

Standards Committee

Agenda

Date: Tuesday, 10th March, 2009
Time: 10.00 am
Venue: East Committee Room, Municipal Buildings, Crewe

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests in any item on the agenda

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the Committee.

Individual members of the public may speak for up to 5 minutes but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers.

Note: In order for officers to undertake any background research it would be helpful if questions were submitted at least one working day before the meeting.

4. **Minutes of Previous meeting** (Pages 1 - 4)

To approve the Minutes of the meeting held on 13 January 2009.

5. **Local Assessment Sub-Committees** (Pages 5 - 12)

To consider a report outlining how to progress the establishment of the Standards Committee's local assessment and review function in relation to allegations of misconduct and complaints received in relation to the Code of Conduct.

6. **Political Restrictions - functions of the Standards Committee** (Pages 13 - 16)

To consider a report on the implications of the Local Government and Public Involvement in Health Act 2007 in relation to politically restricted posts.

7. **Promoting the work of the Standards Committee** (Pages 17 - 20)

To consider a report following the first meeting of the Working Group of Standards Committee that was set up to discuss ways and means of promoting the work and function of the Committee and to investigate suitable media whereby such promotional material can be communicated to both Members and to the general public.

8. **Committee Work Programme and future meeting dates**

To consider the Committee's future Work Programme and future meeting dates.

9. **Training DVD**

Time will be allowed at the end of the meeting to view the Training DVD,

CHESHIRE EAST COUNCIL

Minutes of a meeting of the Standards Committee
Held on Tuesday, 13th January, 2009 at Committee Suite 1, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Mr N Briers (Chairman)
Mr D Sayer (Vice Chairman)

Councillors Mrs R Bailey, B Dykes, J Goddard, J Hammond, Mrs M Hollins,
Mrs M Martin, M Parsons
Independent Members Mr M Garrett and Mr R Pomlett
Parish Councillors Mrs P Barnett, Mrs T Eatough and K Edwards

1 APOLOGIES FOR ABSENCE

An apology for absence was received from Mr Ian Clark.

2 DECLARATIONS OF INTEREST

None.

3 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public present who wished to address the Committee.

4 MINUTES OF PREVIOUS MEETING

RESOLVED

That the minutes of the meeting held on Tuesday 25 November be approved as a correct record and signed by the Chairman.

5 LOCAL ASSESSMENT SUB-COMMITTEES

The Committee considered a report of the Interim Monitoring Officer on the need to set up Sub-Committees of the Standards Committee to deal with the local assessment and review function. The Local Government and Public Involvement in Health Act 2007 gave Standards Committees the role of undertaking the initial assessment of misconduct allegations in place of the Standards Board for England.

There were Regulations available together with guidance which gave detailed advice as to how the local assessment function was to be discharged by Standards Committees.

The report recommended establishing two Sub-Committees:

- Assessment Sub-Committee – to make an initial assessment of the allegation and decide whether to refer it to the Monitoring Officer for further investigation or alternative action; refer it to the Standards Board for England (if seen as too serious to be dealt with locally) or take no further action;
- Review Sub-Committee – to consider requests for a review of the decision of the Assessment Sub-Committee to take no further action on the allegation. This Sub-Committee would then consider the allegation afresh and decide whether to refer it to the Monitoring Officer for further investigation or local resolution; refer it to the Standards Board for England (as above) or decide that no further action should be taken.

The two Sub-Committees would need to have separate membership in relation to dealing with an allegation. The Regulations required that an Independent Member must chair a Sub-Committee and at least one Member of the Authority must be present at a Sub-Committee meeting; if the complaint related to a Parish Council then a Parish Councillor must be present (who was not also a Member of the Authority). The regulations prescribed that to be quorate a Sub-Committee must have at least three Members present for its duration. Members of either Sub-Committee would not be barred from participating in the meeting of the Standards Committee that ultimately determined the complaint.

RESOLVED: That

- (a) an Assessment Sub-Committee be established with Mr N Briers as Chairman and a Review Sub-Committee be established with Mr D Sayer as Chairman – if either is not available then another Independent Member be approached to chair the Sub-Committee; and
- (b) membership of the Sub-Committees be drawn from the membership of the Standards Committee based on availability of Members and detail of the allegation concerned and with an understanding that membership be rotated as far as possible to enable as many Members as possible to be involved in the process.

6 ANNUAL REPORT

The Monitoring Officer advised the Committee that an Annual Report would need to be prepared each year, to be signed off by the Chairman of the Committee and presented to a full Council meeting. It was seen as good practice to present the report to a public meeting to raise the profile of the work of the Committee.

Members discussed when to produce the first Annual Report taking into account that the Committee had only recently been established with full Membership, had been spending most of its time on Induction and had yet to be involved in any investigations.

RESOLVED: That an Annual Report be produced for the period to Spring 2010 and presented to the Council meeting in April/May 2010

7 NOTIFICATION TO PARISH COUNCILS OF CHANGES FROM 1 APRIL 2009

The Monitoring Officer advised the Committee that the Parish Councils would need to be formally advised of the changes that would come into effect from 1 April 2009 in relation to Code of Conduct and other issues involving the Standards Committee. Members were advised that the Terms of Reference for Cheshire East Committees were being updated by the Governance and Constitution Committee.

Members discussed whether it would be helpful to ask Parish Councils to publicise the work and role of the Cheshire East Standards Committee as well as taking the opportunity to remind them of their obligation to abide by the Code of Conduct and offering assistance with any training needs.

RESOLVED: That the Monitoring Officer write to the Clerks to the Parish Councils in Cheshire East advising them as follows;

- that Standards issues will be dealt with by the Standards Committee from 1 April 2009 and requesting that they publicise this in any Parish newsletter;
- including a copy of the Standards Committee's Terms of Reference (if available); and
- reminding them that Parish Councillors are obliged to abide by the Code of Conduct in a similar way to Elected Members of Cheshire East Council.

8 COMMITTEE WORK PROGRAMME

The Committee considered the draft Work Programme noting that an Induction Session was arranged for February and a formal Committee meeting for 10 March. Members discussed issues to be considered at the Induction Session.

RESOLVED: That the Induction Session be held on Tuesday 17 February at 10.00 am and include a review of the Code of Conduct.

9 FUTURE MEETING DATES

Members discussed frequency of meetings and agreed that an initial cycle of approximately every 2 months would be appropriate.

RESOLVED: That meeting dates be considered further at the next meeting.

The meeting commenced at 11.00 am and concluded at 11.40 am

Councillor (none)

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CHESHIRE EAST COUNCIL

STANDARDS COMMITTEE

Date of meeting: 10 March 2009
Report of: Borough Solicitor
Title: Local Assessment Sub-Committees

1.0 Purpose of Report

- 1.1 To progress the establishment of the Standards Committee's local assessment and review function in relation to allegations of misconduct and complaints received in relation to the Code of Conduct.

2.0 Decision Required

- 2.1 (i) To consider whether to set up a separate Hearings Sub-Committee;
- (ii) Subject to (i) above to consider and agree Terms of Reference for the Hearings Sub-Committee, Review Sub-Committee and Assessment Sub-Committee, in accordance with Appendices 2-5 of this report; and
- (iii) to agree Assessment Criteria to be used for the initial assessment of complaints, in accordance with Appendix 1 of this report.

3.0 Information

- 3.1 At the last meeting Members considered how the Standards Committee should undertake local determination of misconduct allegations and agreed to the establishment of an Assessment Sub-Committee and a Review-Sub Committee with the following roles:
- Assessment Sub-Committee – to make an initial assessment of an allegation and decide whether to refer it to the Monitoring Officer for further investigation or alternative action; refer it to the Standards Board for England (if seen as too serious to be dealt with locally) or take no further action;

- Review Sub-Committee – to consider requests for a review of the decision of the Assessment Sub-Committee to take no further action on the allegation. This Sub-Committee would then consider the allegation afresh and decide whether to refer it to the Monitoring Officer for further investigation or local resolution; refer it to the Standards Board for England (as above) or decide that no further action should be taken.

The Committee is now asked to consider adopting Assessment Criteria to use to assess complaints and assist with deciding what action, if any, to take. The adoption of agreed criteria ensures fairness for the complainant and the Member subject to the complaint and will help to protect Standards Committee Members from allegations of bias. Assessment criteria should ensure that complainants can be confident that any allegations of misconduct will be taken seriously and dealt with appropriately while also ensuring the efficient use of public money and officers' and Members' time by taking into account the public benefit in investigating complaints that may be considered less serious, politically motivated, malicious or vexatious. Proposed Assessment Criteria is set out in Appendix 1. The Committee's attention is drawn to criteria 2 relating to timescales and Members are asked to consider whether it is felt appropriate to specify a timescale.

If it is decided by either the Assessment Sub-Committee or the Review Sub-Committee that the allegation deserves further investigation the Monitoring Officer may undertake this work (or nominate an officer to investigate) following which a report will be produced. It is proposed that the Assessment Sub-Committee would give initial consideration to this report and determine whether any further action is required. If the Assessment Sub-Committee considers that the complaint should be considered further it is recommended that a separate Hearings Sub-Committee is established to consider the Monitoring Officer (or nominee's) final report or to carry out a hearing to determine whether a Member has breached the Code of Conduct and determine any sanctions. This recommendation reflects the potential volume of complaints generated by the size of the principal Council and the large number of parish councils. It also takes into account the practical difficulties of covering and handling matters with a full committee of 16 Members.

The Hearings Sub-Committee would need to be chaired by an Independent Member with a suggested membership of 5 and a quorum of 3 Members. A Member who took part in either the Assessment Sub-Committee or Review Sub-Committee would be eligible to take part in the Hearings Sub-Committee. There is no requirement for any Sub-Committee of Standards Committee to have fixed membership so it is proposed that membership of the Hearings Sub-Committee be drawn from the membership of the Standards Committee taking into account the requirement for one independent member to attend along with availability of Members.

Proposed Terms of Reference for the Hearings Sub-Committee, Review Sub-Committee and Assessment Sub-Committee are attached at Appendices 2, 3 and 4 for consideration.

4.0 Financial Implications for Transition Costs

4.1 None

5.0 Legal Implications

5.1 As set out in the report.

6.0 Risk Assessment

6.1 Creating a separate sub-committee to deal with hearings will allow the separate functions involved in the handling of cases to be carried out without conflicts of interest.

7.0 Overview of Day One, Year One and Term One Issues

7.1 Any further information to be submitted to the Committee as and when required.

For further information:

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Background Documents:

The Standards Committee (England) Regulations 2008

The Standards Board for England Guidance note 10/08/2008

The Standards Board for England bulletin 38

Documents are available for inspection at:

Westfields, Middlewich Road, Sandbach, Cheshire

APPENDIX 1

DRAFT ASSESSMENT CRITERIA

Initial Tests

Before any assessment of a complaint begins, the Assessment Sub-Committee must be satisfied that the complaint meets the following tests:

- *It is a complaint against one or more named Members of Cheshire East Council or a Town or Parish Council within Cheshire East Borough;*
- *The named Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;*
- *The complaint, if proven, would be a breach of the Code under which the Member was operating at the time of the alleged misconduct.*

If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code and the complainant will be informed that no further action will be taken in respect of the complaint.

If the above tests are met the Assessment Sub-Committee will have regard to the following criteria:

1. Adequate information – The Sub-Committee will want to be satisfied that it has sufficient information to decide whether the complaint should be referred for investigation or other action;
2. Timescale – The Sub-Committee will take into account when the events subject to the complaint took place and *will not normally investigate or pursue other action if the events occurred more than 6 months prior to the complaint being submitted* (except if it decides there are exceptional circumstances);
3. Seriousness of the complaint – The Sub-Committee will not normally refer a matter for investigation or other action if it is considered trivial, malicious, politically motivated or tit-for-tat.
4. Public Interest - If the complaint relates to an ex-Member of Cheshire East or one of its Town/Parish Councils who is now a Member of another Authority the Sub-Committee may refer the matter to the Standards Committee of that Authority for consideration. If the Member has resigned, is seriously ill or has died the Sub-Committee will only refer the matter for investigation or other action if it considers that the public interest will be served by so doing. If the complaint has already been the subject of an investigation or other action relating to the Code of Conduct or has been investigated by other regulatory

authorities it is unlikely to be referred for investigation or other action unless it is evident that public interest will be served by further action being taken.

APPENDIX 2

DRAFT TERMS OF REFERENCE OF THE ASSESSMENT SUB-COMMITTEE

- (a) To receive complaints that a Member of Cheshire East Council or a Town/Parish Council within Cheshire East has failed, or may have failed, to comply with the Authority's Code of Conduct;
- (b) To make an initial assessment of any complaint using the Assessment Criteria and decide one of the following courses of action:
 - (i) refer the complaint to the Monitoring Officer for investigation;
 - (ii) refer the complaint to the Monitoring Officer for other action;
 - (iii) refer the complaint to the Standards Board for investigation;
 - (iv) decide that no action should be taken.
- (c) To consider a report of the Monitoring Officer following his/her investigation of the complaint (in accordance with (b) (i) above) and decide one of the following courses of action:
 - (i) to accept the Monitoring Officer's finding that there has been no failure to observe the Code of Conduct;
 - (ii) to refer the matter for consideration at a hearing before the Hearings Sub-Committee;
 - (iii) to refer the matter to the Adjudication Panel for determination.
- (d) To publish a written summary giving the main points considered, conclusions reached and the reasons for the conclusions in relation to any actions set out in paragraphs (b) and (c) above.

APPENDIX 3

DRAFT TERMS OF REFERENCE FOR THE REVIEW SUB-COMMITTEE

(a) To review, upon receipt of a request from a complainant, a decision of the Assessment Sub-Committee to take no action in respect of a complaint that a Member of Cheshire East Council or a Town/Parish Council within Cheshire East has failed to comply with the Authority's Code of Conduct and determine one of the following courses of action:

(i) Refer the complaint to the Monitoring Officer for formal investigation;

(ii) Refer the complaint to the Monitoring Officer for other action;

(iii) Refer the complaint to the Standards Board for England;

(iv) Decide that no action should be taken.

(b) To publish a written summary giving the main points considered, conclusions reached and the reasons for the conclusions in relation to any actions set out in paragraph (a) above.

APPENDIX 4

DRAFT TERMS OF REFERENCE FOR THE HEARINGS SUB-COMMITTEE

(a) To hold hearings into complaints that a Member of Cheshire East Council or a Town/Parish Council within Cheshire East has failed, or may have failed, to comply with the Authority's Code of Conduct;

To decide that:

(i) the Member who was the subject of the hearing has not failed to comply with the Code of Conduct; or

(ii) the Member who was the subject of the hearing has failed to comply with the Code of Conduct but no action needs to be taken; or

(iii) the Member who was the subject of the hearing has failed to comply with the Code of Conduct and that a sanction should be imposed.

(b) To impose any appropriate sanctions when a finding under paragraph (a) (iii) above occurs in accordance with Regulation 19 of The Standards Committee (England) Regulations 2008.

CHESHIRE EAST

Standards Committee

Date of meeting: 10 March 2009
Report of: Borough Solicitor
Title: Political Restrictions – functions of Standards Committee

1.0 Purpose of Report

- 1.1 To consider the effect of the Local Government and Public Involvement in Health Act 2007 in relation to politically restricted posts.

2.0 Decision Required

- 2.1 To note that the function of determining applications for exemption from political restriction now rests with the Standards Committee.

3.0 Information

- 3.1 Section 2 of the Local Government and Housing Act 1989 makes provision for certain senior posts held by local authority officers to be designated as “politically restricted”, and imposed a duty on local authorities to maintain a list of such posts. Section 3 made it the duty of the Secretary of State to appoint a person to give general advice on the question of whether particular posts should be on such lists, and to consider any exemption applications in relation to them.
- 3.2 Section 202 of the Local Government and Public Involvement in Health Act 2007 inserts new Sections, 3A and 3B into the 1989 Act. The effect is that the Standards Committee must now consider any application for exemption from political restriction which is made, in respect of any post under the relevant authority, by the holder for the time being of that post, and that it may, on application or otherwise, give directions to the authority that the post should include a particular post in the list of politically restricted posts.
- 3.3 The effect of the change in legislation is therefore that in England, the functions of requiring inclusion in the list, or granting exemptions from inclusion, are now to be discharged by the Standards Committee, rather than the Secretary of State, as previously was the case. The Secretary of State may however issue guidance, after consultation with representatives from local government, on how this function should be discharged. These new functions have been included into the terms of reference of the Committee in the newly adopted Constitution which takes effect from 1 April.

4.0 Financial Implications for Transition Costs

None.

5.0 Legal Implications

As set out in the report.

7.0 Risk Assessment

Not applicable.

8.0 Overview of Day One, Year One and Term One Issues

None. Any such applications will be dealt with by the Standards Committee as required.

For further information:

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Background documents

None

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CHESHIRE EAST COUNCIL

STANDARDS COMMITTEE

Date of meeting: 10 March 2009

Report of: Nigel Briers, Chairman of the Committee and Working Group and Members of the Working Group - David Sayer, Patsy Barnett, Roger Pomlett Cllr John Goddard

Title: Promoting the work of the Standards Committee

1.0 Purpose of Report

1.1 To provide feedback on the first meeting of the Working Group of Standards Committee set up to discuss ways and means of promoting the work and function of the Committee and to investigate suitable media whereby such promotional material can be communicated to both Members and to the general public.

2.0 Decision Required

2.1 To note and approve the proposals of the Working Group to continue working on ways to promote the Committee.

3.0 Information

The Group, following its formulation at the conclusion of the Shadow Committee's meeting on the 25th November 2008, now met to discuss ways and means of promoting the work and function of the Standards Committee and to consider suitable media whereby such promotional material can be communicated not only to Members but to the public at large.

3.1 Broad Strategy

Roger Pomlett advised the Group of the steps being taken by the Cheshire East Council ("the Council") to promote public awareness of the newly formed authority and how it will affect the population within its sphere of authority. In particular it was felt that the Standards

Committee could conveniently liaise with the Council in this regard and illustrate for the benefit of those unaware of the Standards Committee and its purpose just where it fits in and how it operates. Regard should be had for any regular publication to be issued by or on behalf of the Council in order that the Standards Committee might contribute.

It was unanimously agreed that this presented an opportunity not to be missed and Nigel Briers suggested that it would be appropriate for an internal meeting to be arranged with the Chairman and Chief Executive of the Council with representatives of the Group in order to pursue this line of approach.

3.2 Specific Issues

The Group was unanimous that a leaflet should be drafted and prepared for wide distribution and availability throughout the area of the authority and that such leaflet would explain the role of the Committee and its terms of reference and constitution. The need to maintain a careful balance between the dissemination of information on the one hand and guidance for potential complainants on the other in a plain language document was stressed.

Means of distribution were discussed and considered e.g. Council tax demands, parish/town council newsletters and the like. Patsy Barnett provided helpful information relating to the Cheshire Association of Parish Councillors and the training undertaken by parish clerks. Recent DVDs available to illustrate working examples of the Code of Conduct in practice should be particularly brought to the attention of those involved with parishes of which there are 108 in the administrative area of the newly constituted authority.

At the next meeting of the Committee on 10th March 2009 approval in principle to be sought for the proposed leaflet which the Group accepted would be likely to have to be produced internally i.e. by the Group.

3.2 Conclusion

It was agreed that the meeting and discussion had been useful and Nigel Briers suggested that the Group should remain in existence and thereby retain the initiative in terms of the suggestions made and promotions envisaged. Accordingly it was agreed that the Group would reconvene after the meeting of the Committee on the 10th March 2009 specifically to compile the form and content of the proposed leaflet.

4.1 Financial Implications for Transition Costs

4.1 None

5.0 Financial Implications 2009/10 and beyond

5.1 To be determined at a later date, possibly costs of promotional material.

6.0 Legal Implications

6.1 N/A

7.0 Risk Assessment

7.1 N/A

8.0 Overview of Day One, Year One and Term One Issues

8.1 N/A

For further information:

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Background Documents:

None

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