

CHESHIRE EAST COUNCIL

REPORT TO: STANDARDS COMMITTEE

Date of Meeting: 26 September 2011

Report of: Borough Solicitor/Monitoring Officer

Subject/Title: Standards Regime and Localism Bill – Dealing with complaints under any voluntary code of conduct

1.0 Report Summary

- 1.1 The Local Standards Framework was introduced in May 2008 when Local Authorities themselves assumed responsibility for receiving and assessing complaints about Elected Members (including members of Parish Councils). The Standards Board, re-titled Standards for England (SfE), became a Strategic Regulator, investigating only the most serious cases, and providing advice and guidance to Local Authorities.
- 1.2 Under the Localism Bill Standards for England will be abolished. There will be no national model Code of Conduct or requirement to have a Standards Committee. However, Local Authority's will still have a duty to promote and maintain high standards of conduct by Elected Members and the Bill provides that Authorities may adopt a voluntary Code of Conduct and may continue to appoint to a Standards Committee. This report seeks to stimulate a debate on what type of procedures Members may wish to see in the future.

2.0 Decision Requested

- 2.1 Members are asked to note the position and to comment upon the initial draft procedure.

3.0 Reasons for Recommendations

- 3.1 To stimulate a debate on what type of procedures Members may wish to see in the future following the abolition of the Standards Regime.

4.0 Wards Affected

- 4.1 Not Applicable.

5.0 Local Ward Members

- 5.1 All Members are required to observe the Code of Conduct.

6.0 Policy Implications including - Carbon reduction - Health

- 6.1 The Constitution will need to be reviewed in the light of the abolition of the Standards Regime.

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 7.1 None have been identified.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 Under the Localism Bill Standards for England will be abolished. There will be no national model Code of Conduct or requirement to have a Standards Committee. However, Local Authority's will still have a duty to promote and maintain high standards of conduct by Elected Members and the Bill provides that Authorities may adopt a voluntary Code of Conduct and may continue to appoint to a Standards Committee.

9.0 Risk Management

- 9.1 No risks have been identified.

10.0 Background and Options

10.1 The Current Procedure on Receiving Complaints

- 10.1.1 The Standards for England (SfE) has produced a tool kit designed to ensure a consistent approach across Local Authorities. The toolkit provides detailed guidance and standard templates for use in the Local Assessment of Complaints.

- 10.1.2 A brief overview of the current process is as follows:-

- An Initial Assessment Sub-Committee of the Standards Committee chaired by an independent member is formally convened within 4 weeks of receiving a complaint and decides whether to take no action / refer the matter for "other action" / refer to the SfE for investigation / refer for local investigation.
- If the decision is to take "no action" the complainant has a right of appeal (within 30 days) to a Review Sub-Committee.
- Where the matter is referred for a local investigation a detailed report must be produced within 6 months. The subject member and complainant have the opportunity to comment on the draft report.

- The Investigating Officer concludes whether there has been a breach of the code on the balance of probabilities but makes no recommendation as to sanctions.
- If the report finds there has been no breach of the code a Hearings Sub-Committee of the Standards Committee is formally convened to decide whether or not to accept the recommendations.
- It may conclude that there may have been a breach in which case a separate meeting must take place to hear the evidence and determine any appropriate action.
- If the report finds that there has been a breach a Hearings Sub-Committee must be convened within 3 months. Witnesses may be called and the investigator and subject member are present and may make representations.
- There is a right of Appeal against the decision to the 1st tier Tribunal (Standards for England).
- The Hearing is in public and the outcome should be made public.

10.1.3 A note setting out the detailed process is set out at Annex A together with a series of flowcharts summarising the process at Annex B.

10.2 Complaints under a Voluntary Code – Streamlined Process

10.2.1 It is very important that any Voluntary Code and any process of investigation of complaints under the Code is robust, has the support and respect of all Elected Members and that the integrity of the process also gives confidence to complainants and members of the public.

10.2.2 The existing process, as prescribed by Regulations and in guidance by SfE, is a very thorough and fair process but it is a long winded and technical procedure which can take many months. Under the Localism Bill the Council may determine its own procedures for investigation of any complaints under the Voluntary Code and a draft streamlined procedure is set out at Annex C and a flowchart at Annex D, for Member's initial comments.

10.2.3 A brief overview of the suggested process is as follows:

- An initial Gateway Procedure within 2 weeks to decide whether to take no action / refer to the relevant Group Leader for informal action / refer the matter for formal investigation by an external investigator

- No right of appeal or review against this initial decision
- An external investigation by a firm of Solicitors or experienced investigator with a Monitoring Officer background with a final report to be produced within 8 weeks
- The opportunity for the subject member and complainant to comment on any factual inaccuracies in the report
- The report to make final determination on whether there has been a breach and the sanction to be imposed (sanctions are likely to be very limited anyway the Council probably won't be able to suspend or disqualify elected Members)
- The right of appeal by either the subject member or complainant within 14 days of receiving the final report on the findings of breach of the code (but not solely on the sanction)
- The appeal to be determined by a Panel consisting of the Leader, Chief Executive, relevant Group Leader, Independent Chair of Standards Committee advised by the Monitoring officer. No oral hearing or calling of witnesses etc all to be dealt with by written representations and consideration of the report
- No further right of appeal
- All meetings to be in private

10.2.4 It is important to stress that this is very much an initial draft suggesting a very different process to act as a starting point to stimulate debate. There are a number of issues which Members may wish to consider and these are also set out at Annex C.

10.3 Voluntary Code and Sanctions

10.3.1 As a separate issue Members will need to consider the terms of any Voluntary Code of Conduct. Sanctions are likely to be limited and will probably only include -

- Censure
- Restricted access to council premises and resources (provided this does not unduly restrict the ability to perform the functions of a member)
- Submission of a written apology in an approved format
- Specified Training
- Conciliation

10.3.2 Regulations will specify the requirement to establish and maintain a Register of Member's Interests and in future it will be an offence to fail to register or disclose a financial or other interest.

11.0 Access to Information

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

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