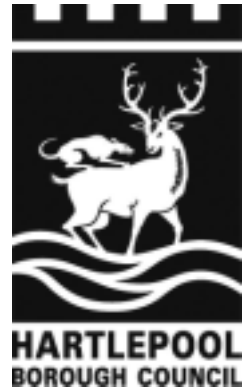


CONSTITUTION COMMITTEE AGENDA



Friday, 26 March 2010

at 12.30 pm

in Committee Room 'A', Civic Centre, Hartlepool

MEMBERS: CONSTITUTION COMMITTEE:

The Mayor, Stuart Drummond

Councillors C. Akers-Belcher, R W Cook, Flintoff, James, Laffey, A Lilley G Lilley, Preece, Richardson and Simmons

1. **APOLOGIES FOR ABSENCE**
2. **TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
3. **MINUTES**
 - 3.1 To receive the minutes of the Constitution Working Group held on 12 March 2010 *(to follow)*.
 - 3.2 To confirm the minutes of the Constitution Committee held on 29 January 2010.
4. **ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT**
 - 4.1 Amendments to the Constitution in respect of Resident Representative Elections – *Assistant Director (Neighbourhood Services) and Chief Solicitor*
 - 4.2 Constitutional Amendments Required to Clarify the Councillor Call For Action Mechanism - *Scrutiny Manager*
 - 4.3 Reporting Mechanisms – Standards Committee – *Chief Solicitor*

CONSTITUTION COMMITTEE

MINUTES AND DECISION RECORD

29 January 2010

The meeting commenced at 2.00 pm in the Civic Centre, Hartlepool

Present:

Councillor: Councillor Carl Richardson (In the Chair)

Councillors: Christopher Akers-Belcher, Marjorie James and Chris Simmons

Officers: Tony Macnab, Solicitor
Chris Scaife, Countryside Access Officer
Amanda Whitaker, Democratic Services Team Manager
Angela Hunter, Principal Democratic Services Officer

84. Apologies for Absence

Apologies for absence were received from The Mayor, Stuart Drummond and Councillors Rob W Cook, Pauline Laffey and Arthur Preece.

85. Declarations of interest by Members

None.

86. Minutes

- (i) Minutes of the Constitution Working Group on 15 January 2010 – received.
- (ii) Minutes of the Constitution Committee on 25 November 2009.

87. Town and Village Greens (*Chief Solicitor and Director of Regeneration and Neighbourhoods*)

The Countryside Access Officer presented the report which sought approval and ratification of the scheme of delegation to be adopted by the Council to enable it to discharge its statutory obligations as the Commons Registration Authority.

At its meeting on 15 January 2010, Members of the Constitution Working Group were very supportive about the proposals and the recommended route of determination of present and future Town and Village Green applications. Members had felt that it was the logical as well as obvious choice for decision making and approved the recommendations presented.

In additional approval was given for training to be given to Planning Committee Members with regards to Town and Village Green as well as Rights of Way procedures and matters.

Members reaffirmed their view that the local authority needed to deal with new legislation in an active manner to mitigate risks on the assets and land that the authority owns. The Countryside Access Officer confirmed that any applications involving Council owned land had to be determined by an outside body whereas applications for private land would be determined by the Planning Committee.

It was suggested that all Members should be made aware of any applications for town and village greens and the potential implications of such applications including the protection of the assets of the town. It was added that in the main, applications for pieces of land to become town or village greens would be for existing spaces used by the public for recreation. The Countryside Access Officer indicated that there was a set of criteria that each application for a town or village green would need to be measured against and these criteria would assist the Planning Committee when they look to make a determination on an individual application.

Members requested additional information to be provided by the Director of Regeneration and Neighbourhoods to aid Members with their decision making as the Commons Registration Authority and address Members' concerns in relation to protecting the assets of the town.

Decision

- (i) The proposals included within the report were approved and the scheme of delegation was ratified for submission to Council for adoption to enable it to discharge its statutory obligations as the Commons Registration Authority.
- (ii) That the Director of Regeneration and Neighbourhoods provide further information to aid Members with their decision making as the Commons Registration Authority and address Members' concerns in relation to protecting the assets of the town.

88. Reporting Mechanisms – Standards Committee (*Chief Solicitor*)

At the meeting of Constitution Working Group on 15 January 2010 consideration had been given to the current remit of the Standards Committee and the proposal to extend that remit. The current functions of the Standards Committee under Article 9 of the Council's Constitution were detailed within the report along with the proposed additional functionality, which had taken into account the views of the Audit Committee.

During the discussions that followed, Members referred to the fact that should a complaint about a Member be submitted to the Standards

Committee, the Member being complained about was not informed of the detail of the complaint made against them. Members were concerned that this did not comply with human rights legislation and natural justice as it appeared to remove the right for that Member to defend themselves and further guidance was requested on that issue.

In addition, Members questioned what action, if any, was taken against Members making vexatious claims against other Members. The Council's solicitor indicated that any Members submitting vexatious claims would be referred to Standards Committee themselves.

A Member sought clarification on paragraph 1.2 (vi) which referred to the granting of dispensations in relation to interests as set out in the Members Code of Conduct. It was questioned why any Members should need to have dispensation granted in relation to their declarations of interest when they had signed up to the Code of Conduct as part of their acceptance of office and agreed to abide by the rules and regulations of Hartlepool Borough Council and uphold the Council's Constitution.

In relation to the extension of the remit, a Member questioned the inclusion of the following function:

- To monitor the operation of the Council's Anti-Fraud and Corruption Policy so far as it relates to the actions of Members of the Council.

It was understood that this policy was already monitored by the Council's Audit Section with any key actions presented to Council. Clarification was sought on whether this was still the case, as this additional functionality within Standards Committee appeared to be duplicating that function. It was suggested that the minutes of the Audit Committee where the additional functionality of Standards Committee was considered be provided for Members of the Constitution Working Group.

Further information was also requested on aspects relating to Members within the Council's Anti-Fraud and Corruption Policy and how the monitoring function actually fit in with the work of the policy. In addition, Members requested guidance on what legislation from the Standards Committee for England covered the recommendations within the report.

Decision

That additional information be provided to the next meeting of the Constitution Working Group covering the following areas:

- (i) That additional guidance be provided on the procedure followed when a Member complains about another Member.
- (ii) Further information be provided on paragraph 2.1 (vi) relating to the granting of dispensations in relation to the declaration of interests.
- (iii) Clarification be provided on where the responsibility for monitoring the

Anti Fraud and Corruption Policy was held, how this fit in with the operation of that Policy and which aspects related to elected Members

- (iv) The minutes of the Audit Committee meeting that considered the extension to the Standards Committee remit be provided to inform discussions.
- (v) Further clarification was sought on the Standards Committee for England legislation that covered the recommendations in the report.

The meeting concluded at 2.36 pm

CHAIRMAN

Report of: Assistant Director (Neighbourhood Services) and
Chief Solicitor

Subject: AMENDMENTS TO THE CONSTITUTION IN
RESPECT OF RESIDENT REPRESENTATIVE
ELECTIONS

1. PURPOSE OF REPORT

- 1.1 The purpose of the report is to invite Members to consider a change to the constitution in relation to the election of Resident Representatives.

2. BACKGROUND

- 2.1 Recent elections to fill casual vacancies for Neighbourhood Consultative Forum representatives have raised some minor procedural issues following the changes that were made to the process in 2008.
- 2.2 The issues relate to point 10.11 of Part 2 of the Constitution and in particular
- eligibility criteria in relation to salary banding
 - issuing election notices
 - count procedure
 - filling of casual vacancies, and
 - rearrangement of items

3. PROPOSALS

- 3.1 The proposed changes are highlighted on Appendix 1 attached to this report.

4. RECOMMENDATIONS

- 4.1 That Members consider and discuss the proposals.

5. CONTACT OFFICER

Christine Armstrong - Central Services Manager – Tel: 523016
Denise Ogden – Assistant Director (Neighbourhood Services) -
Tel: 523201
Civic Centre, Hartlepool.

APPENDIX 1

EXTRACT FROM

Part 2

Articles of the Constitution

ARTICLE 10= NEIGHBOURHOOD CONSULTATIVE FORUMS

- ALL AMENDMENTS ARE SHOWN IN BOLD TYPE
- STRIKE THROUGH INDICATES ITEMS PROPOSED FOR DELETION

10.11 Co-opted resident members

(a) Eligibility criteria

Co-opted resident members of each forum will be elected every two years. The following eligibility criteria apply:

- (i) ~~All residents of the Forum area aged 18 years or over will be entitled to vote. (see (b) below)~~
- (i) All residents of the Forum area aged 18 years and over, with the exception of Borough Councillors and Senior Council Officers **(EXCEPT FOR POLITICALLY RESTRICTED POST HOLDERS)** will be eligible to stand for election.
- (ii) All candidates for election must be willing to accept the roles and responsibilities of resident representative as set out in the attached note.
- (iii) An elected resident member must resign from their position if they no longer reside in the neighbourhood forum area in which they were elected

(b) The election process

The election process will be supervised by the Returning Officer of the Council and may be conducted by an independent facilitator.

The method of election will be as follows:

- i) Resident representatives will be elected at an open meeting.
- ii) The meeting will be notified to all Hartlepool residents through meetings of the Forums and an advertisement in the local press.
- iii) Three meetings will be held, one in each forum area.

IV) ALL RESIDENTS OF THE FORUM AREA AGED 18 YEARS OR OVER WILL BE ENTITLED TO VOTE.

- v) The nomination period will commence **WITH THE ISSUE OF A NOTICE OF ELECTION**, 20 working days prior to the week of the elections and nominations must be delivered to the Returning Officer before 12 noon, 10 working days prior to the week of the elections. A nomination will not be valid unless it is subscribed by ten residents of the neighbourhood forum area ward for which the nomination is made. Both the nominee and the supporting signatories must appear on the current electoral register for the relevant ward. ~~Voting will be by secret ballot.~~ (See vi) below)

VI) VOTING WILL BE BY SECRET BALLOT

- ~~vi) Following the election for the positions of Resident Representatives, the Resident Representatives elected shall elect one of their number to the office of Vice-Chair and another to act as substitute for the Vice-Chair. (See ix) below)~~

- vii) In the event of a tied vote, ~~a further vote will take place~~ **A RECOUNT WILL TAKE PLACE**. If there is no outright result following ~~this second~~ **THE RECOUNT** vote, the Returning Officer will draw lots to decide on the successful candidate.
- viii) At least one resident representative from each Ward will be elected. In the event of there being no nomination for a Ward(s), vacancies will be filled by the remaining candidates with the highest number of votes regardless of the Ward in which they live.

IX) FOLLOWING THE ELECTIONS THE RESIDENT REPRESENTATIVES SHALL ELECT ONE OF THEIR NUMBER TO THE OFFICE OF VICE-CHAIR AND ANOTHER TO ACT AS SUBSTITUTE.

- x) Casual vacancies will be filled at ordinary forum meetings **IN ACCORDANCE WITH THE ELECTION TIMETABLE SET OUT IN V) ABOVE.** ~~with a~~ All those present at the meeting **ARE ENTITLED** ~~able~~ to vote (Councillors, Resident Representatives and members of the public). **IN THE ABSENCE OF A NOMINATION FROM THE RELEVANT WARD, THE VACANCY WILL BECOME AVAILABLE TO ANY RESIDENT FROM THE FORUM AREA.**

XI) THE ELECTION RESULTS WILL BE PUBLISHED AT THE CIVIC CENTRE AND ON THE COUNCIL'S WEBSITE

CONSTITUTION COMMITTEE

26 March 2010



Report of: Scrutiny Manager

Subject: CONSTITUTIONAL AMENDMENTS REQUIRED TO CLARIFY THE COUNCILLOR CALL FOR ACTION MECHANISM

1. PURPOSE OF REPORT

- 1.1 To consider the recommendation of the Constitution Working Group in respect of changing the Constitution to further clarify the Councillor Call for Action mechanism derived from the Local Government and Public Involvement in Health Act 2007.

2. BACKGROUND INFORMATION

- 2.1 Council on 9 April 2009 approved the report of the Constitution Committee entitled 'Constitutional Amendments Required to Implement the Councillor Call for Action Mechanism Derived from the Local Government and Public Involvement in Health Act 2007'. Approved as part of this report was a flowchart illustrating the procedure for consideration of a Councillor Call for Action.
- 2.2 At the meeting of the Constitution Working Group held on 12 March 2010, Members were advised that the Scrutiny Team were currently developing a quick guide to the Councillor Call for Action. During the development of this quick guide, it had been noted that minor amendments to the flowchart contained within the Constitution would be beneficial to clarify the mechanism and time frame for the Councillor Call's for Action process.

3. PROPOSAL FOR CONSTITUTIONAL AMENDMENTS TO CLARIFY THE COUNCILLOR CALL FOR ACTION MECHANISM IN HARTLEPOOL

- 3.1 Attached at **Appendix A** is the flowchart recommended by the Constitution Working Group on the 12 March 2010. For Members consideration, proposed amendments to the flowchart are shown in ***bold italics*** on the flowchart at Appendix A. As indicated, the intention of these changes being to further clarify the procedure for determining the appropriateness of undertaking a scrutiny investigation triggered either by the non-mandatory / Councillor Call for Action referral route.

4. RECOMMENDATIONS

4.1 It is recommended that the Constitution Committee:-

- (a) Considers endorsing the revision to the Councillor Call for Action flowchart as outlined in Appendix A; and
- (b) Subject to recommendation (a), approves for submission to the Council for adoption the suggested amendments to the Constitution.

Contact Officer:- Joan Nominton – Scrutiny Manager
Chief Executive's Department - Corporate Strategy
Hartlepool Borough Council
Tel: 01429 28 4142
Email: joan.Nominton@hartlepool.gov.uk

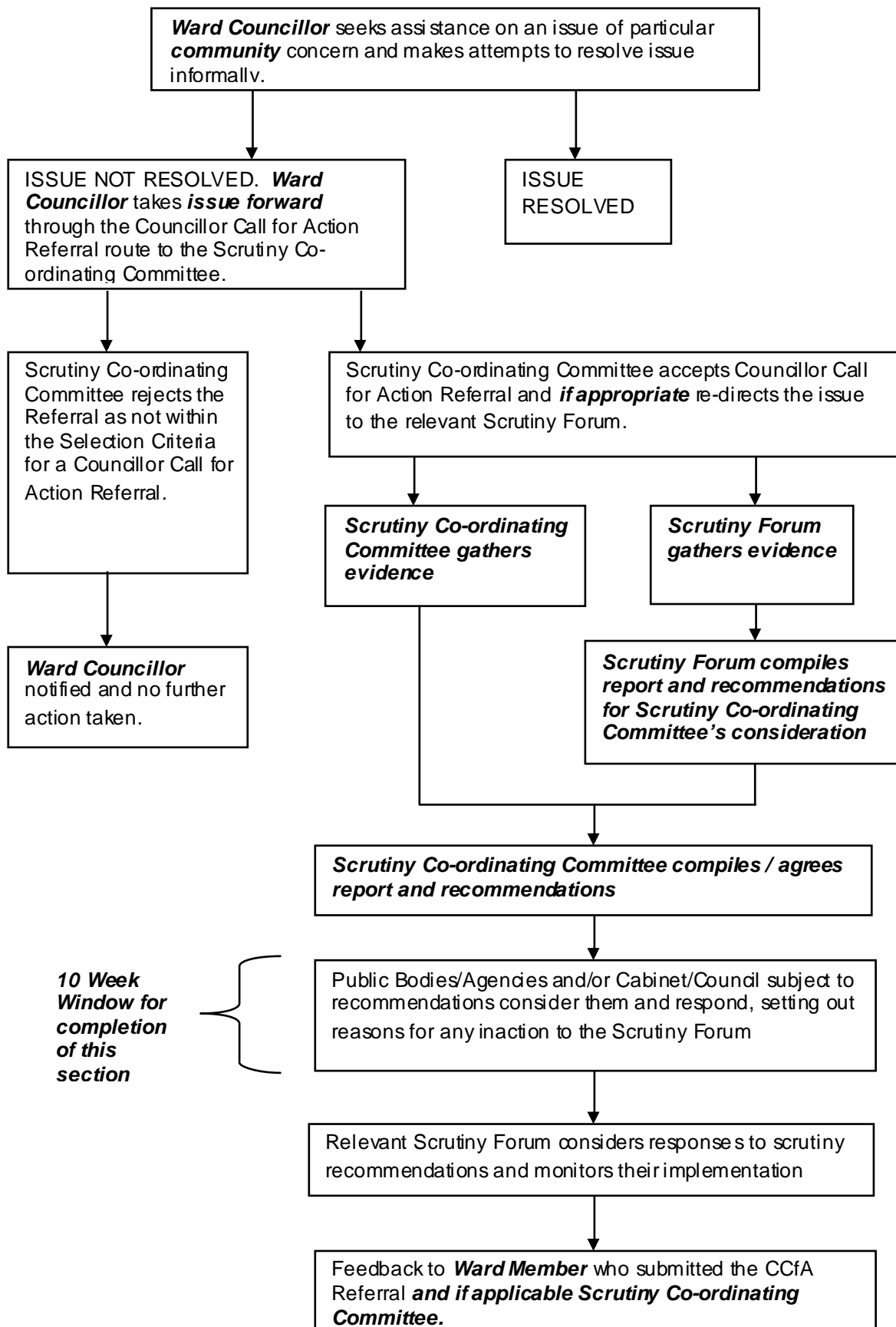
BACKGROUND PAPERS

The following background paper was used in the preparation of this report:-

- (a) Report and decision Record of Council held on 9 April 2009.
- (b) Report and minutes of Constitution Working Group held on 12 March 2010.

APPENDIX A

PROCEDURE FOR THE CONSIDERATION OF NON-MANDATORY / COUNCILLOR CALL FOR ACTION REFERRALS TO OVERVIEW AND SCRUTINY



Report of: Chief Solicitor

Subject: REPORTING MECHANISMS – STANDARDS
COMMITTEE

1. PURPOSE OF THE REPORT

At their meeting on the 29th January, 2010, the Constitution Committee requested reference of this item back to the Working Group for further consideration (the minutes of that meeting refer). This report again covers the current remit of the Standards Committee and proposals to extend that remit. Whilst, the Standards Committee have no direct reporting mechanism to Council, the recommendations of the Working Group did provide for such 'direct reporting' together with additional roles and functions of that Committee.

Standards Committee has also considered and endorsed extending the remit of the Committee as covered in the recommendations mentioned in this report. There has also been consideration by the Audit Committee of two distinct areas in the suggested widening of this current remit relating to the 'Annual Governance Statement' and monitoring the operation of the Council's Anti-Fraud and Corruption policies, in so far as the same relates to the actions of Members of the Council. Audit Committee at their meeting on 29th September, agreed that Standards Committee should be able to raise issues of governance with the Audit Committee. However, it was recognised that too onerous a time frame would be created if the Annual Governance Statement was required to proceed through Standards Committee before being considered by Audit Committee. Therefore it was considered that Standards Committee have the ability to 'raise issues' of governance at its discretion. Further, that Standards Committee should be able to monitor the operation of the Anti-Fraud and corruption policies, which are the subject of regular monitoring reports by the Head of Audit and Governance to the Audit Committee.

The Constitution Committee are therefore further requested to consider this report and the recommendations contained herein.

2. BACKGROUND

- 2.1 Members will be aware that the Standards Committee comprises both Borough Councillors and Parish Council representatives and the overall membership must have not less than 25% 'independent' membership. Following the 'local assessment and determination' process which came into effect from the 8th May, 2008, the Committee has formed Sub-Committees to deal with the initial assessment and determination of complaints and also a

Review Sub-Committee, to consider requests for a review of a complaint wherein a “no action” decision was given. Clearly, the key requirement of the Standards Committee is to “promote and maintain high standards of ethical conduct” within the Authority and also the role of advising the Council on the adoption or revision of the Members’ Code of Conduct. The current functions of the Standards Committee under Article 9 of the Council’s Constitution is as follows:-

- i) promoting and maintaining high standards of conduct by the Mayor, Councillors, co-opted members and church and parent governor representatives;*
- ii) assisting the Mayor, Councillors, co-opted members and church and parent governor representatives to observe the Members’ Code of Conduct;*
- iii) advising the Council on the adoption or revision of the Members’ Code of Conduct;*
- iv) monitoring the operation of the Members’ Code of Conduct;*
- v) advising, training or arranging to train the Mayor, Councillors, co-opted members and church and parent governor representatives on matters relating to the Members’ Code of Conduct;*
- vi) granting dispensations to the Mayor, Councillors, co-opted members and church and parent governor representatives from requirements relating to interests set out in the Members’ Code of Conduct;*
- vii) dealing with any reports from a case tribunal or interim case tribunal, and any report from the monitoring officer on any matter which is referred by an ethical standards officer to the monitoring officer; and*
- viii) the exercise of (i) to (vii) above in relation to the parish councils wholly or mainly in its area and the members of those parish councils.*

2.2 The Committee has engaged in activities which cover the governance of the Council as a public body. By way of example, commentary on the Planning Code of Practice, revisions to the Council’s Whistle-blowing Procedure document, adoption of various protocols, responses to government consultations as well as operating the local assessment and determination process. The following areas of possible additional functionality of Standards Committee (which also includes the views of the Audit Committee) are as follows;

- To recommend changes to full Council in relation to the promotion and maintenance of high ethical standards within the Authority;*
- Promoting and maintaining high standards of conduct by officers;*

- *Assisting officers to observe a Code of Conduct for Employees and advising the Council on the adoption or revision of such a Code of Conduct for Employees;*
- *Monitoring the operation of a Code of Conduct for Employees;*
- *Dealing with the grant and supervision of exemptions from political restrictions in respect of all relevant Council posts;*
- *To receive and make recommendations to the Audit Committee as may be required in relation to the better governance of the Council*
- *To consider complaints relating to the conduct of Members of the Council under the Member/Employee Protocol and the Planning Code of Practice;*
- *To monitor the operation of the Council's Anti-Fraud and Corruption Policy so far as it relates to the actions of Members of the Council;*
- *And to report on such matters to Council with recommendations thereon and that the Council may from time to time arrange for other functions to be discharged by the Standards Committee;*

2.3 Members are therefore requested to consider this report and the recommendations, which cover the suggested 'extension' to the remit and functions of the Standards Committee.

3. RECOMMENDATIONS

1. The Committee note and discuss this report.
2. That subject to the above, the recommendations contained within paragraph 2.2 of this report relating to the extension of the role and functions of the Standards Committee be approved and referred to Council.

Report of: Chief Solicitor

Subject: ADDENDUM REPORT – REPORTING MECHANISM
OF STANDARDS COMMITTEE

1. PURPOSE OF REPORT

- 1.1 To provide additional information and clarification arising from the Constitution Committee meeting on 15th January, 2010, where the Committee in referring this item back to the Working Group, raised five specific points, as follows;
- (i) That guidance be provided of the procedures followed when a Member complained about another Member.
 - (ii) Further information be provided on paragraph 2.1(v) of the current role and remit of Standards Committee relating to the granting of dispensations.
 - (iii) Clarification be provided on where the responsibility for monitoring the Anti—Fraud and Corruption Policy was held, and how this fits in with the operation of that policy and which aspects related to elected Members.
 - (iv) The minutes of the Audit Committee meeting that considered the extensions to the Standards Committee remit be provided to inform discussions.
 - (v) Further clarification was sought on the Standards Committee for England legislation that covered the recommendations in the report.

2. CLARIFICATION OF POINTS RAISED BY THE CONSTITUTION COMMITTEE

- 2.1 Using the same number as above, the following information is provided in response to the points made by the Constitution Committee;
- (i) Since 8th May, 2008 Local Standards Committees became responsible for receiving and assessing complaints about elected and Co-opted Members. These changes were introduced under the Standards Committee (England) Regulations, 2008. The Council's own Standards Committee have produced a "Guidance Note" and the same is appended herewith for the information of the Working Group (**Appendix 1**). It should be pointed out, that whilst there is no obligation to inform the Subject Member of the receipt of a complaint,

the Monitoring Officer has always notified the Member involved and provided a short anonymised summary of the nature of the complaint. In the absence of a referral for an investigation by the Assessment Sub-Committee, a Monitoring Officer has no powers to initiate any investigation before the same is recommended by the Assessment Sub-Committee and requests for anonymity, from a complainant, must again be considered by the Sub-Committee. Standards for England (formerly the Standards Board for England) generally require Sub-Committees to meet and consider a complaint within 20 working days of receipt. Should it be the case, that a matter is referred for investigation, guidance, indicates that such an investigation, depending upon its complexities, may take up to six months. There are also stipulated time periods for the consideration by Standards Committee following on from receipt of a 'final report', where there is a finding of a failure to comply with the Code of Conduct. Where an Assessment Sub-Committee, upon an initial consideration of a complaint, decides to take "no action" (as opposed to a referral for investigation) there is a requirement under the Regulations for a review of that decision, provided a request is received within 30 working days of that initial assessment decision. Further, it is also a requirement that a Review Sub-Committee shall meet within three months of receiving such a request to either confirm that no action was appropriate, or to refer the matter to the Monitoring Officer for the purposes of an investigation or such "other action" that the Review Sub-Committee deems appropriate.

(ii) The Standards Committee (Further Provisions) (England) Regulations, 2009, made changes from the original 2002 Dispensation Regulations. It is therefore the case, that the 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 dispensation in relation to that business, be entitled to vote at a meeting are prohibited from voting (ie., because they have a personal and a prejudicial interest); or
- Where the number of Members are prohibited from voting at a meeting would, but for the granting of any dispensation in relation to that business, upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.

In order to obtain a dispensation a Member/Co-opted Member, must submit a written request for a dispensation to the Standards Committee. The Committee must conclude having regard to the above circumstances, and all other circumstances of the case, whether it is appropriate to grant a dispensation, or not. The Regulations also provide that a dispensation can only be granted in respect of business arising in a period of four years following the grant of a 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. All dispensations that are granted, are required to be recorded in unison with a Member's Register of Interests.

- (iii) The Council's Anti-Fraud and Corruption Policy is a key feature of the Council's "Code of Governance" as adopted by the authority on 16 April, 2009. The Policy specifically incorporates the following documents;

- Fraud Response Plan
- General principles of public life
- Whistle Blowing Policy
- Prosecution Policy
- Gifts and Hospitality

Within paragraph 1.3 of the Anti-Fraud and Anti-Corruption Strategy it is stated that such a strategy will be used "to advise and guide members of staff on our approach to the serious issues of fraud and corruption". It is therefore a feature of this strategy, that arrangements are in place to continuously review this document through the Council's Section 151 Officer and its Internal and External Auditors. The purpose behind the report to the Audit Committee was to seek a role for Standards Committee given the references to the Code of Conduct and also the Council's Whistle Blowing Policy, which was reviewed by the Standards Committee during 2008. Further information in this regard, can be seen in the discussions of the Audit Committee as to extending the role and remit of the Standards Committee in their meeting held on 29th September, 2009 (see below).

- (iv) The minutes of the Audit Committee of 29th September, 2009 which considered the possible extension to the Standards Committee role and remit are appended herewith for Members information (**Appendix 2**).
- (v) Under Part III of the Local Government Act, 2000, provision was made for certain principles governing the conduct of Members of relevant authorities. More specifically, this legislation provided for the introduction of a Code of Conduct to regulate the behaviour of Members and Co-opted Members of a relevant authority. This legislation therefore provided for the operation of Standards Committees under Section 54 of the Act, the general functions of a Standards Committee being as follows;
- (a) Promoting and maintaining high standards of conduct by the Members and Co-opted Members of the authority, and
 - (b) Assisting Members and Co-opted Members of the authority to observe the authority's Code of Conduct.

Furthermore, under Section 54(3) “*a relevant authority may arrange for their Standards Committee to exercise such other functions as the authority consider appropriate*”. There is also provision for the Secretary of State by way of Regulations to make arrangements with respect to the exercise of functions by Standards Committees. The Local Government and Public Involvement in Health Act, 2007, amended the Local Government Act, 2000, to provide for a local assessment of complaints where Members of relevant authorities may have breached the Code of Conduct. The Standards Committee (England) Regulations, 2008, set out a framework for the operation of a locally based system for the assessment, referral and investigation of complaints of misconduct by Members of authorities. Essentially, they amend and re-enact provisions which came through the Relevant Authorities (Standards Committee) Regulations, 2001, as amended, and the Local Authorities (Code of Conduct) (Local Determination) Regulations, 2003, as amended. As noted above, the Standards Committee (Further Provisions) (England) Regulations, 2009, made additional provisions in relation to intervention by Standards for England into Local Standards Committees (ie., where failings were apparent) , the creation of Joint Standards Committees and also clarification upon Member dispensations. Other than these more recent Regulations, the Local Standards Framework which has been operational since May, 2008, reflects the requirements contained in the Standards Committee (England) Regulations, 2008.

3. RECOMMENDATIONS

For Members to note.

Hartlepool Borough Council

Standards Committee Guidance Note
Local Assessment of Complaints against Members

Introduction

These procedures explain the first stages of how a complaint that a Member of Hartlepool Borough Council has breached the Members' Code of Conduct will be assessed and determined. They include the factors that will be taken into account when deciding whether to investigate a complaint. They do not cover the investigation itself or the Standards Committee hearing which will decide whether or not there has been a breach of the Code.

Making a Complaint

Complaints must be made in writing either by letter or by using the Hartlepool Borough Council Code of Conduct Complaint Form. If the complainant is unable to provide written details as a result of disability, assistance will be provided by Council officers.

The Chief Solicitor and Monitoring Officer of the Council will refer the matter to the Assessment Sub-Committee if he is satisfied that it is potentially about Member conduct. The Assessment Sub-Committee has been established for the purpose of making an initial assessment of complaints about Members breaching the Code of Conduct.

The Chief Solicitor in the capacity of Monitoring Officer will prepare a short summary of the complaint for consideration by the Sub-Committee to include the following information:

- (a) Whether the complaint is within the jurisdiction of the Committee
- (b) The paragraphs of the Code of Conduct that might apply
- (c) Any other factual information that is reasonably available and that might assist the Sub-Committee
- (d) If the Councillor serves on two or more authorities whether a similar complaint has been made to that other authority

Where a number of similar complaints are made at or about the same time, the report will summarise these collectively.

However, at this stage further enquiries may only be made for the purpose of clarification of the complaint.

The Sub-Committee will try to meet and consider all written complaints referred to it within 20 working days of receipt by the Chief Solicitor.

Assessment Criteria

Initial Test

The Sub-Committee will carry out an initial test to establish whether it has jurisdiction over the complaint by determining whether;

- It is a complaint against one or more named members of the Hartlepool Borough Council or relates to a Member of the Parish Council within the Borough
- The named Member(s) was in office at the time of the alleged misconduct and the Code of Conduct was in force at that time and
- The complainant, if proven, would be a breach of the Code of Conduct.

If any of the above elements of the test are failed the Sub-Committee cannot authorise investigation and the complainant will be notified that no further action will be taken.

The Committee has developed 'Assessment Criteria' in dealing with the consideration of complaints alleging Member misconduct. The points below are material in the application of such criteria, to which additional reference is advised.

(i) Public Interest

Once the Sub-Committee has established that it has the power to consider the complaint it will consider the matters set out below. Underpinning its consideration will be an assessment of the public interest in investigating a complaint taking into account the cost and time involved.

(ii) Adequacy of Information

The Sub-Committee will then consider the adequacy of the information provided by the complainant. If the complaint does not contain sufficient detail to determine whether the matter should be referred for investigation the complainant will be advised that no further action will be taken unless and until such additional information as the Sub-Committee considers necessary is provided.

(iii) Former Councillors

If the complaint is about someone who is no longer a Member of an authority within its jurisdiction, but is a Member of another authority the Sub-Committee will consider whether to refer the matter to the Monitoring Officer of that other authority.

(iv) Previous Action under the Code of Conduct or by other regulatory authorities

If the complaint has already been the subject of a previous investigation or some other action relating to the Code of Conduct, or a related regulatory process, the matter will not usually be referred for further action.

(v) Repeated Complaints

The Chief Solicitor will not refer to the Sub-Committee a complaint that is the same or substantially the same as one previously made by the complainant.

(vi) Timing of the Alleged Conduct

The Sub-Committee will consider the timing of the alleged misconduct when deciding whether to refer the matter for investigation or further action. If there are significant delays between the incident(s) complained of and the complaint the matter will not ordinarily be considered further unless there are strong and compelling reasons for the delay.

(vii) Trivial Matters

No further action will be taken if the Sub-Committee consider that the matter is not sufficiently serious to warrant further action.

(viii) Ulterior Motive

No further action will be taken if the Sub-Committee considers that the complaint is, by way of example, motivated by malice or political motivation.

(ix) Complaints Previously Assessed by the Standards Board for England

No action will be taken in respect of complaints that are the same or substantially the same as complaints previously assessed by the Standards Board for England as not warranting investigation.

(x) Members of Two or More Authorities

Where a complaint is made about a Member who is also a member of another authority, the Chief Solicitor, having consulted with the Monitoring Officer of the other authority, shall advise the Sub-Committee on which Council should assume responsibility for the complaint.

Initial Assessment Decision

The Sub-Committee shall make one of the following decisions:

- (1) Referral of the complaint to the Chief Solicitor and Monitoring Officer of either Hartlepool Borough Council or another authority where appropriate;
- (2) Referral of the complaint to the Standards Board for England in accordance with the criteria set out below);

- (3) No further action.

Referral to the Standards Board for England

The Sub-Committee shall use its discretion in determining whether to refer a complaint to the Standards Board for England but in any event shall not refer a complaint unless it considers that one of the following criterion apply:

- (a) Where the status of the Member complained about would make it difficult for the committee to deal with the complaint.
- (b) Where the status of the complainant would make it difficult for the committee to deal with the complaint.
- (c) Where a number of committee Members have a conflict of interest that would prevent it from properly discharging its duties or reasonably give the appearance that it could not do so.
- (d) Where there is a potential conflict of interest of the Chief Solicitor or other officers and suitable alternative arrangements cannot reasonably be put in place.
- (e) Where the complaint is so serious that if proven, the powers of the Standards Committee would not be adequate to deal with it.
- (f) Where the complaint is so complex or involves so many members that it cannot be handled locally within the Council's available resources.
- (g) Where the complaint relates to systemic or long term governance issues requiring an independent investigation.
- (h) Where the complaint raises an unresolved legal issue that is a point of public interest and on which a national ruling would be helpful.
- (i) Where the Council could reasonably be perceived as having an interest in the case sufficient to indicate actual or apparent bias.
- (j) Where there are exceptional circumstances that would prevent a competent, fair and timely investigation and determination being undertaken locally.

The Standards Board for England has a discretion to decline to investigate the complaint and to refer it back to the Standards Committee. Where it does so, the Assessment Sub-Committee will reconsider the complaint again within 20 working days taking into account any direction given by the Standards Board.

Referral to the Chief Solicitor

The Sub-Committee may refer a matter to the Chief Solicitor for investigation or for some other action to be taken. The Sub-Committee will consider the appropriateness of other actions based on the facts of the case but it is more likely to be appropriate where there is a pattern of poor relationships or failings in governance.

'Other Action' is an alternative to investigation and will only be pursued following consultation with the Chief Solicitor on its suitability in the circumstances.

Although the Sub-Committee shall retain the discretion to determine what form the other action shall take, ordinarily it will be confined to either:

- (1) Training for the Member(s)
- (2) Mediation between the complainant and the Member
- (3) Advice on changes to procedures of the Council if they are relevant to the complaint.

(1) Mediation

Where mediation is proposed, the Sub-Committee shall first seek the written consent of the complainant, the Member concerned and any third party that would need to participate.

In any case where a complaint is referred for other action the complainant and the Member shall be advised that the matter shall not be reconsidered again for investigation except;

- (1) Where the Member complained or refuses to cooperate with mediation, the Sub-Committee shall reconsider whether to investigate and the failure to cooperate shall be viewed as an aggravating factor.
- (2) Where a complainant refuses to cooperate in mediation, the Sub-Committee shall reconsider whether to investigate and the failure to cooperate shall be viewed as a mitigating factor in favour of the Member.
- (3) Where both parties refuse to cooperate, the Sub-Committee shall reconsider whether to investigate and in doing so shall discount the refusals of the parties.

In the above cases the Sub-Committee will try to reconsider the complaint within 20 working days of the deadline given to the parties to state whether they will cooperate with mediation.

(2) Decision Notices

The decision notice must set out the reasons for that decision and be provided to the complainant and the Member concerned. The Chief Solicitor will usually send this letter within 5 working days of the decision of the Sub-Committee.

The complainant should be advised of their right to request a review of the decision by setting out in writing the grounds upon which a review is sought within 30 working days of receipt of the initial assessment decision.

If the decision is to refer the complaint to the Chief Solicitor or the Standards Board for England the decision notice must summarise the complaint, the type of referral made and the reason for it.

The Sub-Committee may decide not to provide a summary of the complaint to the Member complained about (ie the decision notice) but only where it decides that to do so would be against the public interest or may prejudice any future investigation. The advice of the Chief Solicitor must first be obtained and the Sub-Committee must satisfy itself that sufficient evidence exists to justify the application of one of the above grounds. The Sub-Committee must also consider whether more limited information can be provided to the Member, and any restriction on the provision of

information to the councillor must be kept under review by the Chief Solicitor. Where the Chief Solicitor considers that the reasons for withholding the information no longer apply the Assessment Sub-Committee shall reconsider the decision.

Where a decision is taken to withhold the decision notice from the Members subject to the complaint, the notice will not be published for public inspection until the information is provided to the Member.

Review of No Further Action Decisions

The Review Sub-Committee shall meet within 3 months of receiving a request to review the decision of the Assessment Sub-Committee not to investigate a case. (The Review Sub-Committee has been established for the sole purpose of reviewing on request decisions of the Assessment Sub-Committee).

The Review Sub-Committee shall apply the same criteria used for initial assessment and provide the same information to the parties.

When a request for a review is received, the Chief Solicitor shall write to the complainant acknowledging the request and explaining the process for determination. The Member subject to the complaint will be similarly advised.

(i) Initial Test

The Review Sub-Committee will initially determine whether the request is appropriate for the purpose of considering a review. A review will be undertaken where the grounds are:

- (a) That insufficient emphasis has been given to a particular aspect of the complaint;
- (b) There has been a failure to follow published criteria;
- (c) The Assessment Sub-Committee based its decision on a misunderstanding of the complaint.

However, if further information is provided with the complaint that was not available to the Assessment Sub-Committee, the Review Sub-Committee shall decline to review the original decision if the effect of the new information is to substantially change the nature of the complaint. In these cases the complaint will be referred back to the Assessment Sub-Committee for consideration as a new complaint.

The Review Sub-Committee has the same powers as are available to the Assessment Sub-Committee.

A decision shall be sent to the parties within 5 working days of the meeting wherever possible.

Access to Documents and Meetings of the Assessment and Review Sub-Committees

Meetings of the Assessment and Review sub-Committee shall be held in private and the committee papers will not be published. However, a written summary of complaints considered by the Sub-Committee will be published and which will include:

- (1) The main points considered
- (2) The conclusions on the complaint
- (3) The reasons for the conclusion

The summary will not name the Member subject to the complaint only where to do so would in the view of the Assessment Sub-Committee prejudice any subsequent investigation or otherwise would not be in the public interest. The summary shall be available for inspection for 6 years following the decision.

Withdrawing Complaints

Where a complainant decides to withdraw a complaint, the matter will be referred to the Assessment Sub-Committee, which will ordinarily formally close the matter by deciding that no further action be taken. However, the Sub-Committee may continue to assess a complaint or else continue with an investigation or monitor other action already sanctioned where:

- (a) there are other complainants in respect of the same matter, and/or;
- (b) sufficient evidence in relation to the complaint is capable of being gathered without the participation of the complainant who has withdrawn the complaint, and;
- (c) the public interest still warrants assessment or investigation or other action in respect of the complaint.

Confidentiality

Except in exceptional circumstances, the identity of complainants will be disclosed to the Member subject to the complaint. A request from a complainant to preserve anonymity shall be considered by the Assessment Sub-Committee when it assesses the complaint. The Sub-Committee shall only consider granting anonymity to the complainant where one of the following grounds applies:

- (a) The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed.
- (b) The complainant is an officer who has reasonable grounds for believing that they will be subject to intimidation, bullying or threats in connection with their employment.
- (c) The complainant suffers from a serious medical condition and there are medical risks associated with the disclosure of their identity. Medical evidence will be required in respect of this ground.

In each of the above cases the Sub-Committee may only grant a request if they consider that a fair investigation can still be conducted.

If the Sub-Committee decline a request for anonymity the complainant shall be given the option of withdrawing the complaint as an alternative to the disclosure of information.

Anonymous Complaints

Anonymous complaints will not be considered further unless the complainant provides independent evidence, capable of verification and which discloses potentially serious wrongdoing.

AUDIT COMMITTEE

MINUTES AND DECISION RECORD

29 September 2009

The meeting commenced at 3.00 pm in the Civic Centre, Hartlepool

Present:

Councillor Councillor Preece (In the Chair)

Councillors C Akers Belcher, Barker, Hall, McKenna and Turner

Officers: Mike Ward, Chief Financial Officer
Chris Little, Assistant Chief Financial Officer (Corporate Finance)
Noel Adamson, Head of Audit and Governance
Peter Turner, Principal Strategy Development Officer
Kerry Trenchard, Strategy and Performance Officer
Sarah Bird, Democratic Services Office

Cathy Eddowes, Audit Commission
Cath Andrews, Audit Commission

7. Apologies for Absence

Councillor Wistow

8. Declarations of Interest

None

9. Minutes of the meeting held on 30 June 2009

These were confirmed as an accurate record

10. Approval of 2008/2009 Statement of Accounts – *Chief Financial Officer*

Purpose of Report

The report was presented in order to enable members to approve the final 2008/09 Statement of Accounts and to present the Audit Commission's Annual Governance Report.

Issues for Consideration

Members were reminded that the audit of the 2008/09 Statement of Accounts had run slightly behind schedule but Members had been advised that there would not be any material amendments to the Statement of Accounts which would mean that the Authority's financial position as at 31 March 2009 had not changed since the draft Statement of Accounts had been approved at the previous meeting in June 2009.

Amendments which had been made included:-

- Prior Period Adjustments including the accounting policy on pension fund accounting although these figures were not material
- Changes to the Balance Sheet where an asset valued at £111,000 had been moved from the Asset Under Construction category to Community Assets
- Equal Pay as a small number of Equal Pay cases had received a High Court judgement since the accounts had been authorised in June
- Tall Ships Reserves where the transfer in and out of the reserves had been overstated although the overall effect was neutral

The Auditor had also identified a number of other proposed changes but these issues were not material and did not impact on the position reported in the accounts and the Chief Financial Officer did not recommend that these changes be implemented.

The Audit Commission representative then referred to the Annual Governance Report and apologised for the lateness of its circulation to Members. She highlighted the key messages in the report which stated that the quality of the financial statements had significantly improved since last year. She highlighted the errors in the financial statements, four of which had been corrected but there were a number which the Chief Financial Officer had decided not to amend as the issues were not material. She outlined the findings and conclusions of the use of resources judgement and said that it was expected that the overall score would be a level three which was an improvement on previous years as the testing methodology was harder. The report contained the draft letter of representation which required the approval of the Committee.

In response to a Member's query, it was clarified that the wording regarding the scoring of the use of resources judgements was standard i.e. 'adequate' was the terminology used when a score of 2 was awarded. A Member stated that the uncorrected errors seemed significant and asked if it would be better if the amendments were corrected prior to submission of the accounts. He was informed that these errors were not classed as material and all significant errors had

been amended and making these amendments would delay the submission of the accounts. It was clarified that there was no benefit to the Council from adjusting for the non material errors but there was a risk to future Use of Resources scores from being late. Most of the errors had been about accounting errors between one classification and another, none affected or altered the resources available to the Council for the delivery of services. The annual report was included in the September edition of Hartbeat but there had been a minor differences between the figure used and the final accounts. It was agreed that the correct figure would be published on the website.

It was clarified that in Appendix 3 of the Annual Governance Report, the error relating to the non separation of the value of land and buildings should read that there would be a subsequent understatement of asset values.

Members expressed concern at the late circulation of the final Statement of Accounts and Annual Governance Report and reasons why were explained by Officers.

It was clarified that errors in relation to the asset register had only been identified for the first time this year due to changes in accounting reporting as asset values were more detailed.

Decision

Members:-

- Considered the matters raised in the Audit Commission's Annual Governance Report
- Approved the reasons detailed in Appendix 1 to the Supplementary information to the final 2008/09 statement of accounts and audit commission annual governance report
- Noted that the Chair would sign the Letter of Representation detailed at Appendix 4 of the Annual Governance Report
- Instructed the Chief Financial Officer to implement the action plan detailed at Appendix 6 of the Annual Governance Report
- Unanimously approved the final 2008/09 Statement of Accounts

11. Internal Audit Plan 2009/10 Update – Head of Audit and Governance

Purpose of Report

To inform members of the progress made to date completing the

internal audit plan for 2009/10

Issues for Consideration

Appendix A to the report detailed the pieces of work that had been completed. Internal Audit staff had also been involved with the following working groups

ISO 17799 Group
Procurement Working Group
Corporate Risk Management Group
Use of Resources assessment

The section had also received data matches from the Audit Commission in relation to the National Fraud Initiative (NFI) for 2008/09 and was, along with the Benefit Fraud Team, currently investigating identified anomalies.

The work completed and ongoing was in line with expectations at this time of the year.

Decision

Members noted the content of the report.

12. Consultation on Proposals for an Enhanced Role and Remit of the Council's Standards Committee *– Chief Financial Officer*

Purpose of Report

Part of the work programme for the Constitution Working Group and Constitution Committee for 2009 – 2010 was a consideration of the reporting mechanisms to Council of the Standards and General Purposes Committees. Presently the recommendations made by these committees have no direct reporting mechanism to Council. Therefore consideration had been given to an enhanced role for the Standards Committee. The views of the Audit Committee were sought.

Issues for Consideration

The report set out the background and discussions which had taken place at Constitution Working Group and Constitution Committee in that the Standards Committee would have a role in receiving and reviewing the Council's Annual Governance Statement and to make recommendations for the approval of the Annual Governance Statement to the Audit Committee as well as monitoring of the operation

of the Council's Anti-Fraud and Corruption Policy so far as it relates to the actions of Members of the Council.

The Chief Financial Officer suggested that from a practical perspective it would be too onerous a time frame for it to go through Standards Committee before the Audit Committee but Standards may raise issues of governance with the Audit Committee. Members agreed with this.

In relation to the anti-fraud and anti-corruption policy, it was commented that these issues would be reported to the Audit Committee in regular monitoring reports submitted by the Head of Audit and Governance.

Decision

Members agreed that the Standards Committee may raise issues of governance with the Audit Committee and that the Standards Committee monitor the operation of the Council's Anti-Fraud and Corruption Policy so far as it related to the actions of Members of the Council and make reports as necessary to the Audit Committee.

The meeting finished at 3.05 pm.

CHAIRMAN