

**STANDARD COMMITTEE****Agenda Item: 7**

<b>Meeting Date</b>	14 July 2010
<b>Report Title</b>	Amendments to the Constitution – Standards Committee and Local Assessment and Hearings Arrangements
<b>Portfolio Holder</b>	Leader
<b>SMT Lead</b>	Director of Corporate Services
<b>Head of Service</b>	Interim Head of Legal
<b>Lead Officer</b>	Interim Head of Legal
<b>Key Decision</b>	No
<b>Classification</b>	Open
<b>Forward Plan</b>	Reference number N/A

<b>Recommendations</b>	1. That it be noted that the Terms of Reference and Rules of Procedure for the Standards Committee need to be reviewed to take into account all requirements of the Standards Committee (England) Regulations 2008 with a view to any amendments being submitted to Council on 21st July 2010 for approval.
	2. That a Consideration and Pre-Hearing Sub-Committee be established to comprise of three Members drawn from the membership of the Standards Committee with Terms of Reference as set out in Appendix III.
	3. That the revised Article 9, and Terms of Reference for the Standards Committee and the Referrals; Appeals; Consideration and Pre-Hearing; and Hearing Sub-Committees be approved and that the necessary amendments to the Constitution be recommended to full Council.
	4. To agree that substitutes for the Borough and Parish Council representatives can be used subject to them receiving any training specified by the Monitoring Officer
	5. That a programme of Referral Sub-Committee meetings and the proposed membership for those meetings should be presented to the next Standards Committee for agreement, as per

	paragraph 3.2.
	6. That it be noted that there is no authority in the current legislation for the Monitoring Officer to disclose the details of the complaint to the subject member or to take steps to resolve the complaint before the assessment stage as these are decisions that must be taken by the Assessment Sub-Committee.
	7. That a revised Monitoring Officer Protocol and Local Assessment and Determinations Procedure Rule be drafted in consultation with the Chair of the Standards Committee and Group Leaders, to be considered at the next Standards Committee on 3 August 2010.

## 1. Purpose of Report and Executive Summary

1.1 This report sets out proposed changes to the Standards Committee and its sub-committees to ensure that local assessments are carried out in accordance with best practice and that a balanced and proportionate approach is taken when allegations of misconduct are received.

## 2 Background

2.1 The Standards Committee (England) Regulations 2008 came into force in May 2008 pursuant to the Local Government Act 2000, as amended. The regulations set out a framework for a locally based system. The flowcharts set out in Appendix I show the different stages involved in dealing with complaints of Member misconduct: -

- (i) receipt of complaint
- (ii) assessment (and review if requested)
- (iii) referral to Monitoring Officer for other action
- (iv) referral for investigation by Monitoring Officer or Standards for England,
- (v) consideration of the investigation report and preparation for the hearing
- (vi) hearing

Standards for England has also produced guidance setting out how authorities should implement these Regulations.

2.2 The arrangements have now been in place for some time, which means that there has been an opportunity to look back on how the arrangements that were initially put in place worked. Although there were no written allegations of

Member misconduct in the first year; in 2009, there were nine complaints and four reviews. So far in 2010, there have been nine complaints and three reviews.

- 2.3 A reassessment of the local arrangements is timely and, has provided an opportunity to take into account good practice elsewhere. As a result a number of amendments are proposed to the Terms of Reference for the Standards Committee and its Sub-Committees and a review of the Procedure Rules and Monitoring Officer Protocol will commence shortly.
- 2.4 Swale Borough Council has a hearings procedure for local determination which was adopted by Council on 14th May 2008. However, the statutory framework has changed and new Regulations and further guidance from Standards for England have been issued. In view of the decisions that may be taken at a Hearing Sub-Committee, it is essential that the procedure provides for a fair, balanced and transparent process that promotes public confidence in the system.
- 2.5 Some authorities have also developed detailed local assessment and hearing procedures. The procedures for authorities nominated because they have good practice in the area of ethical governance were reviewed. Rossendale, Stockton-on Tees, Thurrock, Newark and Sherwood and Dartford Councils, in particular provide clear guidance and an explanation of steps that should be taken when assessing, reviewing and hearing complaints. It is proposed that procedures for Swale Borough Council should be drafted in consultation with the Chair of the Standards Committee and brought back to the next Standards Committee.
- 2.6 It is also recommended that there be a separate, revised Monitoring Officer protocol to incorporate steps to be taken by the Monitoring Officer during the notification, assessment, investigation and hearing stages, as well as the other statutory duties imposed by Section 5 of the Local Government and Housing Act 1989
- 2.7 The Constitution and the Standards Board Guidance, "Local Assessment of Complaints", requires the Standards Committee to approve the procedures for the local assessment rules, so a decision to approve the revised procedures can be taken by the Standards Committee and does not have to be approved by full Council.

### **3 Proposals**

- 3.1 The main changes proposed at this time are listed in paragraph 3.2 below and, if agreed, will result in amendments to Article 9 and Part 3 of the Constitution.
- 3.2 Appendix II explains the rationale for the proposed changes and Appendix III sets out the proposed amendments to the Constitution.
  - 1) Clarification of steps to be taken by Monitoring officer on receipt of written complaint
  - 2) Establishment of a Consideration and Pre-Hearing Sub-Committee
  - 3) Frequency of meetings

- 4) Substitute members
- 5) Updated Terms of Reference for the Standards Committee, the Assessment, Appeals, Consideration and Pre-Hearing and Hearing Sub-Committees including dealing with applications for exemption or inclusion on list of politically restricted posts

## 4 Alternative Options

- 4.1 A Consideration and Pre-Hearing Sub-Committee provides an appropriate procedure for dealing with the receipt of an Investigating Officer's report by the Standards Committee and resolving pre-hearing matters in complex cases. The Terms of Reference for this committee could be merged with either the Assessment Sub-Committee or the Hearing Sub-Committee, but there are different stages in the process and it is unlikely that they will take place at the same time.
- 4.2 The use of substitute members is not encouraged by Standards for England, because some authorities use them to achieve Political Balance (PB) on the Standards Committee although the PB rules do not apply. With the uncertainty over the future of the standards regime, it is suggested that this approach be taken for the time being and reviewed at the end of the municipal year.
- 4.3 It is proposed that a programme of monthly Referral Sub-Committees is agreed to ensure that assessments are carried out within 20 working days. The proposal will comply with the requirement that members of the sub-committee are appointed by the Standards Committee and not by Democratic Services officers.

## 5 Consultation Undertaken or Proposed

- 5.1 Not applicable.

## 6 Implications

Issue	Implications
Corporate Plan	Becoming a high performing organisation – the proposals in the report will strengthen the ethical framework and clarify roles and responsibilities. These proposals, especially the revised Monitoring Officer protocol, should have a positive impact on the Use of Resources score.
Financial, Resource and Property	The cost of servicing the Council's committees will be met within existing budgets. The establishment of an additional Committee would have financial and human resource implications, but this is one of the consequences of the introduction of the local filter imposed on the Standards Committee by Section 185 of the Local Government and Public Involvement in Health Act 2007.

Legal and Statutory	The proposals in this report relate to duties imposed by Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007.  The Report has been prepared in consultation with the Interim Head of Legal and this and other relevant legislation has been included in the body of the report.
Crime and Disorder	None identified at this stage
Risk Management and Health and Safety	The proposed amendments to the local arrangements ensure compliance with relevant legislation and should ensure a balanced and proportionate approach is taken when a complaint alleging misconduct by an elected member is made.
Equality and Diversity	The proposals in the report are intended to improve the local arrangements which will be of assistance to any individual with concerns about the behaviour of elected or co-opted members.
Sustainability	None identified at this time.

## 7 Appendices

### 7.1

- **APPENDIX I** – Flowcharts
- **APPENDIX II** - Summary of proposed changes
- **APPENDIX III** - Proposed Article 9 and Terms of Reference for the Standards Committee, and Sub-Committees
- **APPENDIX IV** – Current version of Article 9 and Terms of Reference for the Standards Committee, and existing Sub-Committees

## 8 Background Papers

### 8.1

Swale Borough Council Constitution

The Guidance issued by the Standards Board for England Standards Committee (England) Regulations 2008

Standards Board Guidance “Local Assessment of Complaints”

Standards Board Guidance “the Role and Make-up of Standards Committees”

Standards Board Guidance can be found on [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)

Standards Committee (England) Regulations 2008