

BROMSGROVE DISTRICT COUNCIL

STANDARDS COMMITTEE

20TH MAY 2009

REVIEW OF THE LOCAL ASSESSMENT REGIME

Responsible Portfolio Holder	Councillor Geoff Denaro
Responsible Head of Service	Claire Felton, Head of Legal, Equalities and Democratic Services and Monitoring Officer
Non-Key Decision	

1. SUMMARY

- 1.1 Local assessment of complaints about members has been in operation for 12 months. The Committee has asked officers to review certain aspects of the process and this report sets out the findings of that review.

2. RECOMMENDATION

- 2.1 That the report be noted and that the following decisions be taken:
- 2.1.1 whether the assessment criteria at Appendix 1 should be revised;
 - 2.1.2 to decide whether a subject member should be notified of a complaint before assessment;
 - 2.1.3 to decide whether a review hearing should be a re-hearing or a review of the soundness of the decision-making process followed by the Assessment Sub-Committee; and
 - 2.1.4 To decide whether to make any recommendations to Council about the composition of the Standards Committee.

3. BACKGROUND

- 3.1 At its meeting on 31 March 2009 the Standards Committee identified a number of areas of the local assessment regime which it considered ought to be reviewed at this stage. Each is set out below.

Publicity to and promotion of the ethical framework and complaints process

- 3.2 It was agreed at the meeting on 31 March 2009 that the fact that members sign up to and adhere to a Code of Conduct and that an ethical framework and standards regime is in place should be more widely publicised. This

should be done in a positive manner to highlight the openness and transparency of the decision making process.

- 3.3 Officers have met with the Council's Customer First Officer to discuss how this might be achieved and a number of ideas were considered. Key to this will be the development of a "brand" for the ethical framework and standards regime including a title which can be readily understood by the public. This "branding" for the ethical framework will then be used in all subsequent publicity, literature, information etc. The Customer First team have agreed to give some thought to this branding and come up with some ideas which will be brought to the Committee for consideration. It is intended that it will portray the positive benefits of the framework in language that is not legalistic.
- 3.4 The Council is in the process of developing a new website which will go live at the end of September. It is intended that the new site will be much easier for the public to use. It will include a new dedicated section promoting the ethical framework, the Code of Conduct, the Register of Interests, the work of the Standards Committee and how to make a complaint about the conduct of a councillor, and this section will be headed with the new branding. The section will be drafted in such a way as to be concise with links to more detailed information or explanations or to documents (such as minutes of meetings, Decision Notices, Register of Interest Forms, the Complaint Form and guidance, the Annual Reports etc) to make it more user-friendly. Again the Customer First team has agreed to assist in ensuring that the wording is in plain English. Officers will be receiving training in June on using the new website and it will be ready to go live at the end of September. A link to this section will be available from the section of the website relating to parish councils, and officers will liaise with parish councils in due course to encourage them to include the link on their own websites. It will be made clear how members of the public can complain about failures in service delivery, maladministration or the conduct of officers and how these differ from complaints about councillors' conduct, with the appropriate links clearly shown.
- 3.5 Officers have also met with both the Customer Services Manager and the Assistant Customer Services Manager at the Customer Service Centre to discuss publicity of the ethical framework and standards regime at the Centre. Both are happy for this to be promoted, including the displaying of a poster, information leaflets, complaint forms, guidance etc. Space for this will, of course, be somewhat limited as the Centre is part of the Worcestershire Hub and therefore also has to utilize its space equally for publicity of County functions. Officers will also be speaking with relevant County Council officers to see whether they wish for details of the County Council Member complaints system (which affects some of the district councillors in their dual capacity) to be highlighted, with a view to having as prominent a position as possible at the Centre for the required publicity to ensure this doesn't end up becoming 'lost' in with the existing information. The public is currently able to access the Council's website (including the

Register of Members' Interests) via a computer terminal at the Centre, with two additional terminals due to be made available once the relocation of the Planning Reception from the Council House to the Customer Services Centre takes place next month. Further to a suggestion from officers, it has been agreed that prior to implementation of the new publicity and the launch of the Council's new website, officers will conduct training sessions for the Customer Services Advisors at the Centre to ensure that they are fully aware of the ethical framework and standards regime and can point the public to the relevant elements of this. Staff at the Centre are not currently familiar with the separate Member complaints system as they have not had cause to use this to date, and have confirmed that their first instinct would be to direct any complaints through the Council's iCasework system; the general customer feedback system in place for issues linked to service delivery. Any complaints about Members logged on iCasework would however still filter through to the appropriate officers and would be actioned in the normal manner. As detailed at paragraph 3.4 above, links to both the iCasework system and Ombudsman complaints will appear alongside the Member complaints system to ensure the public are fully aware of the separate complaint processes.

3.6 It is proposed that 2010 should promote local democracy in the run up to the next local council elections. The ethical framework will be actively promoted and explained throughout this campaign and will receive much greater prominence than in previous years.

3.7 Other means of promoting the ethical framework which will be utilised include:

- Coverage in the Together Bromsgrove publication about the obligations of councillors to adhere to the Code of Conduct;
- Press coverage surrounding the adoption of the new Code of Conduct later this year;
- Press coverage surrounding the independent member vacancies;
- Press coverage surrounding the adoption of the new Code of Conduct which is expected to be published this year; it is expected that this will be published in about June 2009 and therefore it is likely that the Council will be adopting it in about September 2009. This will coincide with the launch of the new website and it is therefore proposed that there should be a high profile press release or series of releases promoting the standards regime; and
- Working with parish councils to promote the framework in parished areas.

- 3.8 Officers have looked carefully at the Complaint Form and Guidance which has been used for the past year. It is acknowledged that both could be set out and written in a simpler, clearer manner and in a more logical order, and officers will set about redrafting these for implementation as soon as the new Code of Conduct has been introduced. Drafts of the form and guidance will be presented to members of the Committee for comments before implementation.
- 3.9 Members are requested simply to note the progress being made; regular updates on progress will be given in future Monitoring Officer Update reports.

Assessment criteria

- 3.10 The current assessment criteria are attached as Appendix 1. This is intended to be a guide for members of an Assessment Sub-Committee when deciding whether a complaint should be investigated rather than a prescriptive decision-making protocol. Members are invited to comment on its usefulness in the assessment process and to suggest any improvements.
- 3.11 Officers are seeking guidance from the Standards Board for England about whether or not it is appropriate for the Sub-Committee to take into account previous or concurrent complaints about a member which may demonstrate that a pattern of behaviour emerges; conflicting advice has been received on this issue in the past and officers are seeking to obtain a definitive response on this point.

Notification of complaint to subject member prior to assessment

- 3.12 The Regulations governing local assessment give the Monitoring Officer the discretion as to whether or not to notify the subject member that a complaint about him or her has been received before it has been assessed. The SBE guidance does not direct or suggest a course of action, but advises that in determining its practice the Standards Committee must consider the implications of s63 of the Local Government Act 2000.
- 3.13 Section 63 LGA prohibits the disclosure of any information obtained by a Monitoring Officer in the course of performing any of his or her functions relating to complaints about members except in specified circumstances. One of the exceptions is that a Monitoring Officer may disclose information received as part of a complaint about a member if doing so will enable a Standards Committee or Sub-Committee to perform any of its functions.
- 3.14 Therefore the Committee needs to decide if notification to the subject member will assist it in enabling it to perform any of its functions (which could include the final determination of the matter). If the Committee decides that it would or could (and this might include the example given at the last meeting of the preservation of necessary evidence), then the SBE guidance goes on to add that the Data Protection Act would apply, therefore prohibiting the disclosure of any information about the complainant or any

other person referred to in the complaint unless one of the exceptions to the Data Protection Act applies.

3.15 Finally, the SBE guidance advises that, if the Committee decides that it does intend to notify the subject member about a complaint before it has been assessed, the only information which can be given is the fact that a complaint has been made, the name of the complainant (subject to Data Protection and any request by the complainant for confidentiality) and the relevant paragraphs of the Code which may have been breached; the notification should state that a written summary of the allegation will only be provided to the subject member once the Assessment Sub-Committee has met to consider the complaint, and the date of this meeting if known. Members might question whether or not it is worth making such a bland notification.

3.16 To date it has been the Committee's practice not to notify the subject member about the complaint until an initial assessment decision has been made. The reasons for this were:

- This reflected the practice formerly adopted by the SBE when it had responsibility for assessment; and
- It removes the risk of the subject member "lobbying" members of the Assessment Sub-Committee or seeking to introduce evidence at the assessment stage.

3.17 At the last meeting, Members expressed the view that it might be helpful to notify the subject member before assessment that a complaint has been received to ensure that essential evidence is preserved. However, in the light of the SBE guidance, it seems that it would not be possible to alert the subject member to the nature of the complaint and therefore the aim of evidence preservation could not be achieved.

3.18 Members are requested to decide whether they wish to continue with the existing practice or whether they wish a notification to be sent to the subject member before assessment.

Decision Notices

3.19 Officers will be reviewing the content and format of all of the template decision notices/letters, which are currently based on Standards Board models. Consideration will also be given to the separate notices required under Regulations 8 and 11 of The Standards Committee (England) Regulations 2008 and any proposals in this regard will be brought back to the Committee for approval.

Review of Assessment Decisions

3.20 To date no requests for reviews of assessment decisions have been received and the Committee has not had to give detailed consideration as to how to conduct a review. However, there are 2 schools of thought as to what constitutes a review of an assessment decision and the Committee is asked to decide which approach it will adopt.

- 3.21 On the one hand, a review can simply be a re-run of the assessment hearing by a different group of members, based on exactly the same information given to the initial Assessment Sub-Committee.
- 3.22 On the other hand, the review can be a consideration of whether or not the Assessment Sub-Committee followed the correct procedures, took relevant considerations into account and discounted irrelevant considerations.
- 3.23 The former is the view of the SBE. However, officers have been advised by specialist solicitors that this is not the correct approach; if the review hearing is effectively an assessment hearing then theoretically it should also be capable of being subject to review. Officers are advised that, notwithstanding the SBE guidance, the second approach is the one which the Council should follow. This is similar to the approach taken on a judicial review, in that the Review Sub-Committee would ensure that the decision making process was sound and that the decision reached was not unreasonable based on the information available, but it would not generally seek to find that the Assessment Sub-Committee should have reached a different conclusion unless it concludes that there has been an irregularity.
- 3.24 Both approaches are valid, and members are requested to consider which they consider to be the most appropriate.
- 3.25 Members should bear in mind that if a review is requested and more information is provided by the complainant at that stage, the correct procedure would be for the original Assessment Sub-Committee to re-assess the complaint with all the new information rather than review the initial decision in the light of the new information.

Parish Councils Publicity and Promotion of the Standards Regime and Complaints Process

- 3.26 It has been identified that the standards regime and the complaints process relating to parish councillors probably needs to be given a higher profile at parish level. It is proposed that officers work with the Parish Forum/WCALC to determine how best to do this; ideally this would tie in with the raising of the profile of the District Council's standards regime around September and parishes would be encouraged to participate. It is therefore suggested that an item is placed on the Parish Forum and/or WCALC agendas for either their June or September meeting (or possibly both) and that officers liaise with the Parish Representatives on the Committee. Members' views and suggestions are sought.

Parish Councils – Notification of Complaints

- 3.27 A recent Town and Parish Standard published by the SBE suggested that principal authorities should work with their parish councils to formulate a process by which it is clear what parish council clerks should do when they receive notification of a complaint about one of their members. If a clear process is agreed by all parishes it would remove any difficulty or

embarrassment a clerk may face publicising a complaint made about one of their members. Again it is suggested that officers work with the Parish Representatives on the Committee with a view to placing an item on the agenda for the Parish Forum and/or WCALC meetings in either June or September.

Composition of the Standards Committee

3.28 During the past year a number of queries have arisen relating to the composition of the Standards Committee, some from within and some from outside the Committee. These are:

- Should the same members be able to sit on both the Assessment Sub-Committee and Final Determination Sub-Committee? Again there are 2 schools of thought; one suggests that the impartiality of members who dealt with the assessment of a complaint based on the evidence of the complainant only might be compromised in the event that they come to sit on the Final Determination Sub-Committee. However, when this issue was considered by this Committee last year it was satisfied that this would not be the case. It has yet to be tested as the Committee has not yet undertaken a final determination of a complaint which it has assessed itself and it might be more appropriate to delay consideration of this issue until the Committee has more experience of this, but the Committee's views are welcomed.
- Should the size of the Committee be increased? This would only be a relevant consideration if the Committee decided that members who sat on the Assessment Sub-Committee would not be able to sit on the Final Determination Sub-Committee and so again it is suggested that this issue is not considered at this stage.
- Should there be a Cabinet member on the Standards Committee? The most recent guidance from the SBE states that the Council should give consideration to this issue. The legislation does not require the Standards Committee to include a member of the Cabinet. However, the SBE recommends that the Council should consider whether it is appropriate to appoint a Cabinet member as, on the one hand, appointing a Cabinet member might show that the Committee is supported and respected by all parts of the Council, but on the other, not having a Cabinet member could reflect a degree of independence from the political leadership of the Council. Members are requested to consider whether or not to make a recommendation to Council to amend the composition of the Committee.
- It has been suggested that the Parish Representatives be required to have been elected as opposed to having been co-opted. For the sake of clarity, the local government legislation treats a member who takes office as a result of an uncontested election as being an elected member. Co-opted members of parish councils are required

to adhere to the same requirements as elected members and have the same obligations as elected members. It may be that the issue to be considered is the selection process for the Parish Representatives; at present the selection is left entirely to the Bromsgrove CALC Committee. By analogy, the Independent Members of the Committee are selected by the Council in accordance with selection criteria prepared by the Standards Committee and perhaps consideration could instead be given to adapting the process by which Parish Representatives are selected. The current Parish Representatives have been appointed until the 2011 election and it would be at that point that any new selection process would be implemented. Members are requested to consider whether any recommendation should be made to Council in this respect.

4. FINANCIAL IMPLICATIONS

4.1 None

5. LEGAL IMPLICATIONS

5.1 The Local Government Act 2000 introduced primary legislation to enable the implementation of a Members' Code of Conduct, and this was amended by the Local Government and Public Involvement in Health Act 2007 insofar as it related to the application of the Members' Code of Conduct to their private lives. The local assessment regime was introduced by the LGPIHA 2007, and further expanded in the Standards Committee (England) Regulations 2008 which also set out the rules and procedures governing the investigation and determination of complaints.

6. COUNCIL OBJECTIVES

6.1 This item does not link directly with any Council objectives.

7. RISK MANAGEMENT

7.1 The main risk associated with the details included in this report is:

- *Risk of challenge to Council decisions; and*
- *Risk of complaints about elected members.*

7.2 These risks are being managed as follows:

- Risk Register: *Legal, Equalities and Democratic Services*
Key Objective Ref No: 3
Key Objective: *Effective ethical governance*

8. CUSTOMER IMPLICATIONS

8.1 None

9. EQUALITIES AND DIVERSITY IMPLICATIONS

9.1 None

10. VALUE FOR MONEY IMPLICATIONS

10.1 None

11. OTHER IMPLICATIONS

Procurement Issues	None
Personnel Implications	None
Governance/Performance Management	None
Community Safety including Section 17 of Crime and Disorder Act 1998	None
Policy	None
Environmental	None

12. OTHERS CONSULTED ON THE REPORT

Portfolio Holder	No
Chief Executive	No
Executive Director - Partnerships and Projects	No
Executive Director - Services	No
Assistant Chief Executive	No
Head of Service	Yes
Head of Financial Services	No
Head of Legal, Equalities & Democratic Services	Yes

Head of Organisational Development & HR	No
Corporate Procurement Team	No

13. WARDS AFFECTED

All wards

14. APPENDICES

Appendix 1 Assessment criteria

15. BACKGROUND PAPERS

None

CONTACT OFFICER

Name: Claire Felton and Debbie Warren
E Mail: c.felton@bromsgrove.gov.uk &
d.warren@bromsgrove.gov.uk
Tel: (01527) 881429 & (01527) 881609