

REPORT OF:	MONITORING OFFICER AND HEAD OF LEGAL & PROPERTY SERVICES
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TO:	STANDARDS COMMITTEE & EXECUTIVE
DATE:	10 TH MARCH 2008 & 27 TH MARCH 2008
EXECUTIVE MEMBER	COUNCILLOR M. A. BRUNT

AGENDA ITEM NO:	4	KEY DECISION REQUIRED:	YES
WARD(S) AFFECTED:	ALL		

SUBJECT:	LOCAL FILTERING- TO SEEK APPROVAL FOR CHANGES TO THE TERMS OF REFERENCE FOR THE STANDARDS COMMITTEE AND TO INCREASE THE NUMBER OF MEMBERS
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<p>RECOMMENDATIONS:</p> <ol style="list-style-type: none"> 1. That Council approve the following and authorise the Head of Legal & Property Services to make the necessary changes to the Constitution- <ol style="list-style-type: none"> i) The amendment of Part 3 of the Constitution to reflect the decision making structure described in paragraph 17 of this report and that "local filtering" decisions and any hearings required into breaches of the Member Code of Conduct be undertaken by the Standards sub-committees . ii) The amendment of Article 9 of the Constitution to make it mandatory that the Chairman and Vice Chairman of the Standards committee be Independent Members. iii) That the Monitoring Officer be authorised, in consultation with the Leader of the Council, the Executive Member for Organisational Development and the Chairman of the Standards Committee, to appoint the new Independent Members referred to in Recommendation 1(iv). iv) Subject to the approval of recommendation 1(iii), the Monitoring Officer be authorised to advertise for up to 4 Independent Members to serve on the Standards Committee. 2. The Monitoring Officer bring a further report to the Standards Committee on 30th June 2008 and the Executive on 10th July 2008, on any further changes required to the Constitution including increasing the membership of the Standards Committee to 12 following the noting of the appointment of the new Independent Members, to take effect no sooner than the 1st September 2008.
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Council must determine recommendation 1 but the Standards Committee may determine recommendation 2

SUMMARY

1. Currently the decision as to whether a complaint made under the Members Code of Conduct should be pursued rests with the Standards Board for England. New regulations are about to be introduced under the Local Government and Public Involvement in Health Act 2007 (Part 10) (" the LG&PIH Act 2007"), which will pass that responsibility to Standards Committees established under the Local Government Act 2000 as amended. The function is known as "local filtering" or "first sieve".
2. In order to implement this change the Council's Constitution will need to be amended and the above recommendations are fundamental to that process.

STATUTORY POWERS

1. The Local Government Act 2000 ("the LGA 2000") introduced the requirement for members to comply with a Code of Conduct and made the Standards Committee responsible for ensuring high standards of ethics and probity by Councillors. The Current code was adopted with effect from 1st September 2007.
2. The LGA 2000 also created specific functions for Standards committees to perform. Those statutory duties are set out in Part 3 of the Council's Constitution together with additional functions agreed by Full Council.
3. Under section 185 of the LG&PIH Act 2007 amendments have been made to the LGA 2000 (section 57), which provide for written allegations of alleged breaches of the Member Code of Conduct to be made to the Standards Committee rather than the Standards Board.
4. In order to bring this change into effect the Government is intending to introduce regulations in the Spring, transferring the responsibility for filtering complaints to Standards Committees. The intentions and implications of this are set out below.
5. The role of the Standards Board for England ("SBE") will in future be one of an advisory and monitoring body. Under section 186 of the LG&PIH Act 2007 (introducing a new section 66B into the LGA 2000), the Council will be required to supply the SBE with periodic information on -
 - The misconduct allegations it has received
 - The reviews it has carried out, and
 - The general exercise of the Committee's and the Monitoring Officer's functions.

ISSUES

The 3 stages for complaints investigation

6. There are now 3 possible stages following the receipt of a complaint. These are described below and the basic considerations shown on the flowchart forming Annex 1 to this report.
7. Stage 1 - On receipt of an allegation the Standards Committee must decide whether to -
 - Refer the matter to the Monitoring Officer under section 66 of the LGA 2000 for investigation;
 - Refer it to the Standards Board for England in limited circumstances, where the nature of the complaint demands it; or
 - Decide that no action should be taken for example, where it is apparent on the face of the details supplied that no breach of the Code has occurred.
8. Stage 2 - The Complainant will have a statutory right, under section 57B of the LGA 2000, to request a review of the decision of the Committee to take no further action on the complaint. The Committee will be required to undertake a new assessment of the allegation and reach a decision within three months of the request for the review.
9. Stage 3 - Where a decision is taken to investigate the complaint, the existing procedures for investigation by the Monitoring Officer and any necessary hearing by the Standards Committee will continue to apply.

Changes to Processes and Procedures

10. In addition, a number of changes to the current processes and procedures will be required. The main issues to be addressed are set out below.
11. A specific complaints procedure for the “filtering” of complaints received will need to be adopted by the Standards Committee. Guidance from the Standards Board (“the SBE”) is awaited, but the procedure will need to -
 - Define the meaning of a complaint;
 - Set out how one can be made; and
 - Describe the procedures to be followed as well as the type of considerations the Standards Committee will take into account.

12. The SBE guidance suggests that sub-committees of the Standards Committee, with a minimum of three members, will need to be established, in order to implement the procedure for each of the three stages of local filtering referred to in this report. As with the Licensing sub-committee process, this is necessary to ensure that different members are involved in the different stages and so that a fair hearing is given to all concerned.
13. This will mean that the members involved in Stage 1 cannot be the same as for Stage 2, but that any member from either of the first two stages can be on the sub-committee that ultimately hears the case (stage 3).

Required Constitutional Changes

14. These requirements mean that the current membership of 8 is likely to be insufficient, as it will not provide a sufficient pool of members. This is particularly so if conflicts of interest, personal and prejudicial interests under the Code and inability to attend the dates allocated for the sub-committees to meet, are also taken into account.
15. However, there is also a statutory requirement that at least 25 percent of the Committee must be independent members. Bearing in mind the constraints identified above a minimum of three such members is recommended. This is supported by the SBE guidance.
16. A suggested membership model is set out in Annex 2 from which the minimum recommended membership is 12 with a minimum of three independent members. Until the new Independent Members are appointed it is not lawful to increase the number of members of the Committee, as this would breach the 25% rule referred to above.
17. Nevertheless a sub-committee structure is required to deal with local filtering as soon as it is introduced. It is therefore proposed that this be based on the model adopted for the Licensing sub-committees and to have the Chairman always appointed from the Independent Members. The remaining two members will then be chosen from the remainder of the Standards Committee. It should be noted that if a parish member is the subject of the complaint then a Parish or Town Council member must sit on the sub-committee. This is reflected in **Recommendation 1(i)**.
18. There is also very likely to be a statutory requirement that the Chairman of the Standards Committee, or any sub-committee of it, be an Independent Member. The Council's Chairman and Vice Chairman of the Standards Committee currently mean this criterion is fulfilled. However, the Constitution does not make it mandatory, and change to the Constitution will therefore be needed to Article 9.02(d). **Recommendation 1(ii)** deals with this.
19. In order to appoint the new Independent Members within the timeframe set out in the proposed regulations, it is recommended that a panel be established to make those appointments as there is no standing body set up to do so under the

Constitution. The proposed membership of that panel is set out in **Recommendation 1(iii)**.

20. **Recommendation 1(iv)** seeks approval for the appointment of up to four independent members as this will give maximum flexibility in the running of the sub-committees. A further report will be made to the Committee, and the Executive, once that recruitment process is complete to seek approval to increase the membership of the Committee to 12. This is reflected in **Recommendation 2**.
21. Interim training will be put in place by the Monitoring Officer to enable the current Committee Members to fulfil this new role, if the changes are enacted before that time. However the process for appointing the new Independent Members is unlikely to be completed until Summer 2008, and there may well be a change in Membership of the Committee after the elections in May. Therefore a further training programme will be introduced at that time for all Members of the Standards Committee.
22. The LGA 2000 envisaged that independent Members would only sit for a term of up to three years. The Chairman and Vice Chairman have been in post for nearly six years. In addition the Vice Chairman tendered her resignation last year but agreed to remain in post until a replacement could be found following the current exercise.

OPTIONS

23. It will not be possible to provide the appropriate decision making with the current single Committee structure for the reasons set out above. The appointment of sub-committees is therefore imperative.
24. The Chairman of the sub-committee must be an independent member but to ensure maximum flexibility it is recommended that the other members be agreed as and when a sub-committee is called to take decisions as with the Licensing sub-committee model already adopted by the Council.
25. Recommendation 1(iii) seeks approval for the appointment of the Independent members to be delegated. There is no process currently adopted by the Council and that proposed will provide the flexibility required to appoint the new Members within the tight timeframe established by the Government.
26. Recommendation 1(iv) seeks approval to appoint up to four independent members. Members could reduce this to the minimum of three but this would restrict the flexibility of the sub-committee process, and should good candidates be found now it would save potential advertising costs in the future.

LEGAL IMPLICATIONS

27. These are set out in the report.

FINANCIAL IMPLICATIONS

28. The appointment of additional Members to sit on the Standards Committee may have an impact on the Members Allowances budget, as will the likely increase in business that these changes will bring.
29. In addition, there is a cost to advertising for new Independent Members, of around £1,000.
30. However, these are statutory costs that cannot be avoided.

CONSULTATION

31. The Executive Member for Organisational Development has been consulted on these proposals, as have the Horley Town Council and the Parish Council for Salfords and Sidlow.

POLICY FRAMEWORK

32. The changes referred to in this report are statutory and do not form part of the Council's policy framework.

Background Papers:

Consultation on the new filtering arrangements issued by the Department for Communities and Local Government.

Various guidance issued by the Standards Board for England

All available from the Head of Legal and Property Services