

CHESHIRE EAST COUNCIL

REPORT TO: STANDARDS COMMITTEE

Date of Meeting:	27 September 2010
Report of:	Borough Solicitor and Monitoring Officer
Subject/Title:	Terms of Reference – Standards Sub-Committees

1.0 Report Summary

- 1.1 At the meeting of the Standards Committee held on 26 July 2010, the role of each of the Sub-Committees was discussed and clarification sought. This report details the Terms of Reference for each of the Sub-Committees of the Standards Committee, namely (1) Assessment Sub-Committee; (2) Review Sub-Committee; (3) Hearings Sub-Committee, and provides a brief explanation on the role of each.

2.0 Recommendation

- 2.1 The Committee is asked to RESOLVE –
- That the Terms of Reference for the Sub-Committees of the Standards Committee be noted.

3.0 Reasons for Recommendation

- 3.1 The Terms of Reference for the Standards Committee Sub-Committees comply with relevant legislation and Guidance issued by Standards for England.

4.0 Wards Affected

- 4.1 Not applicable

5.0 Local Ward Members

- 5.1 All Councillors

6.0 Policy Implications

- 6.1 None identified

8.0 Legal Implications

- 8.1 None identified other than as outlined in the report.

9.0 Risk Management

- 9.1 The creation of separate Sub-Committees to deal with various aspects of complaints has ensured that the separate functions involved in the handling of complaints can be carried out without conflicts of interest as required by legislation and guidance.

10.0 Background and Options

- 10.1 At its meeting held on 13 January 2009, the Committee agreed to the establishment of two Sub-Committees to fulfil its assessment and review roles, namely the Assessment Sub-Committee and the Review Sub-Committee.

- 10.2 On 10 March 2009, the Committee agreed to establish a separate Hearing Sub-Committee and approved its Terms of Reference. The Terms of Reference were revised to accord with the Guidance issued by Standards for England on 18 May 2009 and the Monitoring Officer reported . At the meeting, the Monitoring Officer outlined proposed amendments and these were accepted by the Committee which authorised the Monitoring Officer to make any consequential amendments.

Revised Terms of Reference were reported to the meeting held on 13 July 2009.

- 10.4 The Terms of Reference for each are attached as an Appendix. In summary, the role of each Sub-Committee is as follows:

(A) Assessment Sub-Committee

The role of this Sub-Committee is to receive complaints and make an initial assessment as to whether or not there is a *prima facie* case which warrants further action or investigation.

(B) Review Sub-Committee

If the Assessment Sub-Committee has concluded that there is no case to answer, and the complainant is dissatisfied with this outcome, they can request the Review Sub-Committee to review that decision.

This Sub-Committee will assess the complaint afresh and it has the same decision-making powers as the Assessment Sub-Committee, ie (i) refer the complaint for investigation, (ii) refer for other action, (iii) refer to Standards for England, or (iv) decide that no action should be taken.

The Review Sub-Committee cannot comprise the same membership as that of the Assessment Sub-Committee which initially assessed the complaint.

(C) Hearings Sub-Committee

Although this Sub-Committee is called the “Hearings” Sub-Committee for ease of reference, it has two distinct roles. It has a “consideration” role and a “determining” role. The “consideration” meeting is separate to the meeting at which a hearing may subsequently need to be conducted to “determine” the complaint.

“Consideration” role

Where a complaint has been referred for investigation, the Monitoring Officer will appoint an Investigating Officer to investigate the complaint. The Sub-Committee, acting in a “consideration” capacity then receives the Investigator’s Report, for the purpose of deciding, based on the facts as set out in the report, whether or not to accept the findings of the Investigator.

If the Investigator’s report concludes that there has been no breach and the Sub-Committee agrees, there is no further action.

However, if a breach has been identified by the Investigator, or the Sub-Committee disagrees with an Investigator’s finding of “no breach”, then it must hold a hearing to consider the matter in full. Not only is this in accordance with the Standards Committee (England) Regulations 2008, but it also ensures that the Rules of Natural Justice are not breached; these are the minimum standards of fair decision-making imposed on persons or bodies acting in a judicial capacity and includes (a) the right to know the case against them; (b) the right to a fair hearing; and (c) the rule against bias, including a perception of bias.

“Determination” role

This will be a separately convened Sub-Committee but it can include the same Members who considered the complaint at “consideration” stage.

At the Hearing, the subject Member and/or their representative, together with the complainant and any witnesses, will have the opportunity to present their case to Members (both orally and in writing).

The Sub-Committee will determine whether or not there has been a breach of the Code of Conduct and if it concludes that there has been a breach, will be able to impose appropriate sanctions.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Chris Chapman
Designation: Monitoring Officer
Tel No: 01270 686637
Email: chris.chapman@cheshireeast.gov.uk

TERMS OF REFERENCE FOR SUB-COMMITTEES

(A) Assessment Sub-Committee

(3 Members – any 3 drawn from full Committee)

(Regulation 6 stipulates that an Independent Member must chair a Sub-Committee and Regulation 7 stipulates that at least one Member of the Authority must be present at the meeting)

Terms of Reference

- (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.

(B) Review Sub-Committee

(3 Members – any 3 drawn from full Committee)

(Regulation 6 stipulates that an Independent Member must chair a Sub-Committee; and Regulation 7 stipulates that at least one Member of the Authority must be present at the meeting)

Terms of Reference

- (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).

(C) **Hearings Sub-Committee**

(5 Members – any 5 drawn from full Committee - Quorum - 3)
(Regulation 6 stipulates that an Independent Member must chair a Sub-Committee and Regulation 7 stipulates that at least one Member of the Authority must be present at the meeting)

Terms of Reference

- (a) To consider a report of the Monitoring Officer following his investigation of the complaint 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 this Sub-Committee;
 - (iii) to refer the matter to the Adjudication Panel for determination.
- (b) 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.
- (c) To impose any appropriate sanctions when a finding under paragraph (b) (iii) above occurs in accordance with Regulation 19 of The Standards Committee (England) Regulations 2008.
- (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 (a) and (c) above.