

STANDARDS COMMITTEE AGENDA



Tuesday 28 July 2009

at 4.00 p.m.

**in Committee Room B,
Civic Centre, Hartlepool**

MEMBERS: STANDARDS COMMITTEE:

Councillors Coward, Fleet, Lauderdale, Preece, Shaw, Simmons and Turner.

Co-opted Members: Barry Gray, Ted Jackson.

Parish Councillor Ray Gilbert, Elwick Parish Council, Alan Bell, Hart Parish Council.

- 1. APOLOGIES FOR ABSENCE**
- 2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
- 3. MINUTES**
 - 3.1 To confirm the minutes of the meeting held on 28 April 2009
- 4. ITEMS FOR DECISION / INFORMATION**
 - 4.1 Business Report – *Chief Solicitor* (To Follow)

STANDARDS COMMITTEE

MINUTES AND DECISION RECORD

28 APRIL 2009

The meeting commenced at 4.00 p.m. in the Civic Centre, Hartlepool

Present:

Mr B Gray (In the Chair)

Councillors: Coward, Lauderdale, Preece, Shaw, Sutheran and Wright.

Co-opted Member: E Jackson.

Parish Councillors: Bell and Gilbert.

40. Apologies for Absence

None.

41. Declarations of interest by members

None.

42. Confirmation of the minutes of the meeting held on 17 March 2009

Confirmed.

The Chief Solicitor informed the Committee that Planning Committee had established a Working Group to consider the Planning Code of Conduct (Minute 37 refers).

43. The Code of Conduct – An Overview *(Chief Solicitor)*

The Chief Solicitor gave a presentation to the Committee setting out the background to the model code of conduct, Standards Committees, The Standards Board for England and the Adjudication Panel for England. The presentation highlighted the appropriate legislation and the main functions of the bodies and committees. The presentation went to outline the ten principles of conduct in local government, how the code was applied, members' obligations and personal and prejudicial interests. The Chief Solicitor concluded the presentation by setting out how Local Assessment Determinations were undertaken and code of conduct complaints resolved

together with the sanctions available.

In the debate following the presentation, Members discussed the application of the code of conduct to those people that were not councillors but regular attendees of council meetings, such as co-opted members and resident representatives. The Chief Solicitor clarified that the code of conduct applied to 'elected members' which included Parish Councillors. Resident Representatives were essentially 'privileged' members of the public that had to have regard to the general principles of the code of conduct. Members questioned how such individual could be 'disciplined' for breaches of the code of conduct. The Chief Solicitor indicated that they could simply be removed from the position they held.

Decision

That the presentation be noted and utilised where possible in future Members training.

44. Maintaining Members' Register of Interests Electronically *(Chief Solicitor)*

The Chief Solicitor reported that as part of the ethical framework provisions, Members are required to maintain a Register of Interests and also a register relating to gifts and hospitality over a prescribed amount (currently £25). Notification of the changes to those registers must be made to the Monitoring Officer, within 28 days of a Member taking office, or alternatively within 28 days of such a change taking place. At present, these registers are maintained in a "hard copy" format although, increasingly local authorities are moving towards such information being available through electronic means, as part of the promotion and demonstration of the values of good governance.

The Chief Solicitor had written to all Members of the Authority to seek their views as to the Register of Interests being made available electronically. As a caveat, it should be noted, that particularly "sensitive" information can be exempt from the inclusion within a Register of Interest, provided that such information is brought to the attention of the Council's Monitoring Officer who has agreed to such a request. It was for the individual Member to decide which information should be included upon their own particular Register of Interests as well as that relating to gifts and hospitality. This matter had been raised previously under an item of Any Other Business at the Committee.

The Chief Solicitor indicated that a number of neighbouring local authorities already made members' register of interests available through their internet sites. Members queried if there was much interest shown by the public in the current paper records and were informed that there had only been one in the last two years. Comments to the Chief Solicitor's letter had been received from a number of Members. Some were concerned at security around displaying signatures etc. and only one had indicated their opposition to the proposal. After a short debate, the Committee indicated its support for the proposal as long as the appropriate safeguards were included. The Chief Solicitor stated that a report would be made to a future meeting of the Council

seeking approval to the proposal.

Decision

That a report be submitted to Council with a recommendation that details of Members Register of Interests and Gifts and Hospitality be made available, through electronic means.

45. Parish Council Representation – Standards Committee (*Chief Solicitor*)

The Chief Solicitor reported that at the last meeting of the Standards Committee, it was intimated that further consideration should be given to the term of office of the Parish Council representatives. It was recognised, that Members of the Standards Committee were increasingly involved, through the local assessment and determination process, with relatively complex and often difficult cases where an area of expertise is required. It was also considered appropriate that there should be some resolution as to the overall term of appointment of Parish Council representatives.

The Chief Solicitor had, therefore, canvassed opinions from the five Parish Councils established within the Borough. Independent Members of the Committee are appointed for a four year term but there was more regularity over the appointment of the other Members of the Committee. Whilst this had discernable benefits of allowing individuals to be incorporated within the ethical framework structure, it needed to be counterbalanced against the potential loss of experience of Members who have undertaken relevant training and gained experience within this framework. It was also a consideration as to whether Parish Council representatives should appoint “substitutes” given the small number of Parish Councils operating within the Borough, which could present the potential for a conflict of interest (potential or otherwise) in dealing with Parish Council matters through the local assessment and determination process.

The Chief Solicitor also indicated that the Committee may also wish to consider whether the number of Parish Council representatives should be increased from the present composition of two to three, either in addition to, or as an alternative to the use of substitutes.

Members considered the issue and after debate suggested that appointing a third Parish Councillor would be an appropriate course of action. Members were concerned, however, to ensure that Members experience was not lost too readily and supported some form of rotational appointment to ensure that not all three parish councillors were subject to reappointment at the same time.

Decision

That a report be submitted to Council seeking the appointment of a third Parish Councillor to the Committee.

46. Good Practice: Standards Committees (*Chief Solicitor*)

The Chief Solicitor reported that the Standards Board for England had announced that from a total of twenty-two entries, Rossendale Borough Council had been chosen as “winners” for the LGC Standards and Ethics Award. There were a total six authorities who were shortlisted “for their dynamic approach to improving and promoting ethical standards amongst Members and helping to boost public confidence in local democracy”. The Chief Solicitor set out in his report the main “themes” wherein ideas and innovations had been used by the six shortlisted authorities to achieve and maintain high ethical standards and from which good practice can be developed.

Decision

That the report be noted.

47. 2009 Assembly of Standards Committees (*Chief Solicitor*)

The Chief Solicitor reported that this year’s Annual Assembly of Standards Committees organised through the Standards Board for England would take place over the period 12th-13th October, 2009 at the ICC in Birmingham and sought interest from Members to attend the conference. Members were requested to inform the Democratic Services Team if they wished to attend.

Decision

That the report be noted.

48. Quarterly Returns to The Standards Board for England (*Chief Solicitor*)

As Members may be aware, there is a requirement for the submission of quarterly returns to the Standards Board for England (in addition to the supply of an “annual return”- which is pending). In the period 8th May through to the 31st December, 2008, a majority of the authorities provided this information, with the exception of Stafford Borough Council and Surrey Heath Borough Council.

Over the period 8th May to the 31st December, 2008 Monitoring Officers reported a total of 2030 cases being received in this period. The sources of these complaints are broken down as follows: Member – 696; Public – 1130; Other – 71; Council Officer – 76; Parish/Town Clerk – 57.

Of these complaints, a decision to refer, for investigation purposes, had not been made in 179 cases (9%), with a breakdown for the remaining 1851 cases being as follows:

Referred to another authority – 2
Referred to Standards Board – 104
Referred to MO for alternative measures – 250

Referred to MO for an investigation – 524
No further action - 971

The average length of time a case takes from the date of receipt to a referred decision was 20 working days. However, 545 cases (29%) took longer than 20 days for a referral decision to be made. In the period in question, 344 requests for reviews of decisions had been made. In essence, a review was being requested in 35% of cases where the initial assessment decision was not to take the complaint any further.

Of those cases which preceded towards an investigation 94 cases had reached an outcome as follows:

No breach of the code – 78%
Breach with penalty – 19%
Breach but no further action – 3%

The majority of the complaints related to alleged breaches of failing to declare a personal and/or prejudicial interest, failing to treat others with respect and engaging in conduct which could reasonably be regarded as bringing the office of a Member of the authority into disrepute.

The Chief Solicitor reported that since 8 May 2008, Hartlepool had had three complaints with reports of no failure. Presently, there were four complaints relating to a Parish Council. An Assessment Sub Committee had considered these complaints and three had been referred to the Monitoring Officer for investigation and one was for no further action, though a review had been requested. There were also three complaints relating to Councillors and these were to be considered by an Assessment Sub Committee shortly. There was also one further complaint that was currently incomplete.

Decision

That the report be noted.

The meeting concluded at 5.20 p.m.

CHAIRMAN

STANDARDS COMMITTEE

28 July 2009



Report of: Chief Solicitor

Subject: Business Report

1. MONITORING OFFICER PROTOCOL

- 1.1 Since the introduction of the Local Assessment and Determination Procedures in May, 2008, the Standards Committee have continued to develop its practices and procedures in this area of maintaining high ethical standards within the Authority. Not least, the development of the “Assessment Criteria” as being fundamental in the operation of the Local Assessment Procedure process and how it should operate.
- 1.2 It is now considered appropriate that Members consider in unison with the Assessment Criteria and other applicable guidance as issued through the Standards Committee, a Monitoring Officer Protocol to cover the initial assessment of standards complaints. Accordingly, appended herewith is a Draft Protocol for the consideration of the Committee and attention is drawn to the area of “local resolutions” as mentioned within paragraph 3 of that draft document. Members are therefore asked to consider the attached “Monitoring Officer Protocol” as supplied herewith (**Appendix 1**).

2. THE STANDARDS COMMITTEE (FURTHER PROVISIONS) (ENGLAND) REGULATIONS, 2009

2.1. BACKGROUND

- 2.1.1 The Standards Committee (Further Provisions) (England) Regulations, 2009 came into force on 15th June, 2009 and makes various provisions in relation to intervention by the Standards Board for England, the creation of Joint Standards Committee and clarification upon Members dispensations.
- 2.1.2 The Regulations, enable the Standards Board for England to suspend a Local Authority Standards Committee's power to undertake the initial assessments of an allegation that a Member or a co-opted Member has failed to comply with the Authority's Code of Conduct. Further, the Regulations also make provision to enable two or more Local Authority's to

establish a Joint Standards Committee to exercise functions under Part 3 of the Local Government Act, 2000 and Part 1 of the Local Government and Housing Act, 1989. The Regulations also revoke the relevant Authority (Standards Committees) (Dispensations) Regulations, 2002 and replace them with new provisions, which prescribe and clarify the circumstances in which a Standards Committee may grant dispensation to Members or co-opted Members who otherwise be prohibited from engaging in the business of the Authority.

2.2. SUSPENSION OF STANDARD COMMITTEE FUNCTIONS

2.2.1 As Members of the Committee will be aware, the initial assessment of complaints that a Member or co-opted Member may have breached the Code of Conduct was effectively transferred from the Standards Board for England to the Local Standards Committee, through the local assessment and determination regime, on 8th May, 2008. The Standards Committee (England) Regulations, 2008, make provision in relation to how Standards Committees can deal with misconduct allegations as well as the size and composition of the Committee and Sub-Committees of the Standards Committee, the validity of their proceedings and the various powers, procedures and requirements in relation thereto. The Standards Committee (Further Provisions) (England) Regulations, 2009 now provide a power for the Standards Board to intervene in an individual Authority, if they believe the same action is warranted.

2.2.2 Accordingly, an intervention can be triggered where it is the view that the Authority's Standards Committee has failed;

- to have regard to the Standards Board for England guidance;
- to comply with the directions from Standards Board for England;
- to carry out its functions within a reasonable time or in a reasonable manner.

2.2.3 Further, an intervention can also be triggered where the Standards Board are of the view that the Authority's Monitoring Officer has failed to carry out his/her functions within a reasonable time or in a reasonable manner or the Authority or the Standards Committee has requested the Standards Board to intervene.

2.2.4 Clearly, the Standards Board's decision on whether to suspend a Standards Committee's initial assessment functions will be taken on a case by case basis and will relate through information about the standards of performance of the Standards Committee and its Monitoring Officer. Where the Standards Board considers intervention, it must give the Authority notice of its intentions and reasons and give the Authority at least 28 days to respond before making a direction. The effect of such a direction is to transfer the initial assessment function to either the Standards Board itself, or to the Standards Committee of another named Authority.

- 2.2.5 During the period of any intervention, the Standards Board, or the Standards Committee of the other named Authority, would undertake the initial assessment and review of a complaint in precisely the same manner as the original Authority. Consequently, there can be reference of an allegation for a local or a Standards Board investigation, or that of alternative action falling short of an investigation, or no action should be initiated, as appropriate. It should be noted, that the intervention will be strictly related to initial assessment functions. The Regulations also provide a discretion to the Standards Board to use their own investigators and the Adjudication Panel's hearing or alternatively, the other "substitute" Authority to use its own Monitoring Officer and Sub-Committee structure. Alternatively, reference could be made to the Monitoring Officer of the original Authority, if that is deemed appropriate. For the avoidance of doubt, such an intervention by Standards Board can be terminated at any time.

2.3. JOINT STANDARDS COMMITTEES

- 2.3.1 The Regulations provide a discretion for two or more Local Authorities to set up a Joint Standards Committee, to discharge all of each of the participating Authorities standards functions, or some of those functions, that each Authority retains its own Standards Committees to discharge those standards functions which have not been allocated to the Joint Committee. In the explanatory memorandum to the Regulations at para 7.18 it is indicated;

"In order to promote more effective ways of working locally, the Government believes that two or more relevant Authorities should be able to establish a Joint Standards Committee to exercise their functions under the devolved conduct regime, which might, for instance, allow for more efficient use of common resources and aid the sharing of information, expertise, advice and experience".

- 2.3.2 Where a function has been allocated to a Joint Standards Committee, an Authority Standards Committee do not thereafter discharge those functions, so allocated.
- 2.3.3 Where Authorities desire to establish a Joint Standards Committee then each respective participating Authority would need to resolve to establish such a Joint Committee and to agree the terms of reference thereof. Such terms of reference would need to be notified to the Standards Board for England and must;
- identify the functions which are to be discharged by the Joint Standards Committee;
 - Make provision for the administrative arrangements of the Joint Standards Committee, such as the procedures for conducting meeting, a protocol setting out the role of each Authority's Monitoring Officer and the financial arrangements adopted by the Joint Standards Committee;

- specify for each Authority involved in Joint Standards Committee the body which is to be regarded as the Standards Committee to which written allegations under Section 57(A)(1) of the 2000 Act, should be sent;
- specify the number of Members to be appointed to the Joint Standards Committee by the Authorities establishing the Committee and the terms of office of those Members, and make provision for the appointment of Members to Sub-Committees of the Joint Standards Committee;
- specify the provisions, if any, regarding the payment of allowance for Members of Joint Standards Committees;
- make provision within the procedures for an Authority to withdraw from the Joint Standards Committee.

2.3.4 The Regulations also provide that expenses incurred by the Joint Standards Committee shall be defrayed amongst the participating Authorities, in such proportions as the Authorities agree. In the absence of agreement, expenses would then be defrayed as decided by a single arbitrator agreed by the participating Authorities.

2.4. DISPENSATIONS

2.4.1 The original 2002 Dispensation Regulations provided that a Member who had a prejudicial interest in a matter could apply to the Standards Committee for a dispensation, to allow that Member to speak and to vote on the matter at meetings. Although, these original Regulations provided two grounds for dispensation, the second ground which related to the proportionality requirements of Committees and Sub-Committees, related only to the actual appointment and not to attendance at individual meetings. Accordingly, the 2002 Regulations are revoked in regard to circumstances where a Standards Committee may grant a dispensation to a Member or a co-opted Member of an Authority, as follows;

- Where more than 50% of the Members who would, but for the granting of any dispensations in relation to that business, be entitled to vote at a meeting are prohibited from voting; or
- Where the number of Members are prohibited from voting at a meeting would, but for the granting of any dispensations in relation to that business, upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.

2.4.2 Although the 2009 Regulations restate the first ground, the second ground is now altered to cover the business of the Authority, where the same would be impeded because the absence of Members as a consequence of prejudicial interests would upset the political balance requirements to such an extent as to prejudice the outcome of voting at the meeting.

2.4.3 In order to obtain a dispensation a Member must submit a written request for a dispensation to his or her Authority's Standards Committee and that Committee must conclude having regard to the above circumstances, and all

other circumstances of the case, whether it is appropriate to grant a dispensation. The Regulations provide that the dispensation can only be granted in respect of business arising in a period of four years following the grant of the dispensation. Further, a dispensation cannot be granted to allow a Member of an Overview and Scrutiny Committee to participate in the scrutiny of a decision of another Committee in which he/she was involved or to allow an individual Member of the Executive of an Authority to exercise Executive functions solely. All dispensations are required to be recorded in relation to the Register of Members Interests.

2.5 RECOMMENDATIONS

2.5.1 That Members note this report.

2.5.2 That the Monitoring Officer advise all Members of the Authority of the new grounds for application for a dispensation and the procedure associated with such an application.

MONITORING OFFICER PROTOCOL –
INITIAL ASSESSMENT OF COMPLAINTS

**INSTRUCTIONS TO THE MONITORING OFFICER ON THE DISCHARGE OF
FUNCTIONS IN RELATION TO THE INITIAL ASSESSMENT AND REVIEW OF
ALLEGATIONS THAT A MEMBER OF THE AUTHORITY HAS FAILED TO
COMPLY WITH THE CODE OF CONDUCT**

1. RECEIPT OF ALLEGATIONS

- 1.1 The Monitoring Officer shall make necessary arrangements within the Authority to secure that any allegation made in writing that a Member or a co-opted Member of the Authority has or may have failed to comply with the Authority's Code of Conduct is referred to the Assessment Sub-Committee immediately upon receipt by the Authority.
- 1.2 The Monitoring Officer shall maintain a register of such allegations to ensure that the Authority can comply with its obligations under the relevant legislation.
- 1.3 Complaints shall only be entertained where they are submitted on the requisite "Complaint Form" (available on the Authority's website) and signed by the complainant. Further, that the Monitoring Officer is authorised to maintain the confidentiality of the identify of the complainant where and for so long as in his/her opinion that would be in the public interest.

2. NOTIFICATION OF RECEIPT OF ALLEGATIONS

- 2.1 All relevant allegations must be assessed through the Assessment Sub-Committee. It is recognised that the Monitoring Officer has no authority to deal with an allegation which appears to be an allegation of failure by a relevant Member or co-opted Member to observe the Code of Conduct other than by reporting it to the Assessment Sub-Committee. The Monitoring Officer shall therefore determine whether the allegation appears to be a substantive allegation of misconduct. Where it appears not to be, he/she shall ensure that the matter is dealt with under a more appropriate procedure, for example, a legal claim against the Authority or a complaint against an Officer of the Authority.
- 2.2 Following receipt of the allegation, and where the allegation does appear to be a complaint of misconduct against a relevant Member or co-opted Member, the Monitoring Officer will promptly, and in any case in advance of the relevant Sub-Committee meeting;
 - acknowledge to the complainant receipt of the allegation and that the allegation will be assessed by the Sub-Committee at its next convenient meeting¹
 - notify the Member against who the allegation is made of receipt of the complaint, together with a summary of the allegation and notification

4.1

Appendix 1

that the allegation will be assessed at the next convenient meeting of the Sub-Committee. However, where the Monitoring Officer is of the opinion that such a notification would be contrary to the public interest or would prejudice a person's ability to investigate the allegation, the Monitoring Officer shall consult with the Independent Chair of the Sub-Committee and may then decide that no such advance notification shall be given;

- collect such information as is readily available and would assist the Assessment Sub-Committee in its function of assessing the allegation;
- seek local resolution of the matter where practicable, in accordance with paragraph 3 below;
- place a report including a copy of the allegation, as to whether the allegation discloses an apparent failure to observe the Code of Conduct on the Agenda of the next convenient meeting of the Assessment Sub-Committee.

3. LOCAL RESOLUTION

- 3.1 Local resolution should not be seen as an alternative to reporting the allegation to the Assessment Sub-Committee, but could avoid the necessity of a formal local investigation.
- 3.2 Where the Monitoring Officer is of the opinion that there is the potential for local resolution, he/she shall approach the Member against whom the allegation has been made and ask whether that person is prepared to acknowledge that his/her conduct was inappropriate. Further, whether or not that individual will be prepared to offer an apology or undertake further appropriate remedial action. With the consent of the Member concerned, the Monitoring Officer may then approach the complainant and ask whether the complainant is satisfied by such an apology or other remedial action. The Monitoring Officer should then report to the Assessment Sub-Committee as required, and at the same time report the response of the Member concerned and of the complainant. The Assessment Sub-Committee will therefore be in a position to take into account such information, when considering whether the matter merits investigation, or not.

4. REVIEW OF DECISIONS NOT TO INVESTIGATE

- 4.1 Where the Assessment Sub-Committee has decided that no action be taken on a particular matter, the Monitoring Officer shall promptly advise the complainant of the decision and the complainant may then within 30 days of receipt of such notification request that the Review Sub-Committee review that decision.
- 4.2 Whilst the review shall normally be a review of the reasonableness of the original decision rather than a reconsideration, the Monitoring Officer shall report to the Review Sub-Committee the information which was provided to the Assessment Sub-Committee in respect of the matter. Furthermore, the

summary of the Assessment Sub-Committee and any additional relevant information which has become available should also be made available to the Review Sub-Committee.

5. LOCAL INVESTIGATION

- 5.1 Where the Assessment Sub-Committee or following a review and where the Review Sub-Committee have determined that a formal investigation should take place, the Monitoring Officer will arrange for the conduct of a formal local investigation.
- 5.2 It will be up to the Monitoring Officer to determine whether or not he/she will personally conduct the investigation or whether it should be through the Deputy Monitoring Officer or another Senior Officer of the Authority or a Senior Officer of another Authority or an appropriately experienced Consultant.