

Item 5

REPORT TO STANDARDS COMMITTEE

7TH APRIL 2005

REPORT OF SOLICITOR TO THE COUNCIL AND MONITORING OFFICER

REVIEW OF STANDARDS ARRANGEMENTS : STAFFING SUPPORT FOR MONITORING OFFICER : CHANGES TO STANDARDS COMMITTEES : CHANGES TO CONSTITUTION

1. SUMMARY

- 1.1 This report follows a series of reports to the Council's Standards Committee, Cabinet and full Council since 2002, reporting upon the development of the provisions of Part III of the Local Government Act 2000 relating to standards arrangements for Council members.
- 1.2 Following the introduction in November 2004 of regulations to provide for local investigation by Monitoring Officers of member misconduct, a review has taken place of the Council's arrangements in light of the significant changes brought about by these regulations. In particular, it should be noted that a significant transfer of responsibility for investigations of Parish and Borough Members has been transferred to the Borough Council who, henceforward, will be responsible for all local investigations of Parish and Town Council members.
- 1.3 The detail of the report sets out the reasons for specific changes to ensure that the Council is both able and capable of meeting the demands and requirements which the Council will face. In particular, recommendations are made with respect to additional staffing support being provided to the Monitoring Officer, support specifically for the Standards Committee and the establishment of new sub-committees for the Standards Committee to undertake the additional duties and responsibilities.

2. RECOMMENDATIONS

- 2.1 That Standards Committee be appraised of the report.
- 2.2 That Cabinet and Council receive further reports.

3. DETAIL

- 3.1 **Staffing support for Monitoring Officer:** Complaints of alleged member misconduct, under the new arrangements, may now be directed either to the Standards Committee for a local determination or direct to the Monitoring Officer for investigation and then come before the Standards Committee.

- 3.2 The Council's Solicitor and Monitoring Officer regularly advises all members, including the Cabinet Executive, on a range of standards and personal member issues. This responsibility could, in some circumstances, give rise to potential for professional conflicts of interest, which would preclude him from advising the Standards Committee should matters be referred to it for determination.
- 3.3 Accordingly, it is necessary to ensure within the establishment that some other suitably qualified officer exists who would be able to assume the Monitoring Officer's responsibilities in such circumstances, or in his absence.
- 3.4 For these reasons, this report recommends that the Principal Assistant Solicitor be authorised to act in such circumstances, albeit not concurrently with the Monitoring Officer, so as to provide the necessary capacity within the establishment to resolve these issues.
- 3.5 Specifically, therefore, it is recommended that the Principal Assistant Solicitor undertake the Monitoring Officer's statutory responsibilities as designated Deputy Monitoring Officer:
- (a) in his absence, or if ill, and
 - (b) where it is considered that professional conflicts of interest may or might arise, such as the Monitoring Officer has identified.
- 3.6 Under the legislation both the Monitoring Officer and the Deputy are under a personal responsibility for conducting these duties. The statutory provisions provide under Section 82A(4) and (5) of the Local Government Act 2000, as amended by the Local Government Act 2003, as follows:-
- Certain functions of the Monitoring Officer may be delegated under Part III of the Act of 2000, in particular, the undertaking of investigations, Section 60(2), the receipt of reports from Ethical Standards Officers, Section 64(2) and such other matters as the Monitoring Officer may from time to time determine where he, himself, may not be able to perform particular functions. In those cases a person nominated for the purpose by the Monitoring Officer may act as a substitute.
 - Where a Deputy nominated by the Monitoring Officer under Section 5(7) of the Local Government and Housing Act 1989 considers that in a particular he, himself, ought not to perform those functions while the Monitoring Officer continues to be unable to act either by reason of absence or illness, they may be carried out by a person nominated by the Deputy.

No Deputy has yet been appointed under the 1989 Act in order to deal with professional conflicts of interest or in circumstances where the Council's Monitoring Officer is absent or ill. Accordingly, this report, and subsequent reports, will enable the Council to deal with those situations should they arise. A further report will accordingly be submitted to Cabinet and Council for approval.

- 3.7 **Staffing support for Monitoring Officer at Standards Committee:** The role and range of duties and responsibilities of the Standards Committee have changed rapidly in recent years. The Committee is expected to carry out a series a statutory functions, including advising the Council on constitutional change, the provision of training to members on standards and, latterly, the conduct of determination hearings and hearings following the production of Monitoring Officer's reports. They have both statutory and regulatory responsibility for ensuring the smooth administration of the processes associated with arranging local hearings and investigations.
- 3.8 As a result of the most recent changes, the Standards Committee is now responsible for hearing all cases involving Parish and Town Council members. Sedgefield Borough is a fully parished Borough Council administrative area. It is therefore appropriate to consider and review requirements for support to the Standards Committee. It is therefore intended that staffing reports be submitted to Cabinet and Council for approval.
- 3.9 **Changes to Standard Committee arrangements:** Section 54A of the Local Government Act 2000, as amended by Section 113 of the Local Government Act 2003, permits a Standards Committee of an authority to appoint a sub-committee with full delegated powers to discharge any of its functions. This new power does not apply to Standards Committee's functions in connection with Parish members for which provision to establish sub-committees is already in existence under Sections 55 and 56 of the Act 2000. Section 54A, as amended, enables the existing Standards Committee to appoint "from among the members of the Standards Committee", sub-committees: the number of members of a sub-committee and the term of office of those members are to be fixed by the Standards Committee by which the sub-committee is appointed. It is considered appropriate to use these provisions to facilitate the setting up from time to time of sub-committees as and when necessary to carry out functions in connection with local hearings, should the need arise.
- 3.10 It is therefore recommended that the Constitution be amended to widen the Standards Committee powers accordingly.

4. RESOURCE IMPLICATIONS

- 4.1 Resource implications flow from the recommendations in this report relative to the proposals for increasing the duties and responsibilities of the Principal Assistant Solicitor and the addition of support to the Standards Committee. Staffing reports will follow for Cabinet and then Council approval.
- 4.2 These changes result from new legislation and new statutory requirements being imposed upon the Council's Monitoring Officer and the Standards Committee.

5. CONSULTATIONS

- 5.1 The Standards Committee has already considered a report of the Monitoring Officer at its meeting on the 10th February 2005 detailing the most recent changes to the range of duties and responsibilities of the Monitoring Officer and the Standards Committee.

6. OTHER MATERIAL CONSIDERATIONS

- 6.1 The proposals contained in this report are intended to strengthen the Council's arrangements corporately in relation to matters of governance.
- 6.2 It has been recognised nationally, that the next round of the Comprehensive Performance Assessment will concentrate upon each Council's approach to governance and standards issues.

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Ward(s)

Key Decision Validation

Background Papers

Sections 60(2), 64(2), 82A(4)(5) Local Government Act 2000 (as amended by the Local Government Act 2003)

Standards Committee

ST.1/01: Part III Local Government Act 2000 – 10th April 2002

ST.5/03: Determination of Standards Allegations by Standards Committee –
4th November 2003

ST.10/03: Draft S.66 Regulations – 17th May 2004

ST.21/04 – Summary of Changes to the Local Authorities (Functions and Responsibilities)
Regulations 2000 – 10th February 2005

ST.23/04: Introduction of Changes to the Ethical Standards Arrangements 2004
Regulations – 10th February 2005

Cabinet –

CAB.75/03 – Determination of Standards Allegations by the Standards Committee –
16th October 2003

CAB.110/04 – Introduction of Changes to the Ethical Standards Arrangements under the
Local Government Act 2000 : The Local Authorities (Code of Conduct) (Local
Determination) (Amendment) Regulations 2004 and the Standards Board for England
(Functions) Order 2004 – 9th December 2004

Council

C.54/03 – Determination of Standards Allegations by the Standards Committee –
7th November 2003

C.73/04 - Summary of Changes to the Local Authorities (Functions and Responsibilities)
Regulations 2000 – 25th February 2005

C.74/04 - Introduction of Changes to the Ethical Standards Arrangements under the Local
Government Act 2000 : The Local Authorities (Code of Conduct) (Local Determination)
(Amendment) Regulations 2004 and the Standards Board For England (Functions) Order
2004 - 25th February 2005

C.75/04 - Arrangements for Review of the Constitution – 25th February 2005