



Ryedale District Council

REPORT TO: Standards Committee

DATE: 3 April 2008

REPORTING OFFICER: Council Solicitor
Anthony Winship

SUBJECT: **Local Assessment**

1.0 PURPOSE OF REPORT

The purpose of this report is to ask the Standards Committee to recommend to the Council changes to its constitution so that the Standards Committee can discharge its new Local Assessment function in relation to dealing with complaints of misconduct against Members and other functions under the provisions of the Local Government and Public Involvement in Health Act 2007.

2.0 RECOMMENDATIONS

That the Standards Committee be asked to recommend Council:

- 2.1 To suspend in accordance with Council Procedure Rule 24.1, Council Procedure Rule 24.2 in Part 4 (Part 1) (Meetings and Proceedings of Council) during consideration of this item to ensure any Motion to adopt the recommendations of this report is not adjourned without discussion to the next ordinary meeting.
- 2.2 To recommend to Council the adoption of the revised Article 8 of the Constitution set out at Annex A (amendments for adoption shown in italics);
- 2.3 To recommend to Council the adoption of the revised functions of the Standards Committee set out at Annex B (amendments for adoption shown in italics);
- 2.4 To recommend to Council that Parish Councillor Mr Peter Lerew be made a full member of the Standards Committee for a period of four years as recommended by the Yorkshire Local Councils Association.

3.0 BACKGROUND

3.1 In the Local Government White Paper “Strong and Prosperous Communities”, the Department for Communities and Local Government proposed that aspects of the conduct regime should be devolved to local councils, and that the Standards Board for England should become refocused as a light touch regulator.

3.2 One of the ways this is to be achieved is by amending the process for the initial receipt and assessment of complaints. Instead of complaints being received centrally by the Standards Board, and then either dismissed or referred elsewhere for investigation, this process will be handled by each individual standards committee.

3.3 The Local Government and Public Involvement in Health Act 2007 and Regulations¹ introduces the framework for significant changes to the process of handling standards allegations against members of local authorities. These changes include the devolution of the handling of such allegations from the Standards Board for England to individual local authorities’ Standards Committees.

3.4 It is understood that the Department’s intention is to implement the changes in May 2008.

3.5 Members of the Committee will recall that a report with attached checklist for the Implementation of the Locally Managed Ethical Framework was reported to the Standards Committee meeting on 24 January 2008.

4.0 REPORT

LOCAL ASSESSMENT

Current assessment system

4.1 Under the current system for assessing complaints of misconduct against Members, complaints are received centrally by the Standards Board for England. The referrals unit then aim to make an initial decision about the complaint within ten days. This decision would be based on the following criteria:

¹ The Department of Communities and Local Government has issued a consultation paper on the Orders and Regulations relating to the Conduct of Local Authority Members in England in January 2008.

- Whether the complaint is serious enough, if proven, to justify the range of sanctions available to the Adjudication Panel for England or local standards committees;
- Whether the complaint is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the authority and there is no other avenue left to deal with it, short of investigation;
- and in considering this, the Board takes into account the time that has passed since the alleged conduct occurred.

4.2 If the Standards Board decides not to refer a complaint for further investigation, the complainant has the right to have this decision reviewed. The complainant should make this request, within 30 days of the referral decision, by writing to the Chief Executive of the Standards Board for England.

4.3 If the Standards Board does refer the complaint, they are able to instruct the monitoring officer of the local authority or an Ethical Standards Officer to carry out the investigation.

Proposed new assessment system

4.4 Under the new system, complaints will be received locally by each local standards committee. As complainants will write directly to the local authority to make their complaint, this process will need to be advertised. Ensuring that people are aware of this new process is also likely to be a criterion in the Audit Commission's new Comprehensive Area Assessment in future.

4.5 Each local authority will have to decide who will receive and collate these complaints, although the actual decision on the matter must be taken by the standards committee or a sub-committee of the standards committee. The role of Legal Services and Customer and Member Services in this process will need to be considered further in due course.

4.6 The consultation on the draft regulations suggests that the time scale for assessing complaints will not be dealt with by way of regulations and a statutory penalty for failing to comply. The time scale will instead be indicated in the guidance issued by the Standards Board, at this stage the consultation paper indicates that the time scale may be 20 days for dealing with the assessment process.

4.7 Whilst dealing with the complaint, the authority will be required to notify certain parties of its progress. It is expected that the regulations will require local authorities to notify both the complainant and the Member at the time the allegation is received and when the standards committee have decided how to proceed. Consideration will need to be given to issues of confidentiality, sensitivity and avoiding delay with regard to this procedure. Prior to making the decision on the matter, the standards committee will also have the power

to request further clarification or evidence of a complaint, enabling them to make a fairer decision on the case.

4.8 The standards committee, or assessment sub-committee, will need to consider the same points as the Standards Board does under the current regime, regarding whether to refer a complaint for investigation. However each local authority will have to develop its own set of assessment criteria to decide whether a possible breach of the Code warrants further investigation or not based on guidance from the Standards Board. This is because local circumstances and priorities will need to be taken into account. The Standards Board will be providing guidance on developing criteria and the types of issues to be considered when considering complaints.

4.9 Monitoring Officers will be able to acquire additional factual information which is readily available about allegations before the assessment takes place. This should not include interviews or investigations.

4.10 Under the new system, the vast majority of investigations would be expected to be carried out locally. Although the standards committee could still choose to refer a matter for investigation by an Ethical Standards Officer, these would only expect to deal with cases which had the following characteristics: A complaint which if true, would attract a sanction of disqualification; Complex cases involving many Members or many documents; and cases involving substantial local conflict of interests.

4.11 Local authorities will also need to establish a review mechanism for complainants to appeal against the local assessment decisions of the standards committee if the decision is made not to investigate and the complainant complains about this decision.

Size and make up of the Standards Committee

4.12 The new system for local assessment of complaints has the potential to create conflicts of interest for Members of the Standards Committee. This is because a complaint has three potential stages that need to be considered by Members of the Standards Committee.

- The local assessment of complaints to decide if they will be investigated.
- Dealing with any possible review of a decision that a matter should not be investigated.
- Dealing with any hearing following an investigation.

4.13 The Standards Board and the consultation on the regulations suggest that conflict issues can be avoided altogether if decisions on local assessment

of complaints, reviews and hearings are taken by smaller sub-committees rather than the whole standards committee.

4.14 The Standards Board checklist does say that a Member of the Committee who dealt with the local assessment or a review hearing can deal with any subsequent hearing in relation to that complaint. This is because the initial assessment does not require deliberation of whether the conduct did or did not take place, it simply requires assessment of whether the complaint discloses something that needs to be investigated. However draft regulations indicate that a member of the standards committee who has been involved in the initial assessment cannot subsequently be involved in a review of a decision not to refer in relation to that matter.

4.15 The Local Government and Public Involvement in Health Act 2007 inserts section 56A into the Local Government 2000 giving the Secretary of State the power to make regulations providing that two or more authorities may establish a joint committee. The authority can then arrange for functions of the Standards Committee to be exercised by the joint committee.

4.16 In order to consider any issues affecting Parish Councils, including complaints regarding Parish Councillors in the Ryedale area, a Parish representative of the Committee must be present. The current number of two may cause issues if there is a review of the decision, or if a conflict of interest arises. Accordingly it is recommended that the Parish representation on the Standards Committee should be increased from two to three.

4.17 Members should be aware that the Local Government and Public Involvement in Health Act 2007 amends Section 53 (4) of the Local Government Act 2000 to provide that the chairman of the Standards Committee should be an independent Member. The LGPIH Act 2007 does not require that the chairman of a subcommittee should be an Independent Member. However the Standards Board checklist and consultation on the regulations indicate that it may also become a requirement that the sub-committee chairs are also independent members.

4.18 Members should also be aware that the current regulations provide that Standards Committees must consist of at least three Members of which one must be an Independent Member and at least two should be Members of the Council. As Ryedale District Council has Town and Parish Councils in its area there is also a requirement that there is a Town or Parish Council representative on the Committee. Independent Members should make up at least 25% of the Standards Committee. There is no requirement that Standards Committees are politically balanced.

4.19 Members will need to consider how they wish each stage of the process to be dealt with and the size and make up of any sub-committees. It is

proposed that sub-committees are established to consider local assessment decisions, deal with any reviews and hearings.

4.20 Members are asked to consider if the following arrangement for dealing with the three stages should be implemented.

- Initial local assessment decisions: Sub-committee
- Review of local assessment decisions: Sub-committee
- Hearings: Sub-committee

Initial local assessment decisions

4.21 These could be dealt with by a sub-committee consisting of at least three Members of the Standards Committee, comprising one Independent, one elected Member one Parish Member.

4.22 The terms of reference of the Standards Referrals Sub-Committee, which would be determined by a future Standards Committee meeting, would probably be as follows:

1. *to consider allegations of failure to observe the relevant Code of Conduct for Members by any member or members of Ryedale District Council and of District and Parish Councils within Ryedale District, with delegated powers to –*
 - a. *refer the allegation to the Monitoring Officer for investigation;*
 - b. *refer the allegation to the Standards Committee of another relevant authority;*
 - c. *refer the matter to the Standards Board for England;*
 - d. *refer the allegation to the Monitoring Officer for action short of formal investigation and to adjourn consideration of the allegation until completion of such action; or*
 - e. *decide that no action should be taken in respect of the allegation*
2. *to consider allegations of failure to observe any local protocol adopted by Ryedale District Council by any member or members of Ryedale District Council, with delegated power to –*
 - a. *refer the allegation to the Monitoring Officer for investigation;*
 - b. *refer the allegation to the Monitoring Officer for action short of formal investigation and to adjourn consideration of the allegation until completion of such action; or*
 - c. *decide that no action be taken in respect of the allegation*
3. *to make recommendations to the Standards Committee to secure improved standards of conduct and to secure the effective handling of allegations of misconduct by members of Ryedale District Council and of District and Parish Councils within Ryedale District.*

Review of local assessment decisions

4.23. These could be dealt with by a sub-committee consisting of at least three Members of the Standards Committee, comprising one Independent, one elected Member and one Parish Member.

Hearings

4.24 These could be dealt with by a sub-committee consisting of at least three Members of the Standards Committee, comprising one Independent, one elected member and one Parish Member.

Quorum

4.25 The current requirement that committees and sub-committees shall not be quorate unless there are at least three members present is not subject to any change under the current proposals in the consultation on the draft regulations. The Council's Procedure Rules also provide that the quorum for Standards Committee shall be three, including one independent Member, and that a Parish/Town Council member must be present when Parish/Town Council matters are being considered.

POLITICALLY RESTRICTED POSTS – GRANT AND SUPERVISION OF EXEMPTIONS

4.26 The Local Government and Public Involvement in Health Act 2007 transfers to the Standards Committee from an Independent Adjudicator responsibility for the granting and supervision of exemptions from the political restrictions attaching to a politically restricted post.

5.0 COUNCIL POLICY

5.1 The Council is obliged to make changes to the procedures that govern the way Standards Committee deal with complaints of misconduct against Members. Those changes are required in order that the Council complies with the requirements of the Local Government Public Involvement in Health Act 2007 and the regulations made under that legislation. These arrangements will contribute to the maintenance of good governance arrangements at the Council.

6.0 CONSTITUTIONAL CHANGES

6.1 In order to give effect to the changes referred to in the preceding paragraphs it is necessary to amend Article 8 of the Constitution (The Standards Committee) and the functions of the Standards Committee set out in Part 3 Schedule 2 of the Constitution. The amended parts of the Constitution are attached as Annexes A and B to this report. The Committee

is requested to refer them to Council for approval. The changes are indicated by the words in italics. This is also an opportunity to update and delete text which is out of date which is shown by underlined text.

7.0 CONCLUSIONS

7.1 The Local Government and Public Involvement in Health Act 2007 requires changes to the ways complaints about member misconduct are dealt with at a local level.

7.2 This will require changes to the structure of the Standards Committee. The Standards Board recommend setting up sub-committees to deal with some of the different stages of a complaint to avoid allegations of conflict.

7.3 The broad arrangements for dealing complaints locally need to be agreed by the Committee and the proposals are set out at paragraph 4.

Background Papers:

None.

OFFICER CONTACT:

Please contact Anthony Winship, Council Solicitor, if you require any further information on the contents of this Report. The Officer can be contacted at Ryedale House, Telephone 01653 600666 ext.267 or e-mail: anthony.winship@ryedale.gov.uk

ANNEX A

ARTICLE 8 - THE STANDARDS COMMITTEE

8.01 Standards Committee

The Council will have a Standards Committee.

8.02 Composition

(a) **Membership.** The Standards Committee will comprise:

- five Councillors;
- three persons who are not Councillors or Officers of the Council or any other body having a Standards Committee (Independent Members);
- *three* Members of a Parish Council in the Council's area (Parish Members).

(b) **Independent Members.** Independent Members (ie. those who are not Councillors) will be entitled to vote at meetings.

(c) **Parish Members.** A 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.

8.03 Roles and Functions

The terms of reference for the Standards Committee are set out in Part 3 of this Constitution entitled "Responsibility for Functions".

The Standards Committee will:

- *seek to promote and maintain high standard of conduct in the transaction of all Council and Local Council business.*

- *assist in the observation of the Members' Code of Conduct (set out in Part 5 of this Constitution)*
- *advise on the adoption, revision or monitoring of the Members' Code of Conduct*
- *take a general overview on all ethical issues and issues of probity*
- *undertake assessments, appeals against assessments or conduct hearings into complaints received by it directly or into such matters as are referred to it by and in accordance with the procedural rules of the Standards Board for England*

ANNEX B

TERMS OF REFERENCE OF THE STANDARDS COMMITTEE

To perform all functions given to Standards Committees by the Local Government Act 2000 as amended by any legislation including the Local Government and Public Involvement in Health Act 2007 and any regulations made under those Acts, including:

1. To promote and maintain high standards of conduct by Councillors and co-opted Members;
2. To assist Councillors and co-opted Members to observe the Members' Code of Conduct;
3. To advise the Council on the adoption or revision of the Members' Code of Conduct;
4. To advise the Council generally on matters relating to the ethical conduct of the Council and its Members.
5. To monitor the operation of the Members' Code of Conduct;
6. To advise, train or arrange to train Councillors and co-opted Members on ethical matters including the Members' Code of Conduct;
7. To grant dispensations to Councillors and co-opted Members from requirements relating to interests set out in the Members' Code of Conduct;
8. To consider all reports on Members' conduct whether from a Case Tribunal, an Interim Case Tribunal, or the Monitoring Officer (including those on any matter which is referred by an Ethical Standards Officer to the Monitoring Officer) and make appropriate recommendations to Full Council.
9. (a) To give notice in writing to any ethical standards officer under Section 63(2) Local Government Act 2000 that in their opinion the disclosure of a document or

information or documents or information of that class would be contrary to the public interest.

- (b) To receive reports of an ethical standards officer under Section 64(2)(c) of the Local Government Act 2000.
10. To consider any report of the Monitoring Officer made to the Committee, on matters within its terms of reference, under regulations issued by the Secretary of State, pursuant to Section 66 of the Local Government Act 2000 which may include provisions with respect to the procedure to be followed by the Committee, and to take any action prescribed by the regulations following consideration of the report including as necessary, action against any member or co-opted member of the Council who is the subject of the report.
 11. The investigation and determination of complaints of a breach of the National Code of Local Government Conduct and allegation of breaches of the Members Code of Conduct, in so far as the Committee has power so to do.
 12. Monitoring the operation of the Authority's complaints procedure and whistle-blowing policy.
 13. Considering and making recommendations to the Council in respect of any report of the Ombudsman which relates to the conduct of Councillors.
 14. To exercise where appropriate 1 to 12 above in relation to the Parish Councils within the Ryedale District and the Members of those Parish Councils. See 8.02(c) on page XXXXX.
 15. The appointment of an independent panel to review and advise on Members' allowances;
 16. Investigating non-attendance of individual Members, with powers to withhold payment of allowances in appropriate cases;
 17. Developing monitoring and amending as appropriate, the Authority's Whistle-blowing policy and procedures.

18. *the assessment of complaints in relation to District Councillors, Parish and Town Councillors, and any co-opted Member of a Council or Council Committee and conducting appeals against those assessments.*
19. *the granting of exemptions from politically restricted posts in accordance with the Local Government and Housing Act 1989 as amended by the Local Government and Public Involvement in Health act 2007.*
20. *consideration of reports from the Standards Board or the Councils Monitoring Officer in relation to complaints about the conduct of Members and the holding of local hearings.*
21. *To ensure that a local investigation into the alleged misconduct of District Councillors, Parish and Town Councillors, and any co-opted Member of a Council or Council or Committee is undertaken when such matters are either referred to the Standards Committee by the Standards Board for England or referred to the Monitoring Officer for investigation.*
22. *To establish a sub-committee consisting of at least 3 members of the Standards Committee to conduct an assessment of a complaint or an appeal against an assessment and a local hearing following receipt of a report from the Monitoring Officer or an Ethical Standards Officer. Any such sub-committee shall consist of one member of the Council of the Ryedale District Council, one Independent Member and one Parish representative. The Monitoring Officer or Deputy Monitoring Officer in consultation with the Chairman of the Standards Committee shall have authority to convene a sub-committee .*
23. *To consider allegations of failure to observe any local protocol adopted by Ryedale District Council by any member or members of Ryedale District Council.*