

STANDARDS COMMITTEE: 28 May 2008

THE NEW PROCESS FOR DEALING WITH COMPLAINTS ABOUT MEMBERS

Report of Deputy Monitoring Officer

Statutory Powers: Local Government Act 2000; Local Government and Public Involvement in Health Act, 2007; the Standards Committee (England) Regulations 2008

Financial Implications: It is not possible to quantify the financial implications at this early stage. We will need to provide training for members of the Standards Committee in the new procedures and this can be accommodated within existing budgets. The proposal for reciprocal review arrangements is considered likely to impose no more than marginal additional cost which would also be accommodated within existing budgets. However the newly imposed requirement for the Monitoring Officer to carry out investigations into complaints about members of the district, town and parish councils will depend entirely upon the number and complexity of the complaints made, which it is impossible to foretell.

Purpose

The report seeks to inform members about the new procedures for investigation of complaints against local councillors and the consequent amendments that have to be made to this Council's processes. In order to deal with its statutory duties under the new legislation, the Standards Committee needs to:

- Appoint at least two sub-committees for assessment and review, or three if a sub-committee is carry out the hearing function
- Ensure that the Standards Committee has enough members to deal with the new functions.

There is a link to Council Priority **CP5** – an Accessible Council: working with others to improve access to key services; but these procedures are mandatory.

RECOMMENDATIONS

(1) That the Standards Committee RESOLVES to appoint:

- a) An Assessment Sub-Committee comprising a minimum of three members drawn from members of the Standards Committee including an Independent Member as Chairman and a Parish Representative if the matter relates to a parish or town council with the functions outlined in the report;**
- b) a Review Sub-Committee comprising a minimum of three members drawn from members of the Standards Committee including an Independent Member as Chairman and a Parish Representative if the matter relates to a parish or town council with the functions outlined in the report, and to approve the provisional list of dates for meetings;**

- (2) That the Standards Committee **RESOLVES TO RECOMMEND** to Council that it:
- a) accepts and adopts the proposal for joint and reciprocal carrying out of the review function for complaints against members with Teignbridge District and West Devon Borough Councils;
 - b) delegates to the Standards Committee the function of reviewing assessment decisions taken by the Standards Committees or sub-committees of Teignbridge District and West Devon Borough Councils; and
 - c) authorises the Standards Committee to refer to Teignbridge District or West Devon Borough Councils the function of reviewing assessment decisions taken by the South Hams Standards Assessment Sub-Committee
 - d) authorise the Head of Corporate Services to amend the Constitution to reflect these arrangements.
- (3) That the Standards Committee **RESOLVES** to authorise the Deputy Monitoring Officer, in consultation with the Chairman, to recruit and co-opt up to two additional independent members for this Committee from the membership of the Standards Committees of Teignbridge District and West Devon Borough Councils and that Council be asked to endorse the reciprocal arrangements for the review function on a joint basis.

Background:

1. Until recently the responsibility for investigation of allegations of breaches by councillors of the code of conduct lay with the Standards Board for England. From 8 May 2008, local authority Standards Committees have been given that responsibility.
2. To summarise briefly, the Standards Committee's new duties now comprise:
 - Assessing complaints to decide whether or not to refer to the Monitoring Officer for investigation
 - Reviewing an initial decision not to refer for investigation if the Complainant so requests
 - Carrying out a hearing following an investigation to determine whether the Code has been broken, and if so to consider what, if any, sanctions should be imposed.

The first two of these duties are brand new. Members will be familiar with the third. The other functions set out in s.54 of the Local Government Act 2000, including promoting the Code of Conduct and assisting Members to comply with it, continue. The Monitoring Officer's role in conducting investigations and then reporting, possibly for a hearing, to the Standards Committee will not be different, but given that all complaints will now be investigated locally instead of by Ethical Standards Officers employed by the Standards Board for England, the workload is anticipated to increase.

The Issues:

(1) The structure of the Standards Committee

3. The Standards Committee (England) Regulations 2008 (“the Regulations”) require the Standards Committee to set up two sub-committees to undertake respectively the functions of receiving and assessing complaints and reviewing initial assessment decisions.
4. To avoid perceptions of bias or predetermination, members carrying out a local assessment decision cannot be involved in a review of the same decision, should one be requested and therefore the two sub-committees must have entirely different membership.
5. The Standards Committee can also, if it wishes, set up a third sub-committee to deal with the remaining main function of conducting hearings following investigations; or, it may use the initial (assessing) sub-committee, or the full Standards Committee for hearings.
6. The South Hams Standards Committee comprises five people: two elected members, two independent members one of whom is the Chairman and one co-opted member representing parish and town councils. Assessment and review sub-committees must each have at least three members, including a parish/town council representative when parish/town council complaints are being considered, and be chaired by an independent member. Members will immediately note the arithmetical problem. The solution could be to increase the size of the Committee by recruiting at least one more independent member, or another parish/town council representative, or both. However we have looked at an alternative.
7. On 4 March, the independent Chairmen of the Standards Committees of this Council, Teignbridge District and West Devon Borough Councils met with their respective monitoring officers to discuss the new procedures, then in draft. As the three councils’ legal services (headed by the monitoring officers) are contemplating sharing services, it made sense to explore shared working of the standards procedures too.
8. There are two ways in which this may happen. The first is this: the Regulations allow an authority to co-opt independent members from another relevant authority to the Standards Committee. Doing this will help not only in cases where numbers are insufficient, but also where existing members may have a conflict of interest in the subject of the complaint barring them from taking part. We therefore propose that this Council should co-opt up to two independent members from the neighbouring partner authorities to sit on the South Hams Standards Committee when the need arises. (Note that we cannot co-opt parish/town members because they must be from our area). Since the arrangements are reciprocal, it will mean that the independent members from the South Hams Standards Committee will be invited to be co-opted on to the Standards Committee or either (or both) of the partner authorities. That is entirely a matter of personal choice.

9. The second way is through direct joint working. We had hoped to be able to implement the proposals for joint working with other authorities (the Regulations were fully expected to deal with this; indeed the Standards Board ran joint working pilot schemes last year and consulted on joint working earlier this year) but the Government has deferred the issue of additional Regulations which will govern this. However, it is lawful for authorities to arrange jointly for the discharge of functions under s. 101 of the Local Government Act 1972. Accordingly the monitoring officers of all three Councils are proposing to each of them that the review function be carried out jointly and reciprocally: see paragraph 13 below.
10. It is therefore recommended that members authorise the Deputy Monitoring Officer, in consultation with the Chairman, to recruit and co-opt up to two additional independent members for this Committee from the membership of the Standards Committees of Teignbridge District and West Devon Borough Councils and that Council be asked to endorse the reciprocal arrangements for the review function on a joint basis.

(2) Establishment of sub-committees

11. Under the law and this authority's Constitution, it is for the Standards Committee to appoint its own sub-committees. They can be set up either with specific members appointed or drawn up as necessary (and subject to availability and absence of conflict) from the pool of Standards Committee members.
12. The sub-committees which the Standards Committee must set up are as follows:

12.1 **Assessment Sub-Committee:** responsible for assessing complaints that a Member may have breached the Code. This sub-committee will need to consist of no less than three members, including a parish/town representative where the complaint concerns a parish or town councillor, and must be chaired by an independent member. It is strongly recommended that this sub-committee be drawn from the pool of Standards Committee members, including any co-optees, in order to ensure confidence that sufficient people within the required categories are available, none of whom is "conflicted out" of considering any item before them.

12.2 **Review Sub-Committee:** responsible for dealing with a request from a complainant to review of the decision of the Assessment sub-committee, where it decides to take no further action on the complaint. The Regulations provide that this sub-committee must also be chaired by an independent Member and consist, like the Assessment sub-committee, of at least three members (including the Independent Chairman, one local authority member and a Parish Representative if the matter relates to a town or parish council). Again and for the same reasons it is strongly recommended that this Committee is drawn from the pool of the Standards Committee, including any co-optees.

12.3 Members may wish to note that the process of assessing and reviewing complaints is intended to be a paper exercise, carried out without the press and public being present and without any oral representations being made. That stage comes later, if a complaint is referred for investigation. The

preliminary stage is merely a sifting process and no judgment as to the merits of the case, except as to whether it deserves investigation, will be required.

12.4 We anticipate that because there are time limits for the assessment and determination of complaints, it will be necessary to schedule meetings of the Assessment Sub-Committee so they are in Members' diaries. The provisional dates are:

Monday 2 June 2008	Monday 1 December 2008
Monday 30 June 2008	Monday 22 December 2008
Monday 28 July 2008	Monday 12 January 2009
Monday 1 September 2008	Monday 9 February 2009
Monday 29 September 2008	Monday 9 March 2009
Monday 20 October 2008	Monday 6 April 2009
Monday 10 November 2008	

13. The discussion concerning joint working contemplated the Review stage being carried out by a sub-committee of the Standards Committee of one of the other authorities. This would both achieve total independence within the review process, and reduce (though probably not altogether remove) the immediate need to enlarge the Standards Committee in this Council. The reciprocal arrangements would of course mean that we would have to have the means of performing the review process for our neighbours, when called upon, but because of the absence of risk of conflict, could contemplate a single sub-committee which could deal on one agenda with, in part A, South Hams matters; and in part B, with reviews.
14. To a certain extent we will have to see how matters progress. Much may depend upon the volume and complexity of complaints submitted; but it is suggested that we do provide now for a Review Sub-Committee, composed as indicated above, to be convened with members drawn from the pool of membership, if the need arises.
15. The Committee may set up a sub-committee to deal with receiving reports following a formal investigation and to carry out hearings (a Hearings Sub-Committee). The composition would be as above, namely up to three members including a parish representative for any case involving a parish or town council, and chaired by an Independent Member. There is merit in having a small sub-committee to deal with what are quasi-judicial matters but prescribing the minimum number of members of the sub-committee does not of course preclude more members sitting on the sub-committee, if that is what the Committee generally wishes. The advantage of doing so would be that members gain more experience in dealing with this stage of complaints. The disadvantage is likely to be the call on members' time.
14. The Deputy Monitoring Officer considers that at this early stage, when we don't know how many cases we will get, how long they will take, or the likely call on members' time, it may be premature to set up a hearings sub-committee; but we can keep that option under review and if members are minded to pursue it, now or at any future stage, address its creation and appointments to it. It would as before be officers' recommendation that membership be drawn from a pool of members of the Standards Committee.

15. It is therefore recommended that an Assessment Sub-Committee and a Review Sub-Committee be established in the above terms but that a Hearings Sub-Committee be not established for the time being.

(3) Training

16. It will be essential that Members receive appropriate training particularly with regard to undertaking the initial assessment process. The same principles will apply to reviews. Arrangements are being made to provide training as soon as possible (we are looking at a date of 12th June for formal training with a reserve date if that is difficult for members). We propose to provide that training jointly with other authorities in order to keep the costs down, as well as providing an opportunity to exchange knowledge and ideas.
17. As a preliminary Members are invited to read through the examples of (fictitious) complaints prepared for the pilot schemes, which are appended, and which we will go through as part of the preparation in an informal session after the meeting.

Risk Assessment

The following are the significant risks and opportunities identified:

Opportunity	Issues / Obstacles	Benefits
<p>Local control of the complaints process</p> <p>Development of networking and sharing of skills with members and officers in partner authorities</p> <p>More work for Standards Committee members</p>	<p>Some loss of efficiency as new procedures are developed and bedded in</p> <p>Prospect of unpredictably increased workload and cost for Monitoring Officer and staff</p>	<p>Consistency of approach to standards of behaviour and local determination</p> <p>Better decision-making</p>

Conclusion

It is regrettable that these new processes have been introduced in some haste but the prospects for local determination provide an enhanced number of opportunities for genuinely local management and judgment of members' conduct by their peers.

Delyth Jenkins Evans
Deputy Monitoring Officer

Standards Committee
 28 May 2008

Background Documents:

Local Government Act 2000; Local Government and Public Involvement in Health Act, 2007; the Standards Committee (England) Regulations 2008, all available from the Office of Public Sector Information

Guidance from the Standards Board for England: www.standardsboard.gov.uk