the Monitoring Officer's budget of £9,200 may prove inadequate if there are a significant number of investigations in any year. This is being kept under review.

### **Purpose**

Since 8 May 2008, this Council has been responsible for dealing with complaints about the conduct of councillors in the South Hams area. The report is submitted following the request of the Committee for a review of the Council's new procedures for such investigations: minute SC.11/08 refers.

### **RECOMMENDATION**

**That Scrutiny RECOMMEND to the Executive to RECOMMEND to Council that**

- (1) the membership of the Standards Committee be increased by**
  - one more representative of parish or town councils (three in total) and**
  - one extra independent member (three in total)****whose terms of office should be staggered in order to provide continuity, and**
- (2) the Monitoring Officer be authorised to take all necessary steps to advertise for suitably qualified persons of good standing for appointment to these positions by Council.**

### **Background**

1. On 8 May 2008, local authorities' Standards Committees became responsible for dealing locally with conduct which hitherto had been dealt with by the Standards Board for England (SBE). New regulations were published (The Standards Committee (England) Regulations 2008) and the SBE has issued guidance to Monitoring Officers.

### **New procedures**

2. Prior to drafting the new regulations, the SBE had conducted a pilot scheme in a number of local authorities with a view to establishing robust procedures for local investigation of complaints. This Authority did not participate in the pilot scheme, but Teignbridge District Council did. As a result of that experience, and because the Legal Departments of Teignbridge, South Hams and West Devon Borough Councils

were moving towards a shared service, it was proposed that the three Authorities should establish similar and reciprocal standards complaints procedures. The Chairmen of all three Standards Committees agreed and the Monitoring Officers of the three Authorities have indeed implemented similar procedures. This Council's procedure is at Appendix A.

3. At the beginning of the new regime, members of the Standards Committee attended a very practical training course on complaints assessment run jointly for the members of the three Authorities sharing this process (East Devon DC also participated) and this has meant that they had a good grounding and a common approach.

4. There have been some teething troubles while everyone gets used to the new procedures but it manifestly has not impaired the quality of decision making. We have discovered one gap in the prescribed procedures: while it is necessary to tell the Clerk of the Parish Council that a Parish Councillor is complained about it appears not to be necessary to tell the County Solicitor that a County Councillor is being complained of. Since we have several "dual hatted" Members, we have informally written the latter requirement into our procedures. It does mean that we need to be clear about the nature of the complaint: was the member being complained about acting as a parish, district or county councillor?

5. The guidance issued by the SBE is both extensive and prescriptive, though not mandatory. We have deemed it sensible not to stray too far from what is recommended (since the guidance is based on the SBE's own tried and tested procedures) until experience shows us where improvements can be made.

## **Particular issues**

### **(1) Complaint form**

6. For example, the SBE have drafted a complaint form that complainants are recommended to use (this is attached as Appendix B). The form contains guidance on the complaints process and the sorts of issues that complainants might want to consider, such as whether they wish to claim confidentiality. It has been published on the Council's website and complainants who write in without using it have been asked to resubmit their complaint using the form, because it ensures that they submit all the information that is needed for assessment. This has screened out one or two complaints where people evidently didn't want to make it that formal.

7. The Monitoring Officer feels that the form is not well designed; there is too little space for people to write in full details of their complaint, and their submissions are hard to distinguish from the guidance. As a result people frequently summarise their complaint very shortly ("See attached") and append voluminous correspondence, with or without a covering letter, to the form when submitting. The form does not encourage complainants to set out their complaint in terms of the Code of Conduct and sometimes the Assessment Sub Committee has been rather puzzled about what the complaint really concerns. The Monitoring Officer has asked the Drawing Office to look at re-designing the form so that it is easier for both complainants and the Assessment Sub Committee to use.

## **(2) New complaint process**

8. When a complaint is received it is examined by the Monitoring Officer and referred to the next available Agenda of the Standards (Assessment) Sub Committee. The Assessment Sub Committee can be as few as three members but in practice so far all five members of the Standards Committee have sat on all cases, meeting in July, September and October<sup>1</sup>, and this has certainly enabled them all to gain some experience in the assessment process.

9. The procedure is that the Assessment Sub-Committee considers what is submitted by the complainant and decides what to do; they may

- Refer the matter to the Monitoring Officer for investigation,
- Refer the matter to the Monitoring Officer for some other action (e.g. to arrange training),
- Refer the matter to the SBE for investigation (in more serious cases), or
- Decide that no further action be taken.

If they decide that no further action be taken, the complainant has a right to ask for that decision to be reviewed. This is done reciprocally, in that we can ask either the Review Sub-Committees of West Devon BC or Teignbridge DC to carry out the review stage so that it is completely independent. So far (see below) WD BC have reviewed two of our cases. Neither SHDC nor TDC have carried out any other reviews.

10. If a complaint is investigated, a person is appointed to conduct it on behalf of the Monitoring Officer and report back. The report of the investigation may be referred to the Standards Committee who will, depending upon the outcome, decide whether or not there should be a hearing, at which the member complained about can put their side of the case before the complaint is determined and (if appropriate) a sanction applied. The possible actions might be censure, referral for training or suspension from office for up to six months.

## **(3) Complaints so far**

11. To date eight complaints have been through the assessment process. Four have been referred for investigation but it was decided that no action should be taken on the others. By way of comparison, Teignbridge DC has received not a single complaint and West Devon BC has received only one. West Devon has conducted two reviews of South Hams complaints (neither was upheld).

12. The complaints dealt with at South Hams are summarised in this table:

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<sup>1</sup> November's and December's scheduled meetings were cancelled for lack of business.

DATE	NO.	AUTHORITY	ASSESSMENT	REVIEW	FINAL DECISION	DATE
11.6.08	SH 1	DC	No breach	-	No breach	22.7.08
16.6.08	SH2	PC	Refer to MO for investigation	-	Awaited	
18.6.08	SH3	PC	Refer to MO for investigation	-	Awaited	
18.6.08	SH3A	DC	No breach	WDBC	No breach	18.9.08
17.7.08	SH4	DC	Refer to MO for investigation	-	Awaited	
24.7.08	SH5	PC	No breach			9.9.08
24.7.08	SH5A	DC	No breach	WDBC	No breach	13.11.08
24.7.08	SH6	PCC	Refer to MO for investigation	-	Awaited	

The complaints SH 3/3A and SH 5/5A were made against councillors without it being clear whether they were alleged to be acting in their capacities as District or Parish Councillors, so they were separately considered.

#### (4) Investigations

13. The four complaints that have been referred for investigation concern one member of the District Council and three parish councillors (all from different parishes). Two of the investigations are being conducted by members of the Monitoring Officer's staff but because each investigation takes time<sup>2</sup>, and the officers concerned have other duties, two investigations have had to be referred to an external investigator. Naturally he makes a charge for conducting the investigation and although his charges are reasonable they are a call on the Monitoring Officer's budget which may start to show the strain, should there be a large number of investigations. At the moment it is not overspent but this is being kept under careful review.

14. In two of the four cases where a decision was made to take no further action, the complainants have exercised their rights to have the decision reviewed. Under the reciprocal agreement with our neighbouring Councils the reviews have been carried out by West Devon Borough Council, which was better placed to take the applications at the time the request was made (there is no procedure for selecting which Council will carry out the review and the Teignbridge members were conflicted out). In both the South Hams decision was upheld. This has made the South Hams Assessment Sub-Committee more confident. So far it has not been necessary for this Council to take any cases on review from either of our neighbours.

<sup>2</sup>

E.g. SH4, nearing completion, has taken 45 hours so far at a cost of about £1000 in officer time

## **(5) Membership of the Standards Committee**

15. The processes and procedures that we set up were approved on a trial basis, the Standards Committee taking the view that if anything patently did not work, we could make adjustments as experience dictated. The most critical area where adjustments need to be made is in the number of members of the Standards Committee.

16. Currently the Committee consists of five people: two independent Members, one of whom is the Chairman, two District Council Members and one Parish Council representative. There is one vacancy for a Parish Council representative which we have hitherto been unable to fill. We were aware at the start of the new complaints management process that these numbers might be insufficient (the recommended complement is three independent members, two Councillors and two or three Parish Council representatives).

### Parish council representatives

17. The foreseeable difficulty was what might happen should there be a complaint about Ivybridge Parish Council, because the Parish Council representative is a member of that Council and clearly would not be able to sit where a fellow Councillor was involved (if there is a complaint about a Parish Councillor, it is essential that there is a Parish Council representative on the Committee or Sub Committee considering the case).

18. The Standards Committee Regulations require that there are at least two parish council representatives on a Standards Committee and the SBE has written to ask the Council to correct the present position. Council must be requested to agree to increase the Standards Committee membership by filling the vacant seat and creating another for an additional town or parish council representative (though not from Ivybridge) and making the necessary appointments in due course.

### Independent Members

19. We are in the minority of Councils in having only two Independent Members. We arranged that we might "borrow" an independent member from either West Devon or Teignbridge if the need arose because of a member's unavailability or conflict of interest (which so far it has not). However, the Chairman feels that if there are to be three Town/Parish Councillors and two District Councillors on the Committee there would be an inappropriate balance between councillors and independent members (5:2), which might open the Committee to adverse comment in a high-profile case; and that therefore a third Independent Member's seat should be created.

20. The Chairman is also concerned that, should this proposal be accepted, then for the sake of continuity the Council should be looking at appointing additional members for a term which is not co-extensive with the existing members'. Independent Members are appointed for four years. The Chairman was re-appointed in 2007 and the other, Mr Allison, was appointed to his first term in 2007. The Chairman has not yet decided whether he would wish to seek a second re-appointment at the end of his current tenure. He and the Monitoring Officer agree that it would be sensible to increase the number of Independent Members on the Committee to three, with a new person appointed for a four year period which would overlap with the current

Members' periods of tenure so as to afford continuity. Council should be recommended to consider expanding the Committee in this way.

21. West Devon Borough Council is organising training for Standards Committee members in February and it would be intended, if approved, to interview and appoint suitable candidates in time for them to attend training then.

#### Position of District Councillors

22. One of the District Councillors has queried their position when a complaint to be heard is about a fellow district councillor and whether they should or could declare an interest and decline to sit. The Monitoring Officer has advised that the legislation is framed in such a way that there must be district councillors on the Standards Committee, so membership of the same council on its own will not amount to a personal interest so as to require a member to withdraw. Members have called for guidance on when they might have an interest such that they should decline to sit to hear a complaint and this is being prepared.

#### **Conclusion**

23. Generally the procedures are working well. The reciprocal arrangements for reviews appear to be working well but as none of the cases referred for investigation has been concluded yet, it is still too early to comment on the process as a whole (for example, whether everything takes too long). These and other matters, particularly the budget implications of outsourcing investigative work, and the impact on officers' workloads, are being kept under review.

Delyth Jenkins Evans  
Monitoring Officer

Scrutiny  
17 December 2008

#### **Background Documents:**

The Standards Committee (England) Regulations 2008

SBE Guidance to Monitoring Officers (SBE, 2008)

Report to and minute 11/08 of the Scrutiny Committee, 24<sup>th</sup> July 2008

SHDC procedures for making complaints against members (SHDC website, [http://www.southhams.gov.uk/index/council\\_index/ksp-complaints\\_suggestions-3/localcodeconduct-complaintsprocess.htm](http://www.southhams.gov.uk/index/council_index/ksp-complaints_suggestions-3/localcodeconduct-complaintsprocess.htm) )

Reports of investigations and notes of meetings of the Assessment sub-Committee are not required to be made available to members of the public by virtue of the Standards Committee Regulations 2008