

STANDARDS COMMITTEE AGENDA



Tuesday 23 March 2010

at 4.00 p.m.

in the Council Chamber, Civic Centre, Hartlepool.

MEMBERS: STANDARDS COMMITTEE:

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

Co-opted Members: B Footitt, B Gray and T Jackson.

Parish Councillors: Bell, Hart Parish Council and Dickinson, Elwick 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 9 February 2010
4. **ITEMS FOR DECISION / DISCUSSION**
 - 4.1 Hartlepool Borough Council Standards Committee Annual Report 2009 (to follow) – *Chief Solicitor*
 - 4.2 Standards For England – A Review of the Local Standards Framework (to follow) – *Chief Solicitor*
5. **ANY OTHER BUSINESS THAT THE CHAIR CONSIDERS URGENT**

STANDARDS COMMITTEE

MINUTES AND DECISION RECORD

9 February 2010

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

Present:

Mr Ted Jackson (In the Chair)

Councillors: John Coward, Mary Fleet, Arthur Preece, Jane Shaw,
Chris Simmons and Mike Turner.

Parish Councillors: Alan Bell (Hart) and Mike Dickinson (Elwick).

Officers: Peter Devlin, Chief Solicitor and Monitoring Officer
David Cosgrove, Principal Democratic Services Officer

27. Apologies for Absence

Mr B Gray and Councillor Lauderdale.

28. Declarations of interest by members

None.

29. Confirmation of the minutes of the meeting held on 15 December 2009

Minutes Confirmed.

The Chief Solicitor informed the Committee that the appointment of Professor Footitt as an independent member of the Committee (minute 26) was due to be considered by Council on 11 February 2010. The Chief Solicitor also confirmed that the information referred to in Minute 23 had been sent to all Members of the Council.

30. The Adjudication Panel for England *(Chief Solicitor)*

The Chief Solicitor reported that, as had previously been indicated to the Committee, the work of the Adjudication Panel for England was to be transferred into the unified tribunal structure and into the new General Regulatory Chamber (GRC) within the First-tier Tribunal. This change had taken place on 18th January, 2010, and accordingly, all proceedings taking

place after this date, would be conducted in accordance with the Rules of the First-tier Tribunal. However, where a matter relates to proceedings which had already started, the procedures adopted previously, would continue to apply if it would be unfair to apply the particular provisions of those Rules. Although, the relevant Transfer Order abolishes the Adjudication Panel for England, its work and personnel being transferred to the First-tier Tribunal.

Where a Standards Committee wished to make a referral under Regulation 17 of the Standard Committee Regulations, the Committee would need to complete an “Initiating Application” form. Further, “Decision Notices” issued to Members following a determination by a Standards Committee, would need to reflect the amendments to the Standards Committee Regulations on the Right of Appeal. Members would now have 28 days in which to seek an appeal, from the determinations of a Standards Committee and previous references to the Adjudication Panel for England would now need to reflect the name change “First-tier Tribunal (Local Government Standards in England).”

Any party could also apply for permission to appeal against a decision of the First-tier Tribunal. Such appeals would now be to the upper Tribunal but permission needed to be first sought from the First-tier Tribunal.

Decision

That the report be noted.

31. Notifications to Parish and Town Councils Concerning Complaints about their Members and the Standards Committee (England) Regulations 2008 *(Chief Solicitor)*

The Chief Solicitor reported that there is an explicit requirement within the 2008 Regulations that Parish/Town Councils must be given notification that a complaint concerning one of their Members had been assessed. Unless the initial Assessment Sub-Committee decides to take no action on a complaint, the Parish/Town Council must then be informed of certain significant subsequent steps taken in dealing with that complaint.

Where a Sub-Committee of a Standards Committee meets to assess an allegation or to review a decision it must send in writing to the Parish/Town Council concerned, main points considered, its conclusions, the reasons for its decision and may name the Member unless to do so is not in the public interest or would prejudice an investigation. Further, a Parish/Town Council should also receive notification after a Standards Committee meets to consider the report into an investigation and whether to accept a finding about whether a Councillor has breached the Code of Conduct or not. They should also receive notification on the outcome of the hearing and reasons for it, if one is held. As indicated through the Standards Board for England “the rationale of the notification is to facilitate the Standards Committees action, not to start new action within the Parish or Town Council”.

The Chief Solicitor indicated that it was also recommended by Standards for

England, that Parish/Town Councils should consider putting in place protocols to deal with access to information, the sharing of information and how various legal obligations are met including those under the General Law of Confidentiality, the Freedom of Information Act and the Data Protection Act. Standards for England also indicated that Parish/Town Councils should adopt procedures about how to deal with notifications. Guidance from Standards for England in order to achieve such compliance had been produced and was summarised in the report.

Members questioned if this required specific action at all the Parish Councils. The Chief Solicitor indicated that the matter was being discussed at Tees Valley level to develop a set of protocols that all parish councils could adopt. All Parish Council Clerks would be contacted in relation to these new protocols and how they were to be applied.

Decision

That the notification procedures relating to Parish/Town Councils be noted.

32. Assessing the Impact of Standards Committees (*Chief Solicitor*)

The Chief Solicitor submitted a copy of a report commissioned through Standards for England relating to nine case studies, which in turn provide examples of 'notable practice' in Standards Committees. The research conducted through the University of Hull and Teesside University "Assessing the Impact of Standards Committee" (October 2009) was attached as appendix to the Chief Solicitor's report. Within the case studies, the "key finding" is that "notable Standards Committees" were committed to a variety of innovative practices. It was recognised, that leadership was essential most notably in relation to the political support operating within an authority. It was also indicated, that the composition of Standards Committee needed to be appropriately balanced, with the emphasis on the skills and knowledge based experience of the Independent Members of the Standards Committee. The Standards Committees learning from each other was also seen as being an important aspect of the organisational learning within Standards Committees and better ethical governance within the respective authorities.

Members noted the extremely wide range of issues that were being dealt with by Standards Committees and in some areas, the particularly high number of complaints that were being dealt with locally. The Chair and Councillor Shaw, who had attended the Annual Conference commented that there were some areas of the country where Standards Committees were dealing with huge numbers of complaints, principally from Parish councils. Some areas did, however, have extremely large numbers of Parish Councils within their jurisdiction. The Chief Solicitor also commented that other Standards Committees had experienced some particularly vexatious complainants, with one having submitted over two hundred separate complaints.

Members did note that many other Standards Committees were attended regularly by their Chief Executive's and senior councillors. The Chief Solicitor

stated that he had spoken to the Chief Executive who had indicated that he would be very happy to attend the next meeting of the Committee when the draft annual report was considered.

Decision

That the report be noted.

33. Local Government (Access to Information) (Variation) Order 2006

Under Section 100(A)(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that it involves the likely disclosure of exempt information as defined in the paragraphs below of Part 1 of Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) Order 2006.

Minute 34 Standards Considerations Sub Committees (Para 2 – information that is likely to reveal the identity of an individual).

34. Standards Considerations Sub Committees (*Chief Solicitor*)

The Chief Solicitor reported that there were two complaints previously considered by Assessments Sub Committees where an investigation by the Chief Solicitor had been approved. The two investigations had now been completed and in accordance with new guidance from the Standards Board for England, final reports on the investigations should be considered by a Considerations Sub Committee to consider any findings of fault, prior to any further consideration or a full hearing of the full Committee.

The Chief Solicitor gave a very brief outline of the two issues and explained that due to the Members subject to the complaints and the issues concerned, two separate sub committees would be required with quite different membership. These issues were briefly discussed by the Committee prior to consideration of the membership of the two sub committees and potential dates of meetings.

The Chief Solicitor also informed Members that there had been an additional complaint submitted to him which would require a meeting of an Assessments Sub Committee in the very near future.

Decision

That the two Consideration Sub Committees be convened at the earliest opportunity and that the membership and dates and times of the meetings be determined through discussions between the Independent Members that would Chair the meetings and Democratic Services.

The meeting concluded at 4.35 p.m.

CHAIRMAN

**HARTLEPOOL BOROUGH COUNCIL
STANDARDS COMMITTEE**

Annual Report 2009

INTRODUCTION

This second annual report of the Standards Committee of Hartlepool Borough Council covers the period 1st January - 31st December, 2009. Again, it sets out the roles and remit of the Committee, its composition, together with a review of its activities over the period in question. Standards for England (formally the Standards Board for England) have indicated that 59% of authorities produce an annual report from information collated from their annual returns provided in 2009. The Standards Committee have acknowledged that the production of such an annual report and its dissemination through the publication on the Council's website provides a means of demonstrating the ethical governance arrangements operating within the authority.

On 8 May 2008 the responsibility for considering complaints that a Member or a Co-opted Member of the authority may have breached the Code of Conduct was entrusted to the local Standards Committees. These changes were reflected in the Standards Committee (England) Regulations, 2008, which in turn derived from the Local Government Act, 2000 as amended by the Local Government and Public Involvement in Health Act, 2007. The regulations established a framework for the operation of a locally based Standards Committees to deal with the assessment, referral, investigation and hearing of complaints where Members' misconduct is alleged. In addition to the statutory framework the Standards Committee are also required to take into account guidance issued through Standards for England as well as giving cognisance to best practice operating amongst Standards Committees. The Standards Committee of the Borough Council has taken active steps to publicise information as to the process of dealing with such complaints. Relevant documentation including a "Complaint Form" together with additional guidance is readily available upon the Council's website as well as access to the minutes, proceedings and decision records of the Committee.

Members of the Borough Council have undertaken to comply with the Code of Conduct as initially introduced in 2002 and later revised in 2007 through The Local Authorities (Model Code of Conduct) Order, 2007. Members are obligated to complete entries on their Register of Interests and that relating to the registration of "Gifts and Hospitality" and in addition, Members are reminded on a bi-annual basis through correspondence from the Monitoring Officer as to the "updating" of these Registers, which are now available electronically through the Council's website.

THE REMIT OF THE COMMITTEE

The remit of the Standards Committee under Article 9 of the Council's Constitution is as follows:-

9.01 Standards Committee

The Annual Council meeting will establish a Standards Committee.

9.02 Composition

(a) Membership

The Standards Committee will be composed of the following:

- seven Councillors (other than the Mayor);
- four persons who are not Councillors or officers of the Council or any other body having a standards committee (known as “the independent members”); and
- three members of a parish council wholly or mainly in the Council’s area.

(b) Independent members

Independent members will be entitled to vote at meetings;

(c) Parish members

The parish members will be entitled to vote at meetings. They must be present when matters relating to parish councils or their members are being considered.

(d) Parish Councils sub-committee

The Standards Committee may appoint a sub-committee to exercise the function set out in Article 9.03 (viii) below. Such a sub-committee will include the Chair of the Committee (who will Chair the Sub-Committee) and one parish member. However the Standards Committee may decide to exercise those functions itself.

(e) Chairing the Committee

The Chair and Vice-Chair of the committee will be independent members of the committee.

9.03 Role and Function

The Standards Committee will have the following roles and functions:

- 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.*

9.04 Quorum

The quorum shall be four, which shall include three Councillors and one independent member. Where the committee is dealing with parish/town council issues the quorum shall be 5, which shall include three Councillors, one independent member and a parish/town council representative.

9.05 Appointment of independent and parish members

Independent members

Independent members of the Committee will serve for four years. At the end of each term the selection process will be determined by that Committee in accordance with regulations, however Council must approve the nominations of the Committee.

Parish members

The parish members will be nominated annually by the Parish Councils on a rota basis.

Following reports to the Standards Committee as to the possible extension of this remit, reports have been submitted to the Council's Constitution Working Group and Constitution Committee, together with reference to the Council's Audit Committee. The possible extension to the role and remit of the Committee is set out below, for information purposes:

- *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;*

In accordance with the requirement that not more than 25% of the membership of the Committee should comprise Independent Members, there are four positions upon the Committee wherein these Independent Members will serve for a period of four years. Pursuant to The Standards Committee (England) Regulations 2008, the following criteria apply to those individuals who would seek appointment as Independent Members;

- Approved by the majority of Members of the authority;
- Advertised in one or more newspapers circulating in the area of the authority, and in such other publications or websites as the authority considers appropriate;
- Of a person who submitted an application to the authority;
- Has within a period of five years immediately proceeding the date of appointment has not been a Member or officer of the authority, or
- Is a relative or close friend of a Member or Officer of the authority.

Although, a statutory requirement under the 2008 Regulations to have at least two Parish Council Members, the Standards Committee have acknowledged and followed the guidance issued through Standards for England and have incorporated into the composition of the Committee three positions relating to Parish Council representation. Following the introduction of local assessment of complaints the Standards Committee has formed two distinct Sub-Committees to deal with the initial assessment of a complaint and a Sub-Committee to review an initial assessment decision where "no action" was deemed to be appropriate. Where a matter relates to a complaint against a Member of a Parish Council, a Parish Council representative is required to be a Member of the relevant Sub-Committee. For the avoidance of doubt, all proceedings of the Standards Committee and its Sub-Committees are Chaired by an Independent Member.

COMPOSITION OF THE COMMITTEE

The Standards Committee for 2009 comprised the following Members;

Independent Members

Mr J B Gray – Chairman (reappointed May, 2008)

Mr T Jackson – Vice-Chairman (appointed February, 2009)

Professor B Footit – Independent Member (appointment ratified by Council February 2010)

Vacancy

7 Council Members

Councillors J Coward, J Lauderdale, A Preece, J Shaw, L Sutheran, S Wallace, E Wright (appointed until the Annual Meeting of Council in May, 2009)

Councillors J Coward, M Fleet, J Lauderdale, A Preece, J Shaw, C Simmons, M Turner, (appointed following the Annual Meeting of Council in May, 2009)

3 Parish Council Members

Mr R Gilbert (Elwick Parish Council) – (resigned October 2009) replaced by Mr M Dickinson (Elwick Parish Council)

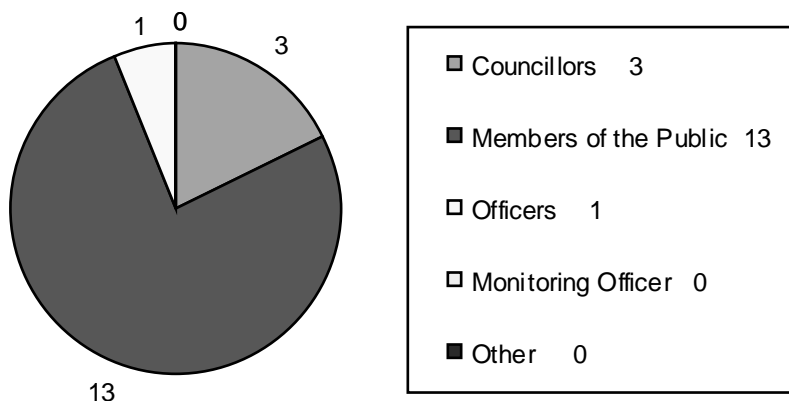
Mr A Bell (Hart Parish Council)

The quorum for the meetings of the Standards Committee is ordinarily prescribed as four (three Councillors and 1 Independent Member). The Assessment Sub-Committee and the Assessment Review Sub-Committee have a quorum of three and will comprise one Independent Member and two Members including one Parish Council representative where matters relate to a Parish Council matter. The Sub Committees meet with reference to any complaints that have been received. The Council's Monitoring Officer, Peter Devlin, acts in the capacity as Chief Solicitor to the Council with Alyson Caman, Legal Services Manager/Solicitor acting in the role of Deputy Monitoring Officer pursuant to Section 5(7) of the Local Government and Housing Act, 1989.

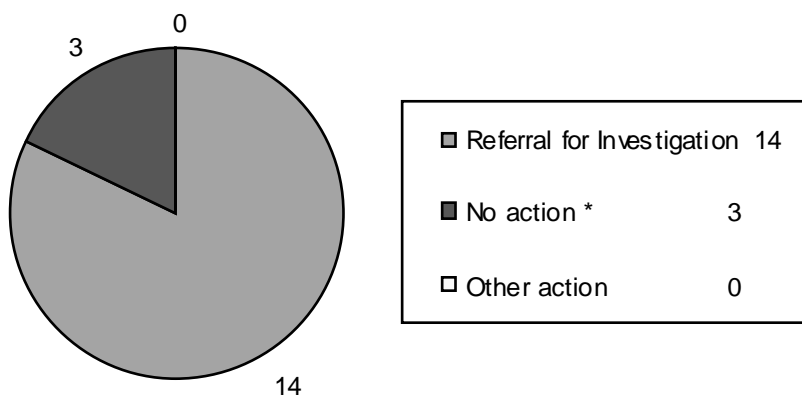
COMPLAINTS

In the period covered by this Annual Report seventeen complaints were received by the Council in relation to the local assessment and determination process, relating to Members of the Authority and the Parish Councils within the Borough of Hartlepool. Of these seventeen complaints, six related to Parish Council Members and eleven complaints relating to Members of the Borough Council. None of these seventeen cases were referred to Standards for England. The breakdown of these complaints by way of source of complaints, the decision of the Assessment/Review Sub-Committees and the relevant provisions of the Code relating to these complaints, are set out below:

i) The source of complaint

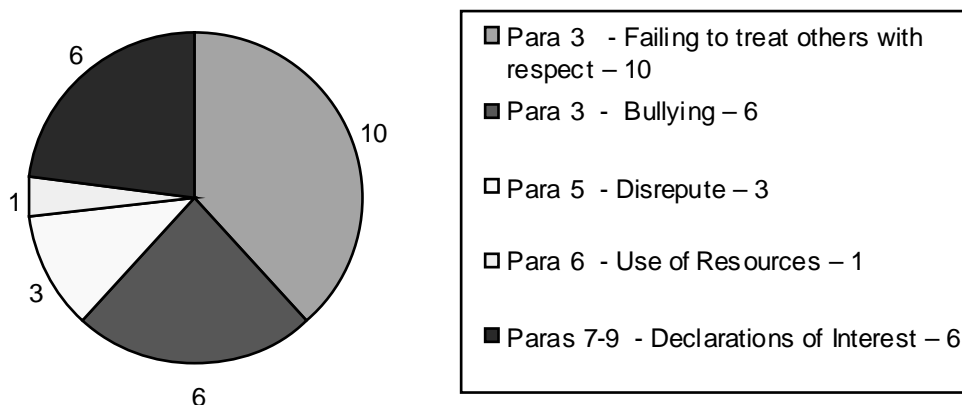


ii) Assessment/Review Decisions;

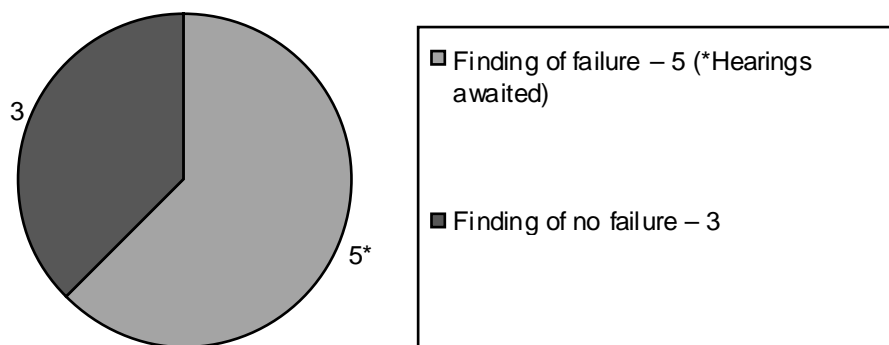


* One matter proceeded before the Review Sub-Committee who confirmed the initial decision to take “no action”.

iii) Provisions of Code



iv) “Findings” following referral for investigation.



There were no applications for any dispensations in relation to Members of the Borough Council or the Parish Councils over the period in question. A dispensation can be sought where the business of an authority can not be transacted when over 50% of the membership have a personal and prejudicial interest in a matter or the political balance requirements are engaged.

WHISTLEBLOWING

On the 15th September, 2008, the Standards Committee considered revisions to the Corporate Whistleblowing Procedure document, which document had been initially adopted by the Council in 2005. The amended procedure is intended to assist employees who have major concerns of any wrong doings within the Borough Council with specific reference to unlawful conduct, alleged financial malpractice or dangers to the public or to the environment. The overall aims of the Whistleblowing procedure is as follows:

- To encourage employees to feel confident in raising serious concerns and to question and act upon those concerns;
- To provide ways for employees to raise those concerns and get feedback on any action taken as a result;
- To ensure that employees get a response to their concerns and that they are aware of how to pursue them if they know what to do if they are not satisfied with any actions;
- To reassure employees if they raise any concerns in good faith and reasonably believe them to be true, they will be protected from possible reprisals of victimisation.

During the period covered by this report, there were four referrals to the Monitoring Officer pursuant to the Council's Whistleblowing procedures. Of those four matters, two were from anonymous sources. All four matters were investigated with the assistance of the Council's Internal Audit. None of the concerns raised were found to be substantiated although recommendations were passed to the respective Heads of Service. The Whistleblowing procedure is an important mechanism of the good governance arrangements operating within any authority and various communications for example emails to all Council staff and references within the Council's "Newline" magazine have highlighted the amended policy and that Council employees should seek reliance upon the same, if circumstances require such action. Again, it is pivotal that Council employees feel confident in utilising such

procedures without fear, on the basis of a disclosure in good faith, of any form of victimisation or harassment. Awareness raising within the Council is therefore vitally important in order to ensure that employees are sufficiently confident to rely upon this procedure if the same becomes necessary.

2009 REVIEW

The following items were considered by the Standards Committee over the period covered within this annual report;

i) Monitoring Officer Protocol

In unison with the Committees "Assessment Criteria" and other applicable guidance, the Committee have also endorsed a Monitoring Officer Protocol in the discharge of functions in relation to the initial assessment and review of allegations that a Member has failed to comply with the Code of Conduct. That protocol entails the Monitoring Officer maintaining a register of complaints received upon the Pro-Foma Complaint document which is available on the Council's website and maintaining the confidentiality of the identity of the complainant until consideration by the Sub-Committee. Further, the Monitoring Officer will be obliged to provide notification of receipt of allegations to the Subject Member(s) and that the same will be assessed by a Sub-Committee of the Council's Standards Committee. Of note, this protocol also provides (paragraph 3 refers) to the possibility of "local resolution" of a complaint, if circumstances mentioned within the Protocol are engaged. The Protocol also covers the review of decisions not to investigate a complaint and the stipulated time periods in relation to such reviews and also provision for local investigation where a formal referral to the Monitoring Officer has been made for the purposes of investigation. The Protocol is available upon the Council's website.

ii) The Standards Committee (Further Provisions) (England) Regulations, 2009

It was reported to the Standards Committee the introduction of the above mentioned Regulations which came into force on the 15th June, 2009. The Regulations make various provisions in relation to the intervention by Standards for England and the suspension of the Standards Committee functions as well as the creation of Joint Standards Committees and clarification upon Member dispensations. The Regulations enable Standards for England to suspend a local authorities Standards Committee's powers to undertake the initial assessment of complaints. The Standards Committee (England) Regulations, 2008 had made provision in relation to how Standards Committees can deal with misconduct allegations as well as the size and composition of the Committee, its Sub-Committees, the validity of their proceedings and the various powers, procedures and requirements in relation thereto. The 2009 Regulations, provide for intervention into an individual authority, if such action is warranted. Such intervention can be triggered in the following circumstances;

- A failure to have regard to the Standards for England Guidance;
- A failure to comply with Directions from Standards for England;

- A failure to carry out the Committees (or the Monitoring Officers) functions within a reasonable time or in a reasonable manner.

Where Standards for England considers intervention, it must give the authority notice of its intentions and reasons and allow 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 Standards for England or to the Standards Committee of another named authority. The Regulations also 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. In an 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.”

The Tees Valley District Lawyers Group and the Tees Valley Ethical Partnering initiative have discussed in a formative sense, the operation of Joint Committees, which is the subject of further dialogue. The 2009 Regulations also amend the earlier Dispensation Regulations wherein a Member seeking a dispensation must submit a written request to his/her authorities Standards Committee. That Committee must conclude having regard to the provisions surrounding dispensations and all other circumstances of the individual case, whether it is appropriate to grant a dispensation, or not. The Regulations 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. All dispensations, are required to be recorded in relation to the Register of Members Interests.

iii) **Planning Code of Practice**

During the period of this review the Standards Committee considered along with representations from the Council's Planning Committee a draft Planning Code of Practice, which was ultimately approved by the authority in July, 2009. This particular Code has now been adopted within Part 5 “Codes and Protocols” of the Council's Constitution. The adopted Planning Code of Practice draws upon guidance issued through the Local Government Association, the Royal Town Planning Institute and the Audit Commission. The purpose of this Code is as follows:

- Protecting the Council from criticism about the conduct of Members in the Planning process
- Providing a framework to deal with potential problems
- Assisting in making decisions in the public interest
- Illustrates the openness and transparency of the decision making process

- Seeks to explain and supplement the Members Code of Conduct for the purposes of Planning Control

A failure to abide by the provisions contained within the Planning Code of Practice could lead to the authority being at risk of proceedings upon the legality or maladministration of the related decision and also placing a Member(s) at risk of either being named and a report being made to the Standards Committee or full Council, if that failure is likely to be a breach of a Members Code of Conduct. The Planning Code of Practice has been circulated to all Members of the authority and has been instrumental in training exercises specifically relating to Members of Planning Committee.

iv) Tees Valley Ethical Governance Standards Training

The Tees Valley Authorities continued to engage in a number of training initiatives of all Standards Committee Members and also training specifically tailored towards Independent Members, as well as Parish/Town Council Forums. There are also two Protocols, mentioned within the previous Annual Report, which had been revised in the light of the provisions contained within the Local Government and Public Involvement and Health Act, 2007, and which cover;

- “Ethical Framework: Members Code of Conduct – Alleged Breaches” – Legal Advice
- “Ethical Framework: Members Code of Conduct – Alleged Breaches” – Monitoring Officer

These particular Protocols, provide for reciprocal legal advice and the provision of Monitoring Officer support, particularly in cases where a Subject Member(s) or a Monitoring Officer is “conflicted out” of dealing with a particular case within their respective authority. These Protocols and also the Ethical Governance Training provides the opportunity for the sharing of good practice amongst the Tees Valley authorities and is indicative of established partnering amongst these respective authorities. The following development programme is therefore of note.

Event	Lead Authority	Date
Town/Parish Council Training Event – Local Assessment; revised Code of Conduct	Hartlepool/Stockton	May 2009
Standards Committee Workshop – Local Assessment criteria; sanctions; joint working; applicable Regulations	Middlesbrough	September 2009
Standards Committees Independent Member Forum	Darlington/Redcar and Cleveland	October 2009

v) **Maintaining Members Register of Interests Electronically**

The Standards Committee recommended to full Council the maintenance of Members Register of Interests being held electronically. This was endorsed by a meeting of Council on the 30th June, 2009. 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 those changes 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. Members within the Borough Council are reminded on a bi-annual basis as to these obligations. Applicable guidance issued through the Standards for England highlights the need for transparency of such information;

“So that decision making is seen by the public as open and honest”.

vi) **Parish Council Representation – Standards Committee**

It is recognised that the 2008 Regulations placed a requirement upon Standards Committees to have a least two Parish Council representatives. Guidance issued Standards for England indicated that at least three Parish Council representatives should ideally be included within the composition of the Committee. The Committee have formed the view that in order to increase representation and involvement of Parish Councils within the workings of Standards Committee and the operation of the Ethical Framework provisions, the three Members of the Committee should be drawn from Parish Council's operating within the Borough. This recommendation again was endorsed through a meeting of full Council on the 30th June, 2009.

vii) **Good Practice – Standards Committees**

Members of the Committee have reflected on areas of good practice and have received reports, including that relating to the LGC Standards and Ethics Awards wherein six authorities were shortlisted through *“their dynamic approach to improving and promoting ethical standards amongst Members and helping to boost public confidence in local democracy”*. It was recognised that certain common “themes” connected these six shortlisted authorities as follows:

- Engaging leadership
- Training and skills for Members
- Communication with staff and stakeholders
- Increasing confidence in democracy
- Working in partnership with other authorities

Some of these themes are reflected in the work of Standards Committee within the Borough of Hartlepool. The Executive Member for Finance and Performance also has within that Portfolio, “Standards and Ethics”. The Annual Report of the Committee is subject to dialogue with the Elected Mayor, the Council's Head of Paid Service and Group Leaders. It is also acknowledged that the authority in working in partnership with Tees Valley colleagues, (which is also incorporated training initiatives with representatives from Standards for

England and a Monitoring Officer peer,) allows for a pro-active approach to ethical governance. The Council have also adopted through its “Code of Governance” references to Standards Committee as part of its commitment to proper and effective governance. In brief, the Code of Governance also provides a set of “key documents” which comprises the following:

- The Constitution
- Essential documents supporting the Council’s Constitution
- Key policy documents
- Key budget and risk management documents
- Key Member/Officer decision making
- Miscellaneous documents

Members have also had regard to the report commissioned through the Standards for England which assesses the impact of Standards Committees, in relation to nine case studies which again provides examples of “notable practice” in this area. This research was conducted through the University of Hull and Teesside University and is entitled “Assessing the Impact of Standards Committees” (October 2009). Again, these case studies, illicit certain “key findings” of innovative practice being essential to the operation of effective governance. This was underlined through leadership and political support to Standards Committee operating within an individual authority. Further, the composition of Standards Committee needs to be appropriately balanced with the emphasis on the skills and knowledge based experience of the Independent Members of the Standards Committee. Further, learning from one another was a key feature of organisational learning with the Standards Committees and better Ethical Governance as a result. On a regulatory point, Members have received reports, indicating the transfer of the work of the Adjudication Panel for England into the unified tribunal structure through the new general regulatory chamber within the first-tier tribunal. Consequently, where a Standards Committee wishes to make a referral under Regulation 17 of the Standards Committee Regulations, an “Initiating Application” form will need to be completed and “Decision Notices” now reflect these amendments. Members will now have 28 days in which to seek an appeal, from the determinations of a Standards Committee.

Members of the Committee have also disseminated to all Members of the Borough Council together with communication to Parish Clerks/Chairs, the Standards for England – “On line Guides/Case Summaries”. These Guides provide a short synopsis upon the following matters:

- Bullying and the Code of Conduct
- Lobbying
- Personal and Prejudicial Interests
- Disclosing confidential information
- Gifts and Hospitality
- Pre-disposition, pre-determination or bias and the Code.

CONCLUSION

It is the expectation of Members of Standards Committee, that this report provides an overview of the work it has undertaken over the period of 1st January – 31st December 2009. Members of the Committee recognise their role in ensuring and maintaining proper ethical governance arrangements within the Borough Council and Parish Councils within the Borough. This also has resonance to maintaining confidence of the community served by these public bodies and it is the overall intention of the Committee to be as proactive as possible in ensuring that there are effective lines of communication including the circulation of this Annual Report, to enhance a better understanding of the work of the Committee. It is also the Committees objective that it is actively involved in the operation and maintenance of good governance within public authorities and this can only be achieved through the engagement with a variety of stakeholders and it will endeavour to achieve this objective with its continuing work in the ethical governance of those authorities.

STANDARDS COMMITTEE

23rd March 2010



Report of: Chief Solicitor and Monitoring Officer

Subject: STANDARDS FOR ENGLAND – A REVIEW OF THE LOCAL STANDARDS FRAMEWORK

1. BACKGROUND

1.1 Standards for England have produced the results of their recent review of the Local Standards Framework “Local Standards 2.0 – The Proportionality Upgrade” (full document appended herewith Appendix 1). The report covers the operation of the local assessment and determination process which has been operative since 8th May, 2008. This allows a more “localised” assessment and review process into allegations that a Member/Co-opted Member has failed to accord with the Code of Conduct. This review provides some 17 recommendations as detailed within the confines of this report.

1.2 These recommendations, encompass the following key findings;

- The need for a more streamlined local assessment process.
- An enhanced role for Independent Chairs and Vice-Chairs.
- A new power for Standards Committees to be able to halt investigations, if they have good reason.
- A commitment to greater transparency for Members who are the subject of complaints.
- The need to develop an approach which allows a special understanding and management of costs associated with the operation of the framework.

1.3 This review by Standards for England will now proceed to the Department for Communities and Local Government for their consideration.

2. SCOPE AND METHODOLOGY OF THE REVIEW

2.1 The remit of the review by Standards for England was to consider the proportionality and effectiveness of the Local Standards Framework and to make recommendations for the consideration of the Department for

Communities and Local Government. The review was carried out in the following three stages.

Stage 1: Wherein the following key questions were identified;

- What has been the impact on public trust in Politicians?
- What has been the impact on confidence in accountability mechanisms?
- What has been the impact on Member behaviour?
- What are the key design principles of a Standards Framework?
- What aspects of the framework work well?
- What are the problems with the Standards Framework?
- What are the solutions/alternatives?
- What is the cost of the Standards Framework?

Stage 2: Consultation was initiated with a number of organisations, for example, the Department for Communities and Local Government, the Audit Commission, Local Government Association, Local Government Ombudsman, the Society of Local Council Clerks.

Stage 3: Finally, the review made recommendations for improvement as outlined herein.

3. CONTEXT TO THE REVIEW

- 3.1 It is an expectation of the public that elected Politicians maintain high standards of conduct (BMG research – 2009). Further, that research shows the confidence and the integrity of Politicians is valued by the public. Consequently, confidence in political systems is also vitally important. A BBC and Ipsos Mori (2009) poll, found that 80% of people did not just blame MPs for the current problems but also the parliamentary system. Although it seems that there was overall support for a Standards Framework;

“...although there are problems within the existing framework, removal of the framework (is) simply not a viable alternative. It is considered to have provided tangible benefits and to perform an extremely valuable role in local democracy”.

(Reference – MacAulay (2010) Comparing Standards Frameworks, prepared for Standards for England, Manchester).

By 2009, research indicates that 94% of Members and Officers agreed that all Members should sign up to a Code of Conduct, compared to 84% in 2004. Notably, in 2008-09, 2,863 complaints about the behaviour of local authority Members were made across England, over half of which were made by members of the public. However, within local authorities, there is the perception that Members behaviour is improved through the framework, but that this is not translated into public perception. However, research through Standards For England suggests that there is improved behaviour which is due to a combination of raised awareness of the Code of Conduct and rules of behaviour. This is enhanced through the support the framework

provides to the sanctioning, demotion and resignation of Councillors and the threat of sanctions. There is a high level of confidence within local government that local authorities will uncover breaches of the Code of Conduct and deal with such breaches appropriately. Although, again, this is not evident through public confidence in this position. Whilst research indicates 74% of Members and Officers were “quite confident/very confident” of the ability of a local assessments procedure to cover a breach, only 25% were similarly “quite confident/very confident” when translated to members of the public.

3.2 It was recognised through Standards for England that there had been innovations within the local assessment and determination process, as follows;

- Communicating standards issues both within authorities and to the public.
- The training of Members.
- Engaging leaders to ensure that Standards become part of the culture of an organisation.
- Promoting local democracy.
- Ensuring good governance across partnership arrangements.

4. A STANDARDS FRAMEWORK BUILT ON PRINCIPLES

4.1 Overall, Standards for England, recommend “eight design principles”;

- The framework should be fair.
- The framework should be swift.
- The framework should be local.
- The framework should be free from political bias.
- The framework should be clear and transparent.
- The framework should strike a balance between the twin tasks of promoting principles through enforcing rules.
- The framework should give the public confidence that poor behaviour will be uncovered and dealt with appropriately.
- The framework should be cost effective.

5. THE CASE FOR A LOCAL FRAMEWORK

5.1 During the course of the review, Standards for England also explored arguments around a “centralised versus local” system in England. It was perceived, the following key advantages of a centralised system were;

- A central body dealing with all allegations is more likely to achieve consistency of process and outcome.
- A central body removes the resource burden on local authorities.
- A central, independent body will be expected to give the public a greater degree of confidence in the impartiality of the framework.

5.2 On balance Standards for England believe that the local system should be supported through the following principles;

- Enables local people to be involved in managing ethical standards issues and encourages them to be aware of issues going on in their authority.
- Allows the use of local information which may influence decisions about the seriousness or validity of a complaint.
- Provides an opportunity for the Monitoring Officer of the Standards Committee to deal with some issues by a more informal and proportionate method.

It was also notable, that within their review, Standards for England indicated the role that leaders and Chief Executives can play as well as political parties in ensuring the discipline of their Members. Further, in a regulatory sense, it was stressed the importance of encouraging the dissemination of notable and innovative practice in local government.

6. FINDINGS AND RECOMMENDATIONS

(i) Improving the local handling of complaints.

It was felt that the current process which starts with the assessment of complaints and then essentially leads to an investigation and resolution, can be somewhat cumbersome. It was also perceived to provide a system which was difficult to understand, resource intensive and slow. It was therefore considered, whether the current investigation arrangements should be replaced with an open hearing system or alternatively through streamlining and simplifying the process. It was considered, simplifying the local filter, would be beneficial. It was felt that current arrangements were unnecessarily resource intensive and slowed down the process. In the first instance, it is recommended that a much clearer system, wherein the Monitoring Officer acts as the initial filter, seeing which allegations fall within the remit of the Code and which do not.

Recommendation 1

(i) The law should say that Monitoring Officers, rather than Standards Committee should receive all allegations and make a decision about whether or not they are within the remit of the Code of Conduct.

(ii) Swift assessment by the Independent Chair

Building upon the above recommendation, two alternatives were considered for dealing with those allegations which the Monitoring Officer had deemed had been within the remit of the Code of Conduct. Namely, whether the Monitoring Officer should be the person who decides what should happen next to those allegations and whether that

assessment should be made by the Independent Chair, with advice from the Monitoring Officer. The review, commends the following recommendation;

Recommendation 2

For allegations within the remit of the Code the Independent Chair of the Standards Committee, acting with the advice of the Monitoring Officer, should determine what happens to an allegation.

The Chair, would have a choice of five options ;

- **To take no further action.**
- **To refer for a local investigation.**
- **To refer to SfE for investigation.**
- **To refer to the Monitoring Officer for other action.**
- **To refer to the Standards Committee to seek their advice in choosing one of the previous four options.**

It was also considered that a Standards Committee Chair should provide written reasons for each decision. The following recommendations (3-5) were also made;

Recommendation 3

The Vice-Chair of the Standards Committee should be an independent person.

Recommendation 4

If the Chair is unavailable or has a conflict of interest in relation to an allegation then the Independent Vice-Chair should deputise. Standards Committees should be able to develop reciprocal arrangements so that their Chairs can assess each others allegations.

Recommendation 5

Standards Committees should undertake retrospective periodic reviews of these decisions to ensure consistency and quality. The national body should also provide oversight via its regulatory role.

(iii) Removing the Right to Review

It was noted, that the process of “review” could be time consuming with consequent, cost implications. Further, only around one review in twenty leads to a reversal of the original decision to take no further action. That said, it was the recommendation, that there should be an automatic right of review.

Recommendation 6

The current statutory review arrangements should be removed but the authority should be given a discretionary power to allow for the review of particular decisions. This review could be undertaken by the Standards Committee or a Sub-Committee of it, by an Independent Member of the Standards Committee not involved in the initial decision or by any of these from another principle authority.

- (iv) Removing the need for a Consideration Committee

A Consideration Committee or a Sub-Committee, currently, must be convened following an investigation, to decide whether or not to accept the finding made by the Monitoring Officer following an investigation. Again, Standards for England were conscious of the costs and time involved in convening such a Committee/Sub-Committee. It was therefore considered, the following recommendations (7-8) as follows;

Recommendation 7

After completion of a local investigation the Chair of the Standards Committee should decide whether to accept a finding of no breach, and were a breach is found, whether the case should go to a local hearing or to the first-tier tribunal. Vice-Chairs should be able to deputise in this role.

Standards Committees should be able to develop a wide range of reciprocal arrangements with other Standards Committees so that their Chairs can assess each others investigations in this way.

Recommendation 8

The Chair or the Vice-Chair should have a greater role in case management, making the pre-hearing decisions (for example, setting deadlines for responses to documents, deciding which witnesses should be called to give evidence and dealing with applications for an adjournment) with advice from the Monitoring Officer.

- (v) Deterring Trivial Complaints

It was considered by Standards for England, whether there should be “sanctions” against trivial complaints and whether there are issues of any cost implications which should be met by a complainant or by the “loser” in relation to a matter of complaint. However, it was a consideration, that it could deter justified complaints and even “serial trivial complainants” may still, on occasion, have justifiable complaints. It is the intention, for local authorities and Standards Committees to be

more robust and public in discouraging trivial complaints. It was therefore recommended;

Recommendation 9

Standards for England should produce guidance that urges Chairs to be more robust in their decision letter and highlight when they believe that allegation to have been trivial.

(vi) Closing down an investigation

A criticism of the Standards Framework is it is very difficult to stop an investigation even when there may be little or no benefit in continuing such a process. It was therefore recommended;

Recommendation 10

The Monitoring Officer should be able to recommend to the Standards Committee – at any stage and for any reason – that an investigation be stopped. Standards Committees should decide whether or not to accept such recommendations by considering how the public interest is best served.

(vii) Enhancing Members “Right to Know”

A criticism of the current assessment process is that Members who are subject of a complaint only find out that they have been subject to such a complaint only after an initial decision has been made on whether or not the allegation merits an investigation. Presently, legislation requires the Standards Committee to notify a Member. That said, guidance issued through Standards for England indicates that a Member should be told as quickly as possible, but it is recognised that the law needs clarification, in this area. For the avoidance of doubt, the Monitoring Officer of Hartlepool Borough Council proceeds upon the guidance issued through Standards for England and does provide notification to the subject Member that a complaint has been received. This is in order to allow some degree of transparency as recognised within the guidance issued through Standards for England.

Recommendation 11

On receipt of an allegation the Monitoring Officer should inform a Member that they have been the subject of a complaint unless there are compelling circumstances not to (for example a risk of prejudicing an investigation by intimidation of witnesses or destroying or compromising evidence).

(viii) Publicising Decision Notices

Presently, a Notice of Decision about the outcome of such investigations have to be publicised in a local newspaper. It is recognised the cost impact for local authorities in meeting such publicity requirements. It is therefore recommended;

Recommendation 12

Local authorities should no longer be required to public Decision Notices in the local newspaper. Instead they should be publicised on the local authority's website.

(ix) Composition of Standards Committees

In consideration of whether or not the mandatory number of Independent Members (currently a minimum requirement of 25% of the overall membership) should be increased to incorporate a Standards Committee composed entirely of Independent Members, was viewed as potentially having a “negative consequence”. On balance it is believed that the current approach is correct.

It is a strong contention of Standards for England and the Committee on Standards and Public Life that Parish and Town Councils should be included within the Standards Framework. This is also supported through the National Association of Local Councils. Parish Councils currently make up around three quarters of all Members covered by the Code of Conduct. They also account for just under half of all complaints ie 2,557 between 8th May, 2008 – 31st December, 2009.

(x) The Cost of the Local Framework

It is recognised that Standards for England need to do more work to be able to offer better information on the reasonable costs incurred by local authorities in complying with the local assessment and determination process. Although mindful of actual/potential costs to local government the overall recommendations contained in this present review, may result in reduced costs to local government.

Recommendation 13

Standards for England should assist local government by development a clear and consistent understanding of the costs of the Local Standards Framework and, through working with local authorities, identify and promote ways of ensuring those costs are reasonable and that excessive and wasteful expenditure can be avoided.

(xi) Local Framework and Promoting High Standards

It is recognised that Standards Committees have a statutory role to promote high standards of behaviour and that there are many ways in which local government can engage to demonstrate such high standards.

Recommendation 14

Local authorities should be encouraged to develop local solutions. Good practice with local solutions should be shared so that local authorities can benefit from each others experiences.

(xii) The Members Code of Conduct

Standards for England, believe that the Code is the correct way to regulate the behaviour of Members of local authorities. It is therefore recommended;

Recommendation 15

The next review should look for opportunities to simplify the Code and ensure that it is readily understood by Members, and remains fit for purpose.

(xiii) The Role of a National Regulator

It is considered that a national body should via training, advice and guidance, as well as through oversight, should ensure a greater degree of consistency than would be the case, if each local authority were left to its own devices.

Recommendation 16

Standards for England should develop a training role. In particular it should respond to the increased responsibility given to Independent Standards Committee Chairs by ensuring basic training is provided to enable them to fulfil this role.

Recommendation 17

The national regulator should have power to investigate allegations that the Chair/Vice-Chair of a Standards Committee was not acting impartially, or performing poorly. If there is sufficient evidence that this is the case then the national regulator should be able to remove the Chair/Vice-Chair of the Standards Committee.

7. RECOMMENDATION

1. To note and discuss.