

STANDARDS COMMITTEE – 24TH JANUARY 2013

REVIEW OF THE NEW STANDARDS REGIME

Report of the: Monitoring Officer

Status: For consideration and decision

Executive Summary: The New Standards Arrangements were approved by Council on the 24th July 2012 following the implementation of the Localism Act 2011 and supporting legislation. Council on the 24th July 2012 agreed that the Standards Committee and or the Modern Local Government Group keeps the Code and Arrangements under review and reports further to the Council as is considered necessary. This reports sets out how the new regime is working and considers minor amendments by way of a desk top review from experience to date. A more detailed review may be considered necessary at a later date.

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

Head of Service Mrs Christine Nuttall – Head of Legal and Democratic Services and Monitoring Officer

Recommendation: . **That the following minor consequential changes be made to the Council’s new processes and procedures in relation to the new standards regime as follows:**

- a) **The criteria in relation to the Initial Intake Test be strengthened by the following amendments being made:**
- **The behaviour took place within the last 30 days**
 - **The complaint is not being made within 6 weeks prior to a District-wide election or an election involving the Parish that the complaint is related to (no action will be taken in relation to any complaint within this period)**
 - **Is there any doubt that the member was acting in their private capacity**
 - **The complaint is a substantive allegation under the Code rather than a service, officer or a statement of policy disagreement or a disagreement within another organisation, such as a political group**
- b) **The relevant Clerk be informed of a complaint relating to a Town or Parish Councillor when a complaint passes the Initial Intake Test.**
- c) **The Monitoring Officer advertises for an additional Independent Person, who would meet the legal criteria for appointment beyond 1st July 2013.**
-

Reason for recommendation: When the new arrangements were approved by Council on the 24th July 2012 it was agreed that the Standards Committee and or the Modern Local Government Group would keep the Code and Arrangements under review and report further to the Council as considered necessary. As it is too early to undertake a full review, minor amendments are suggested by way of a desk top review based on experience to date, which if considered appropriate by this Committee can be implemented by the Monitoring Officer by way of the delegated powers granted by Full Council on the 24th July 2012.

Introduction

- 1 On the 24th July 2012 Council approved the new standards regime arrangements regulating the conduct of District Council Members together with arrangements to process complaints about District and Parish/Town Members that had been developed by a Task Group appointed by the previous Standards Committee. The changes were necessary following the introduction of the Localism Act 2011 and subordinate legislation.
- 2 The main provisions of the legislation surrounded the following measures:
 - The abolition of Standards for England (previously Standards Board for England)
 - A requirement to adopt a Code of Conduct based on the seven principles of public life
 - A requirement to promote and maintain high standards of conduct
 - A requirement to register disclosable pecuniary and other interests
 - The creation of a new criminal offence of failing to register relevant interests
 - The requirement for local authorities to have in place mechanisms to investigate member complaints
 - The appointment of an Independent Person to advise the council before it makes a decision on an allegation
- 3 When Council approved the new provisions it agreed that the Standards Committee and or the Modern Local Government Group would keep the Code and arrangements under review and would report further to the Council as considered necessary. It was suggested that this may necessitate the setting up of a sub-committee for this purpose.

The Current Position

- 4 The Council has now had some 6 months to become familiar with the operation of the new arrangements regarding the conduct of Members. The system appears to be working well, although the number of complaints has increased in 2012 with no apparent decrease since the introduction of the new regime in July of that year. In the complaints received to date, subject members have been very keen to set out their side of the story through the new “Rights of Reply” arrangements. The current position is set out below.
- 5 Statistics were compiled for the Standards Task Group relating to the old system. These figures covered the period March 2008 (when all complaints had to be

made locally) until July 2012 (the end of the old system). In this period there were 62 complaints made. 28 (45%) of these were from members of the public, 34 (55%) from other members.

Following assessment, 34 (55%) had No Action, 16 (26%) had Other Action, 6 (10%) were referred to Standards for England, 3 (5%) were referred for investigation, 1 was withdrawn and 2 were outstanding when the old system ceased on 30 June 2012.

- 6 Of the 62 complaints, 8 (13%) related to Sevenoaks District Council members, 25 (40%) to one particular Town Council, 13 (21%) to one particular Parish Council and a further 5 each to two other Parish Councils. The remaining 6 were spread across other Parish Councils.
- 7 At the time of writing this report (8th January 2013) 17 complaints have been received under the new arrangements, the first of these being received on 24 September 2012. 7 of these are from members of the public, the other 10 from other members. 11 of these complaints all relate to one particular Parish Council. A further 5 relate to one particular Town Council.
- 8 Of these 17, 2 have been withdrawn, 2 have failed the Initial Intake Test, one was essentially the same as a previous complaint and the other 12 are due for Assessment. The first Assessments are to be carried out in mid – January 2013.
- 9 One of the complaints received had also been referred to the Kent Police, and so initially this complaint was held until the police process was concluded. Both the subject Member and the complainant were informed of this. In this case the police subsequently confirmed that they were taking no action, and so the “Standards” process was continued.

Review of Arrangements

Use of the Complaint Form

- 10 Of the 17 complainants received, only 8 used the SDC form. A copy of the form is set out at Appendix 1 to this report. The complaint form is there for the complainant’s guidance and was not always used under the old regime. Often a complainant may wish to merely send in a letter of complaint. As a result there is no recommendation that the form should be changed at this stage.

Initial Intake Test - 90 day deadline to receive complaints

- 11 A copy of the “Criteria for Assessment of Complaints against Members relating to the Code of Conduct” is set out at Appendix 2 to this report. The first page of this sets out the Initial Intake Test. The two complaints rejected under the Initial Intake Test failed because the complaint documentation was received more than 90 days after the alleged incident. This is a very clear “black or white” test. The 90 day intake test does mean that some complaints can be received nearly three months after an incident. Bearing in mind that matters will be delayed still further by allowing a 30 day Right of Reply to a complaint it is recommended that the 90 days be reduced to 60 days or even 30 days. This should still give complainants sufficient time to raise a complaint.

Elections

- 12 Upon Initial Intake Test, 9 of the complaints were delayed due to the Police Commissioner's election which took place on 15th November 2012. Acknowledgements were sent to the complainants informing them of the deferral. The subject members were not informed about the complaints until 20 November, and were at that point given their "Right of Reply".
- 13 These complaints could have been delayed further at that time, due to a number of vacancies that had occurred on a Parish Council. In one of these cases there happened to be no "Request to fill a vacancy by election" and in another only one candidate stood by the relevant deadline. The complaints were thus able to progress as we were no longer "within 6 weeks of an election". With 30 Parish Councils within the District these type of vacancies can occur at any time, and members may wish to review whether the Intake Test remains as the blanket "within 6 weeks of an election". One option may be to only defer to District-wide elections, or those involving the Parish that the complaint is related to.

Acting in your capacity as a member

- 14 The Standards Task Group, in its deliberations, considered including this test as part of the Initial Intake, but decided that it sat best in the Assessment as it could be difficult to judge. Whilst this will be the case in some incidents, there are a small number of the new complaints where it is very clear that the member was not acting in an official capacity (e.g. a social occasion as part of the individuals day-to-day life, emails and information posted on websites in the individuals private capacity). In these cases the process had to continue, with the subject member being asked for their "Right of Reply" before going forward to Assessment Stage.
- 15 Members may wish to consider the option of adding to the Initial Intake Test criteria to include "Is there any doubt that the member was acting in their private capacity". So, if it is clear that they were acting in that capacity, the complaint would fail this initial test and go no further.

Other Initial Intake Criteria

- 16 There is one other Intake criteria that it is suggested could be strengthened to save further work on a complaint issue that clearly relates to another organisation. Three of the new complaints clearly related to issues that had arisen within a political group, and it is suggested that in cases such as this the complaint should not progress to Assessment.
- 17 The issue is that under the current criteria "The complaint is a substantive allegation under the Code rather than a service, officer or a statement of policy disagreement" the complaint could not be rejected as it does not fit into any of the three qualifications to such criteria. It is suggested that a further qualification could be included along the lines of "or a disagreement within another organisation, such as a political group".
- 18 The current notes to the Intake Criteria allow for the Monitoring Officer to advise the complainant that the complaint needs to be referred elsewhere, if appropriate.

The addition to the criteria suggested above would tie in with this, ensuring such complaints are referred at Intake Stage, and not carrying on to Assessment.

The Town/Parish Clerk Role

- 19 For complaints relating to Town/Parish Councils there is no provision under the current arrangements for the relevant Town/Parish Clerk to be informed unless a complaint is referred for investigation, and then only at the end of that process.
- 20 It has been the case with the new complaints received that, in some cases, subject members and complainants are involving or informing their Clerk, who will have had no notification about the complaint from the Monitoring Officer. Members may wish to consider whether the relevant Clerk should be informed, say where complaints pass the Initial Intake Test and are then subject to the 30 day "Right of Response" prior to Assessment. This notification would seem necessary as at the Assessment Stage the Clerk will need to be asked what Code of Conduct applied at the time of the alleged incident. In addition, it would seem appropriate to always inform the Clerk of the outcome of the complaint that is assessed.

The Independent Person

- 21 The Localism Act 2011 requires local authorities to appoint an Independent Person to advise the council before it makes a decision on an allegation. There are restrictions on who can be appointed as the Independent Person and in general the Independent Person cannot be a councillor, officer or their relative or close friend and, if previously an Independent Member of our Standards Committee under the old regime, such person can only be an Independent Person at our Council until 30th June 2013. As a result we have no choice but to lose our present Independent Person on such date. The experience our Independent Person has brought to the new regime has been invaluable and the Monitoring Officer would like to thank him for all the hard work he has undertaken.
- 22 As can be seen from the statistical information set out in this report the work load for the Independent Person is large given the fact that such person receives details of all complaints that pass initial intake and also receives copies of all the Rights of Reply. In addition, the Independent Person can be contacted by the Member who is the subject of the complaint and the Monitoring Officer consults with the Independent Person on all complaints before deciding whether any merit formal investigation.
- 23 The procedure that this Council has adopted in relation to the appointment of an Independent Person is set out within Appendix 3 to this report. The procedures state that Council can appoint at least one person to fulfil the role of the Independent Person. The process of appointment will take some time to implement and so it is recommended that we go out to advertisement now in order that a new person is appointed as soon as possible before the 1st July 2013 in order that they may shadow our present Independent Person and learn from their experience. The advertisement will make clear the criteria they must meet to be legally eligible for the role.

Financial

- 26 It is still too early to assess the overall financial implications of the new standards regime although time recording is taking place which should greatly help to quantify the cost of the new regime especially the cost in relation to individual Parish/Town Councils that may be resource intensive. Under the Localism Act 2011 it is not possible for this Council to charge Parish/Town Councils for anything that is our statutory responsibility but anything outside of this can be charged for.

Community Impact and Outcomes

- 27 As the legislation sets out clearly that an authority must promote and maintain high standards of conduct by Members and Co-opted Members of the authority, the community should not be aware of any impact or outcomes as the work undertaken by the Task Group in developing the new procedures achieved a seamless transfer to the new system.

Legal, Human Rights etc.

- 28 The new processes and procedures for the new standards regime comply with the provisions of the Localism Act 2011 and supporting legislation. The changes proposed in this report are relatively minor and the Monitoring Officer has been given delegated authority to make any necessary consequential changes to the procedures set out within the Appendices to the Constitution. As a result, it is not considered necessary, at this early stage, to carry out a full review in order to report to the Modern Local Government Group and Full Council although it is appreciated that this may be considered necessary at a later date with the Standards Committee considering setting up a sub-committee for this purpose.

Resource (non-financial)

- 29 Strengthening the Initial Intake Criteria will mean that the system is less resource intensive. It will also mean that a reduced number of complaints will have to be dealt with at the Assessment Stage and fewer Rights of Reply considered and fewer subject members having to make Rights of Reply to complaints that are clearly going nowhere.

Value For Money and Asset Management

- 30 The new streamlined procedures should produce value for money. Some authorities have made their procedures labour intensive i.e. by having formal reports produced for the Assessment of a complaint. Although, proper consideration of complaints will be made with an auditable paper trail of the decision plus valid reasons given for decisions, it is not considered necessary for the system to be made bureaucratically over burdensome.

Equality Impacts

- 31 There are no specific equality implications arising from a desk top review of the current procedures for new standards. The suggested amendments to our present procedures do not have any particular implications regarding one "protected group" over another. A full impact assessment has not been produced

in relation to this report as no impact on the private or voluntary sectors is foreseen.

Sustainability Checklist

32 These proposals are considered to have a neutral impact on sustainability.

Conclusions

33 Under the provisions of the Localism Act 2011 the existing Standards regime ceased to operate from the 30th June 2012 and new procedures were implemented on the 24th July 2012. New standards is still in its infancy with the first complaints going forward shortly for Assessment. As a result it is not considered necessary for there to be a full review at this stage and so only minor amendments are suggested which if approved by this Committee can be implemented by the Monitoring Officer under delegated authority.

The suggested amendments for consideration are as follows:

- a) The criteria in relation to the Initial Intake Test is strengthened by the following amendments being made:
 - The behaviour took place within the last 30 days
 - The complaint is not being made within 6 weeks prior to a District-wide election or an election involving the Parish that the complaint is related to (no action will be taken in relation to any complaint within this period)
 - Is there any doubt that the member was acting in their private capacity
 - The complaint is a substantive allegation under the Code rather than a service, officer or a statement of policy disagreement or a disagreement within another organisation, such as a political group.
- b) The relevant Clerk to be informed of a complaint relating to a Town or Parish Councillor when a complaint passes the Initial Intake Test.
- c) The Monitoring Officer advertises for an additional Independent Person, who would meet the legal criteria for appointment beyond 1st July 2013

Risk Assessment Statement

34 The Council needs to ensure that appropriate arrangements are in place that are not overly bureaucratic but comply with the provisions of the Localism Act 2011. Failure to ensure this could result in wasted resources and a challenge to the Council's Governance Arrangements.

Background Papers: The Council's Constitution

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