

REPORT OF:	MONITORING OFFICER AND HEAD OF LEGAL & PROPERTY SERVICES
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TO:	STANDARDS COMMITTEE & EXECUTIVE
DATE:	30 TH JUNE 2008 & 10 TH JULY 2008
EXECUTIVE MEMBER	COUNCILLOR RFC WAGNER

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

SUBJECT:	CHANGES TO THE HANDLING OF COMPLAINTS MADE UNDER THE MEMBER CODE OF CONDUCT
RECOMMENDATIONS:	
<ol style="list-style-type: none"> 1. The Standards Committee, together with the Executive Member for Personnel & Technology, be authorised to complete the selection of candidates to be Independent Members, interview potential candidates, and make recommendations to the Council for appointment. 2. The timetable for the appointment of the new Independent Members, as set out in paragraph 9 of the report, be agreed. 3. The functions of the Standards Committee be amended and those set out in Annex 1 Part 2 be adopted, including the authority set out in recommendation 1 above, and the Monitoring Officer be authorised to amend Article 9 and Part 3 of the Constitution accordingly. 4. Sub-Committees be approved for undertaking the local assessment function, to be known as Complaints Assessment Sub-Committees, Complaints Review Sub-Committees and Complaints Hearings Sub-Committees. 5. The Terms of Reference for each of those Sub-Committees, as set out in Annex 2 be approved and the Monitoring Officer be authorised to amend Article 9 and Part 3 of the Constitution, as well as Rules 2, 3 and 8 to the Committee and Sub-Committee Procedure Rules in the Constitution accordingly. 6. That an additional representative from either the Horley Town Council ("the Town Council") or Salfords & Sidlow Parish Council ("the Parish Council") be sought for the reasons set out in paragraphs 17 of this report, to be appointed in accordance with the timetable referred to in recommendation 2. 	

7. The procedures set out in **Annexes 3 to 5** inclusive and the Standards Board for England "Local Assessment of Complaint" Guidance, for the assessment of complaints under the Member Code of Conduct, be adopted and the Standards Committee be authorised to amend the procedures as necessary in the future.
8. The Monitoring Officer be authorised to investigate the possibility of a Joint Standards Committee with other Local Authorities and bring a further report in due course.
9. The Monitoring Officer be authorised to advertise the new Complaints Procedure, as required by the regulations, and to prepare and publish a Complaints Procedure for the handling of complaints made under the Code.

Council must determine recommendations 1 to 6 but the Standards Committee may determine recommendations 7 to 9.

SUMMARY

1. In March 2008 the Standards Committee and the Executive received reports on the intended changes to the way in which complaints made under the Member Code of Conduct should be handled in the future.
2. At that time the Government had not finalised the procedures to be followed and the reports were based on the draft Regulations then available. On 8th May 2008 *the Standards Committee (England) Regulations 2008* ("the regulations") took effect.
3. This report updates members on the requirements of the regulations, the revised timetable for the implementation of the required constitutional changes and makes recommendations accordingly. The Executive's role is to recommend constitutional changes to the Council

STATUTORY POWERS

1. *The Local Government Act 2000* ("the LGA 2000") introduced the requirement for members to comply with a Code of Conduct ("the Code"), and for Councils to establish Standards Committees to be responsible for ensuring maintenance of high standards of ethics and probity by Councillors. The current code was adopted with effect from the 1st September 2007.
2. The LGA 2000 also created specific functions for the Standards Committee to perform. These statutory duties are set out in Part 3 of the Council's Constitution together with additional functions agreed by Full Council.
3. The regulations came into force on the 8th May 2008 and completed the transfer of responsibility for the management of complaints made under the Code from the Standards Board for England ("the SBE") to the Standards Committees of Local Authorities. The investigation and hearing of complaints had already become the responsibility of local Standards Committees. The regulations put in place the necessary changes to governance and procedure to enable written allegations of misconduct under the Code to be assessed by Standards Committees.

4. In future the role of the SBE will be one of an advisory and monitoring body and will deal only with the most serious of complaints. Under section 186 of the *Local Government and Public Involvement in Health Act 2007*, the Council will be required to supply the SBE with information on-
 - The misconduct allegations it has received
 - The assessments and reviews it has carried out, and
 - The general exercise of the Committee's and the Monitoring Officer's functions.
5. In response to the Regulations, the SBE has already issued two sets of guidance. These are referred to in the background documents to this report. Copies have been circulated to the members of the Standards Committee and placed in the e-members room. They are referred to in this report as the Roles and Functions Guidance and the Assessment Guidance.

ISSUES

6. Full Council on the 17th April 2008 (minute 91), approved four recommendations, relating to constitutional changes and the procedure for the appointment of additional independent members, made by the Standards Committee on the 10th March 2008 (minute 36) and the Executive at its March 2008 meeting.
7. Recommendation 1(iii) authorised the Monitoring Officer "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". However, the regulations mean that this recommendation cannot be implemented for the reasons set out below.

Timetable and procedure for the appointment of Independent Members

8. Under regulation 5 of the regulations it is mandatory for the Council itself to appoint new permanent independent members to the Standards Committee. Following the procedure agreed in minute 36 recommendation 1(iii) would therefore be unlawful. **Recommendation 1** to this report is therefore necessary to ensure the appointment of such members complies with the new legal requirements.
9. In revisiting the procedure it has also been necessary to reconsider the timetable for the appointments set out in the earlier reports. **Recommendation 2** to this report addresses this change. It is therefore proposed that -
 - Early September 2008 - An advertisement will be placed in the local press as required by the regulations, seeking applications. If possible an article will appear in the Borough News around that time. In addition the Clerk to the Magistrates Court, the business community and other appropriate

organisations will be approached, to target those who may have suitable candidates.

- October 2008 - The selection and interview of candidates will take place. Special meetings of the Committee will be required.
- 3rd November 2008 - A report will be made to the Standards Committee and recommendations as the candidates to be appointed made to Full Council.
- 4th December 2008 - The Standards Committee's recommendations will be considered at Council.

10. Should a complaint be received in the meantime the Standards Committee can carry out its required functions, but in the longer term the changes to the numbers on the Committee will need to be addressed for the reasons set out in the earlier report.

Constitutional changes required

11. **Recommendation 3** will ensure that any future appointments required to the Standards Committee can be resolved without the need for a report to commence the process. In addition it seeks approval to replace the existing functions shown in **Annex 1 Part 1** with those in **Annex 1 Part 2**. Most repeat or are amended versions of the functions already delegated to the Committee, but a few are additional and have been recommended by the SBE under its Roles and Functions Guidance.

12. In particular members attention is drawn to the following -

- Proposed function number 2 - Member training. The same guidance (page 17) recommends that training records be kept for members of the Standards Committee. The Committee has previously indicated that in exercising its statutory function to support member training it would be useful to be able to monitor all training received by Members. Expanding the requirement for all member training to be recorded would assist and should breaches of the Code be alleged, enable the relevant sub-committees to easily identify if a training need exists.
- Proposed function number 4 -Responsibility for undertaking a review of the Constitution. Currently the Monitoring Officer is responsible for maintaining the Constitution under Article 11 paragraph 12.03 (a). This does not cover any form of overall review and therefore if one is needed a report would be required to Full Council for authority to do so. The SBE guidance (pages 6 & 7) recommends this function rest with the Standards Committee to emphasise its probity role.
- Proposed function number 9 - Amendment of the politically restricted posts schedule. This statutory function sits well with the Committee's other functions and will improve the decision making process should the need arise.

13. In order to properly operate the new procedures it is necessary to establish sub-committees to carry out different parts of the procedure. This split of functions was mentioned in the earlier report. Sub-committees of the Standards Committee, with a minimum of three members in each to be quorate, will need to be established in order to implement the procedure for each of the three stages of local assessment and hearing complaints made.
14. 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. 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).
15. **Recommendations 4 and 5** seek authority to establish the Sub-Committee structure and make the Constitutional changes required. Members' attention is drawn to **Annex 2**, which sets out the functions proposed for each sub-committee.
16. The Chairman of the Sub-Committees, as for the Standards Committee itself, must be an Independent member under the Regulations. It is however proposed that the Sub-Committees be appointed as and when necessary using the same procedure used for the Licensing sub-committees. The changes recommended to the Committee and Sub-Committee procedure rules in recommendation 5 address this.
17. In order to ensure sufficient representatives to comply with the new sub-committee procedure, **Recommendation 6** seeks an additional representative from either the Town or Parish Council, the appointment of who will be dealt with when Full Council approves those of the new Independent members.

Changes to Processes and Procedures

18. A number of changes to the current processes and procedures will be required. The main issues to be addressed are set out below. The hearing procedure rules were adopted by the Standards Committee some while ago and do not need amendment. However, the procedures for the initial assessment, and possible review of complaints made, do need to be adopted. The Standards Committee can agree its own procedures and those proposed are set out in **Annexes 3 to 5**, and the relevant SBE guidance, as referred to in **Recommendation 7**.
19. The Government consulted on the possibility of joint committees to deal with complaints for a number of Local Authorities. No specific regulation has been introduced to enable this, although the temporary secondment of Independent members from other Councils is and does not require the approval of Full Council. Both Tandridge and Mole Valley District Councils have expressed an interest in this approach.
20. It is proposed that the Monitoring Officer investigate the potential for joint working and a further report be made on this aspect in due course, and **Recommendation 8** addresses this.

21. Finally **Recommendation 9** seeks authority for the Monitoring officer to advertise the new arrangements in accordance with the Regulations.

Additional Constitutional Changes for the future

22. In the next report a recommendation will also be made that the Executive Member for Personnel and Technology be one of the additional Borough Council members to sit on the Standards Committee. This is a further recommendation under the SBE guidance and seeks to emphasise the importance of the probity and ethical issues in the operation of the Executive arrangements adopted by the Council.

23. It is not possible to make this change at present unless one of the existing members of the Committee steps down, since the appointment of an additional member would breach the Regulations' requirement that at least 25 per cent of the Committee be independent members.

LEGAL IMPLICATIONS

24. These are set out in the report.

FINANCIAL IMPLICATIONS

25. The cost of appointing the new members was addressed in the original report to the Committee and Executive in March 2008 and no additional financial implications arise from this report.

CONSULTATION

26. The Executive Member for Personnel and Technology has been consulted on these proposals, as have the Horley Town Council and the Parish Council for Salfords and Sidlow.

POLICY FRAMEWORK

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

Background Papers: Guidance issued by the Standards Board for England-
 "The Role and Make-up of Standards committees"
 "The Local Assessment of Complaints"

Available from the Head of Legal and Property Services