

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Standards Committee

11 June 2008

AUTHOR/S: Chief Executive /Deputy Monitoring Officer

NEW LOCAL ASSESSMENT OF ALLEGATIONS OF MISCONDUCT BY A MEMBER

Purpose

1. This report is intended to advise the Committee of the implications of recent legislation transferring responsibility for the initial assessment of allegations of member misconduct from the Standards Board for England ("the SBE") to the Standards Committee. It sets out the context within which detailed recommendations for the creation of Sub-Committees will be brought forward later on the Agenda.
2. The Standards Committee (England) Regulations 2008 ("the Regulations") came into force on 8 May 2008 and set out the details of how the new framework will operate. SBE Guidance was published on the local assessment framework on 6th May and new guidance on Standards Committees on 12th May.

Background and work undertaken to date

3. Prior to 8 May 2008, a complaint of misconduct by a Member had to be submitted to the SBE. The Referrals Unit of the SBE determined whether the allegation appeared to disclose a failure by a Member to comply with the authority's Code of Conduct and then whether the allegation merited investigation. The responsibility for assessment of allegations regarding district and parish councillors in South Cambridgeshire transferred to the Standards Committees with effect from 8 May 2008 and a duty was placed on councils to publicise the change. A public notice was published in the Cambridge Evening News on 8 May advertising the change. The new system has also been flagged up in the South Cambridgeshire magazine, which is distributed to all households in the district, and all parish councils have been sent a copy of the newspaper notice and asked to place it on their parish noticeboards. The council's website was updated on 8 May with information on the new system and a complaint form available.
4. The Standards Board has published a guidance "toolkit" on the local assessment of investigations. The toolkit provides template documents, forms and process maps for use in the local assessment process.
5. The regulations introducing local responsibility for assessing allegations has significantly expanded the Committee's functions. Council, at its Annual Meeting on 22 May 2008, approved changes to Article 9 and Part 3 of the Constitution in recognition of these expanded functions. Details of the revisions approved are **attached** as an Appendix to this report.

Considerations – Key implications of the regulations

6. The Standards Committee must establish sub-committees:
 - (i) To undertake the initial assessment of allegations and determining whether a particular allegation should be investigated.

(ii) To consider any request from complainants to review a decision of the assessment sub-committee not to investigate a particular allegation within 3 months of receiving the request. The complainant will have 30 working days after the receipt of the initial assessment decision in which to lodge a request for review.

8. Other key provisions of the new legislation and guidance are as follows:

- (a) The Assessment Panel should complete the initial assessment within 20 working days of receiving the complaint; the Committee will be recommended to adopt this as a local target.
- (b) The Assessment Sub-Committee can direct the Monitoring Officer to "take other action" regarding a complaint, such as mediation, instead of formal investigation.
- (c) The Assessment Sub-Committee can refer a complaint to the SBE for investigation by an ethical standards officer in appropriate cases, such as the seriousness of the case, conflicts of interests or other public interest reasons.
- (d) The initial assessment decisions and any subsequent review of decisions to take no further action on a complaint must be conducted in closed meetings and are not subject to the notice and publicity requirements under Part 5 of the Local Government Act 1972, although a written summary must be produced after the meeting and made available for inspection.
- (e) The Regulations now allow for the investigation officer's report to go directly to Hearings Panel for determination of that complaint at hearing.
- (f) The Standards Committee must now be chaired by an Independent co-opted member (this has always been the practice at SCDC).
- (g) The maximum sanction available to Standards Committees has increased from three months to six months suspension - or cases can be referred if necessary to the Adjudication Panel for England, which has the power to disqualify for up to 5 years.
- (h) The Monitoring Officer will have to make quarterly and annual returns to the SBE on the operation of the Code at the Council and the standards framework locally. The legal services section has developing the necessary procedures to satisfy these requirements.

9. The composition of each of these sub-committees has been closely defined in the Regulations and the amendments to Article 9 agreed by Council reflect this. Each sub-committee must be chaired by an Independent co-opted member and include a district council member and a parish member (where the allegation relates to a parish councillor).

10. Council removed the existing exclusion preventing Executive (Cabinet) Members from sitting on the Standards Committee. The regulations specifically provide that one executive member may sit on the committee; Council therefore considered that this local provision was unduly restrictive and should be removed. **(Amendments to the Constitution approved by Council are attached to this report at Appendix A)**

11. The new assessment framework is likely to result in an increased workload for the Standards Committee, especially the requirement to create and make appointments to panels to undertake the initial assessment and review of complaints. Council, at its Annual Meeting, increased its representation of district councillors to eight, and the Committee will be recommended to increase representation by parish councillors to four and independent co-opted members to six.

Conclusions and recommendation

12. The Committee will be required to put processes in place to fulfil its legal duties and to set up and operate an effective and smooth local assessment system, which is not susceptible to challenge on the grounds of bias. Subsequent reports will recommend that this is best achieved by setting up separate assessment, review and hearing panels with fixed membership so training can be focused and experience gained in a particular area. Membership can then be changed after a fixed period of time if members wish to gain experience of other areas of the committee's work.
13. The Committee is recommended to note the contents of the report.

Background Papers: the following background papers were used in the preparation of this report:

The Standards Committee (England) Regulations 2008
SBE Guidance: "Local Assessment of Complaints" (May 2008)
SBE Guidance: "The Role and Make-up of Standards Committees" (May 2008)
The Constitution

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The Standards Committee – Article 9 of the Constitution

Changes agreed by Council on 22 May 2008 marked in bold italics

9.01 Standards Committee

The Council will establish and maintain a Standards Committee. Under the regulations, Standards Committees are not subject to the political balance requirements of sections 15-17 of the Local Government and Housing Act 1989. This is to allow the Standards Committee to be seen as being above party politics and comprised of representatives that command the support of the whole authority, regardless of party political loyalties. The Standards Committee should include representatives from all groups represented on the Council and should be constituted to ensure that no one political group dominates.

9.02 Composition

- (a) **Membership.** The Standards Committee will be composed of at least:
- 6 councillors, ***with no more than one being a member of the Executive*** (Council Members).
 - 4 persons who are not councillors or officers of the council or any other relevant body (Independent Members¹)
 - 3 members of parish councils in the Council's area; (Parish Members)
- At least 25% of the members of the Standards Committee must be Independent Members.
- (b) The Council will appoint the **Council Members**.
- (c) **Independent Members.**
- Independent Members will be entitled to vote at meetings;
 - Their appointment shall be ratified by Council on the recommendation of the appointments panel of the Standards Committee, its size and composition to be determined by the committee Chairman in consultation with the Monitoring Officer
 - Independent Members shall not be closely connected to any councillors or to the Parish Members
- (d) **Parish Members.**
- At least one Parish Member must be present when matters relating to parish councils or their members are being considered;
 - Parish Members will be entitled to vote at meetings on matters relating to the discharge of the functions set out in Article 9.03 (h) below
 - A ***district*** councillor may not be a Parish Member
 - Parish Members may not be closely connected to ***district*** councillors
 - The Parish Members shall be nominated by parish councils at their annual parish council meeting, nominations to include a statement supporting the candidate, not exceeding one side of A4 paper. In the case of more than the requisite number being nominated by the

1 'Independent' in this context means simply a person who is not a member or officer of the Council, any parish council in the district or any other relevant authority – "the relevant authorities". It has no connotation with political independence from any party or political group

deadline set, the candidates' statements will be sent with a voting paper to all parish councils in the District and the votes received by the deadline set will determine the candidates to be elected

- In the event of a tied vote, the position will be filled by the Monitoring Officer drawing lots
- A clear and strict deadline will be set for both receipt of nominations and, if a vote is required, voting slips. These deadlines will apply equally to all parish councils, including those of existing or retiring Parish Members

(e) **Chairing the Committee.** An Independent Member shall chair the committee.

(f) **Term of Appointment:** A **Council Member** shall cease to be a member of the committee if he / she is no longer a member of the Council. Otherwise he / she shall retire after a term of four years service, but shall be eligible for re-appointment for a further term or terms. A **Parish Member** shall cease to be a member of the committee if he / she is no longer a member of the parish council which nominated him / her. Otherwise he / she shall retire after a term of four years' service, but shall be eligible for re-nomination and appointment for a further term or terms. An **Independent Member** shall retire after four years (but remain eligible for re-appointment for **one further term only, a maximum of 8 years**).

(g) **Quorum and Deputies.**

- The quorum for any meeting of the Standards Committee or any sub-committee of the Standards Committee shall be **three** members of whom at least one shall be an Independent Member (and one must be a Parish Member if parish councils or parish councillors are being considered). For hearings panels under the hearing procedure described in Part 5, Section N, the number of members on the panel shall be three.
- Except in the case of hearings panels, normally where the number of members of any sub-committee is less than the number of the committee, any Standards Committee councillor, Independent Member or Parish Member who is not a member of the sub-committee may be appointed by the equivalent sub-committee member to act as his or her deputy in his or her place to attend and vote at any meeting of the sub-committee; the minutes of any sub-committee meeting shall record deputised attendance.

9.03 Sub-Committees of the Standards Committee

The Standards Committee must appoint sub-committees from its membership to:

- ***Assess new complaints that councillors have breached the Code of Conduct (the "Assessment Panel")***
- ***Review decisions to take no action over a complaint (the "Review Panel")***

The membership of both these Panels must be entirely separate.

The Standards Committee may appoint sub-committees to:

- *consider a monitoring officer's final investigation report*
- *consider determination hearings (the "Hearings Panel") in accordance with the hearings procedure set out in Part 5 Section N of the Constitution*
- *determine any matter relating to parish councils or Parish Members (the "Parish councils sub-committee")*

At least three members of the Standards Committee must be present throughout a meeting of any sub-committee for it to be valid. These three members must include at least one member of the council and one independent member, who must be the chair. At least one parish representative must be present if the matter relates to a parish council.

9.04 Role and Function

The Standards Committee will have the following roles and functions:

- Promote and maintain high standards of conduct by councillors and co-opted members;
- Assist the councillors and co-opted members to observe the Members' Code of Conduct;
- Advise the Council on the adoption or revision of the Members' Code of Conduct;
- Monitor the operation of the Members' Code of Conduct;
- Advise, train or arrange to train councillors and co-opted members on matters relating to the Members' Code of Conduct;
- Initial assessment of all complaints relating to breach of the Code of Conduct by a district or parish councillor in South Cambridgeshire***
- Instruct the Monitoring Officer to carry out an investigation into whether the Code of Conduct has been breached following a complaint (in accordance with the Procedure for the Local Investigation of Referred Complaints set out at Part 5 Section M of the Constitution)***
- Referral of complaints to the Standards Board for England where appropriate***
- Instruct the Monitoring Officer to take other action regarding a complaint instead of carrying out an investigation***
- Review on request decisions of the Assessment Panel to take no further action in relation to a complaint that a district or parish councillor has breached the Code of Conduct***
- Receive the investigation report of the Monitoring Officer on any matter which is referred by the Assessment Panel to the Monitoring Officer and make a decision on whether it agrees with the report's findings;***
- Receive and take a decision where necessary on any other report from the Monitoring Officer on any matter which is referred by the Assessment Panel to the Monitoring Officer;***
- Hold hearings to determine complaints in which an investigation report has held that the Code of Conduct has been breached (in accordance with the hearings procedure set out in Part 5 Section N of the Constitution) and where appropriate, to impose a sanction on a councillor***
- Refer determinations to the Adjudication Panel for England for a greater sanction if considered necessary***

- (o) Grant dispensations to councillors and co-opted members from requirements relating to interests set out in Members' Code of Conduct;
- (p) The exercise of (a) to (o) above in relation to the parish councils in its area and the members of those parish councils
- (q) Receive reports from time to time from the Monitoring Officer concerning the operation of Members' Code of Conduct and in respect of his / her statutory functions under the Local Government and Housing Act 1989;
- (r) Overview of the Council's 'whistle-blowing' policy;
- (s) Overview of complaints handling and Ombudsman investigations.
- (t) ***Supervise, receive applications and make directions in relation to politically restricted posts under section 3A of the Local Government and Housing Act 1989***

TABLE ONE (Part 3)

Committee	Membership	Functions	Delegation of functions
<u>Standards Committee</u>	At least 6 councillors (<i>with a maximum of one member of the Executive</i>), chosen so far as possible from all groups represented on the Council and constituted to ensure that no one political group dominates. [at least 4 independent members and 3 parish members]	As set out in <i>Article 9.04</i>	<i>Must appoint sub-committees to deal with:</i> <ul style="list-style-type: none"> • <i>initial assessment of complaints (Assessment Panel)</i> • <i>review of complaints (Review Panel)</i> <i>May appoint sub-committees to:</i> <ul style="list-style-type: none"> • <i>receive the investigation report of the Monitoring Officer</i> • <i>hold determination hearings (Hearings Panel)</i> • <i>deal with parish council matters (Parish council sub-committee)</i>