

STANDARDS COMMITTEE – 15 JULY 2008

SUB-COMMITTEES OF THE STANDARDS COMMITTEE

Report of the: Monitoring Officer

Status: For consideration and decision

Executive Summary: The Standards Committee (England) Regulations 2008 came into force on the 8th May 2008. The legislation made the establishment of Sub-Committees of the Standards Committee a mandatory requirement along with the transfer of functions to them.

The composition and terms of reference of these Sub-Committees is closely defined by the legislation.

This report aims to complete the formal adoption of the Sub-Committees and sets out their composition and terms of reference for approval by this Committee for recommendation to Council for formal adoption and incorporation into the Council's Constitution.

This report supports the Key Aim of effective management of Council resources.

Portfolio Holder Cllr. Loney

Head of Service Head of Legal and Democratic Services – Christine Nuttall

Recommendation: It be Recommended to Council that the following Sub-Committees:

- a) Assessment Sub-Committee
- b) Review Sub-Committee
- c) Determination Hearing Sub-Committee

be approved along with their composition and terms of reference as set out in this report for incorporation into the Council's Constitution.

Background

- 1 The establishment of Sub-Committees is mandatory under the Standards Committee (England) Regulations 2008 (the Regulations) which came into force on the 8th May 2008.
- 2 The composition of the Sub-Committees must be chaired by an independent member and there must be three members of the Sub-Committee present for the duration of the meeting, including at least one District Councillor and at

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least one Parish/Town Council representative, where the allegation relates to a Parish/Town Councillor.

Introduction

- 3 On the 4th March 2008 (Agenda Item No. 3), the Standards Committee agreed that subject to the Regulations that a hearing panel (a sub-committee) chosen from a pool of members (the Standards Committee) be established to deal with this new role (the sifting process) and that a further hearing panel (a further sub-committee) chosen from a pool of members (the Standards Committee) be established to deal with this additional new role (the appeal process).

Composition

- 4 Following the implementation of the Regulations these Sub-Committees and their composition need to be formally approved by Council for incorporation into the Council's Constitution. The composition of the Sub-Committees set out in italics below is suggested for approval by this Committee and consideration by Council for approval and incorporation into the Constitution as follows:

Standards Committee

*Composition of the Assessment Sub-Committee and the Review Sub-Committee
Relating to Allegation(s) of Member Misconduct including Composition of the
Determination Hearing Sub-Committee*

One Independent Member (Chairman)

One/Two District Councillor(s)

*One Parish/Town Councillor where the allegation relates to a
Parish/Town Councillor*

- There is no requirement for fixed membership or a fixed Chairman of the above mentioned Sub-Committees. Preferably such members will be chosen on a rotational basis from the pool of members on the Standards Committee.*
- The Chairman of the above mentioned Sub-Committees is given authority to make a substitute or to vary the hearing panel where difficult circumstances are envisaged to minimise the risk of conflicts of interest and ensure fairness for all parties.*
- The quorum for a meeting of the above mentioned Sub-Committees will, for the duration of the meeting, be three members.*
- Decisions of the above mentioned Sub-Committees will, be taken by majority vote.*

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- *Members who are involved in the decision making on the initial assessment of a complaint must not take part in the review of that decision.*
- *Members who have taken part in the initial assessment of a complaint even on review may take part in any subsequent determination hearing as the initial or review stages make no findings of fact.*

Terms of Reference of the Committees

- 5 Following the implementation of the Regulations it would seem beneficial to have terms of reference for the Sub-Committees. The Review Sub-Committee will have the same decision making powers as the Assessment Sub-Committee and suggested terms of reference for these Sub-Committees and the Determination Hearing Sub-Committee are set out below in italics for endorsement by this committee and consideration by Council for incorporated into the Constitution as follows:

Standards Committee

*Terms of Reference of the Assessment Sub-Committee and Review Sub-Committee
Relating to Allegation(s) of Member Misconduct including Terms of Reference
of the Determination Hearing Sub-Committee*

- *The Assessment Sub-Committee is established to receive allegations that a member of the Authority has failed, or may have failed to comply with the Authority's Code of Conduct.*
- *The public's right is to complain to the local Standards Committee and not to the Standards Board for England. A complaint can be made to the Monitoring Officer, Sevenoaks District Council, Argyle Road, Sevenoaks, Kent TN13 1HG. Further details can be found on the Council's website along with a Complaint Form.*
- *Upon receipt of each allegation the Assessment Sub-Committee shall make an initial assessment of the allegation and shall then do one of the following:*
 - a) *refer the allegation to the Monitoring Officer for investigation*
 - b) *refer the allegation to the Standards Committee of another relevant authority*
 - c) *refer the allegation to the Standards Board for England*
 - d) *take no action in respect of the complaint*
 - e) *refer the allegation to the Monitoring Officer for action short of formal investigation such as training or conciliation or such other steps (not including an investigation), as appear appropriate*

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- *The Complainant has a right of review over the Assessment Sub-Committee's decision to take no action.*
- *The Review Sub-Committee has the same decisions available to it as the Assessment Sub-Committee. In addition, the Review Sub-Committee may decide that the review will not be granted in the circumstances.*
- *Where the Complainant makes further or new information of any significance available in support of their complaint that changes the nature of or gives rise to a potential 'new' complaint and the information submitted is not merely a repeat complaint, the Review Sub-Committee will consider if it is more appropriate to refer the matter back to the Assessment Sub-Committee as a 'new complaint'. In the circumstances, the decision arrived at by the Review Sub-Committee will be 'that the review request not be granted'.*
- *The purpose of the initial assessment decision or review is simply to decide whether any action should be taken on the complaint either through investigation or some other action. The Assessment Sub-Committee and Review Sub-Committee make no findings of fact. If the Assessment Sub-Committee refers the complaint to the Monitoring Officer for investigation or other action, it does not mean that the Sub-Committee has made up its mind about the complaint. It simply means that the Sub-Committee believes the alleged conduct, if proven, may amount to a failure by the Subject Member, to comply with the Code of Conduct and that some action needs to be taken in response to the complaint.*
- *The Assessment Sub-Committee and Review Sub-Committee also have the power to receive a Monitoring Officer's Report within 3 months of receipt of the Assessment Sub-Committee's or Review Sub-Committee's Direction to take other action. If the Assessment Sub-Committee or Review Sub-Committee is not satisfied with the action specified or proposed in the Monitoring Officer's Report, it will direct the Monitoring Officer accordingly.*
- *Where an allegation or complaint is investigated and there is a "Finding of failure to comply with the Code of Conduct" the Determination Hearing Sub-Committee will hear and determine the allegation/complaint that a District Councillor, Parish or Town Councillor or Co-opted Member has failed or may have failed to comply with the Code of Conduct.*
- *Where an allegation or complaint is investigated and there is a "Finding of no Failure to Comply with the Code of Conduct" a meeting of the Determination Hearing Sub-Committee will be convened to consider the "Finding of no Failure to Comply with the Code of Conduct" and decide whether to agree. If the Determination Hearing Sub-Committee accepts the finding of no failure, this will be a 'finding of acceptance'. Where the Determination Hearing Sub-Committee decides that on the balance of probability there is a case to answer the Determination Hearing Sub-*

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Committee will arrange for a formal hearing to be convened and will hear and determine the case.

- *The Assessment Sub-Committee shall agree a programme of meetings including one meeting per calendar month, but shall only meet where one or more allegation has been received which require to be assessed at that meeting or when the Monitoring Officer wishes to submit a Report following a Direction given by the Assessment Sub-Committee or Review Sub-Committee to take other action.*
- *The Review Sub-Committee shall meet as and when required to enable it to undertake the review of any decision of the Assessment Sub-Committee within 3 months of the receipt of the request for such a review from the person who made the allegation.*
- *The Determination Hearing Sub-Committee shall meet as and when required to enable it to determine whether a District Councillor, Parish or Town Councillor or Co-opted Member has failed to comply with the Code of Conduct*

Options (and Reasons for the Recommendation)

- 6 The Committee is asked to consider the proposed composition and terms of reference of the various Sub-Committees for recommendation to Council for formal adoption and incorporation into the Council's Constitution.

Key Implications

Financial

- 7 There are no financial implications directly associated with the formal adoption by Council of the above mentioned Sub-Committees along with details of the Sub-Committees composition and terms of reference.

Legal, Human Rights etc.

- 8 The establishment of these Sub-Committees is mandatory under the terms of the Regulations.

Resource (non-financial)

- 9 There is no non-financial resource implications directly associated with the formal adoption by Council of the above mentioned Sub-Committees along with details of the Sub-Committees composition and terms of reference.

Value For Money

- 10 Efforts are being made to try and keep the expenditure associated with the work of these Sub-Committee within existing budgets.

Equality

- 11 The Assessment Sub-Committee and the Review Sub-Committee will be the point of first entry for allegations of misconduct against members. The Determination Hearing Sub-Committee will determine a case following an investigation. The composition and terms of reference of such Sub-Committees ensures that no-one is disadvantaged in their ability to pursue or defend an allegation.
- 12 The Regulations and guidance reiterates that in order to minimise the risk of conflicts of interest and to ensure fairness for all parties, the Members who are involved in the decision making on the initial assessment of a complaint (Assessment Sub-Committee) must not take part in the review of that decision (Review Sub-Committee). However, Members may take part in any subsequent determination hearing (Determination Hearing Sub-Committee) as the initial or review stages make no findings of fact.

Conclusions

- 13 The Regulations set out the details of how the local based system for assessment, referral, investigation and hearing of alleged complaints relating to a breach of the Code of Conduct by Members will operate.
- 14 The establishment of Sub-Committees to carry out these functions is mandatory, as is the transfer of functions to them. The composition and terms of reference of the Sub-Committees is also closely defined.
- 15 This report aims to complete the formal adoption of the Sub-Committees setting out their composition and terms of reference.

Risk Assessment Statement

- 16 This authority will be failing in its statutory duty if it fails to carry out the formalities necessary to set up these statutory sub-committees.

Sources of Information: The Standards Committee (England) Regulations 2008

Local Assessment of Complaints

Contact Officer(s): Christine Nuttall – ext. 7245

Dr. Pav Ramewal
Corporate Resources Director