

STANDARDS COMMITTEE

**Venue: Town Hall, Moorgate
Street, Rotherham. S60
2TH**

Date: Thursday, 14 April 2011

Time: 2.00 p.m.

A G E N D A

1. To determine if the following matters are to be considered under the categories suggested, in accordance with the Local Government Act 1972.
2. To determine any item which the Chairman is of the opinion should be considered as a matter of urgency.
3. Minutes of the previous Meeting held on 10th February, 2011 (herewith) (Pages 1 - 3)
4. Maintaining High Ethical Standards in Local Government (paper herewith) (Pages 4 - 11)
5. Future of Standards Committee (report herewith) (Pages 12 - 22)
6. Work Programme (herewith) (Page 23)
7. Exclusion of the Press and Public
The following item is likely to be considered in the absence of the press and public as being exempt under Paragraphs 2 and 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (information relating to the identity of an individual and business affairs)
8. Referral Under Confidential Reporting Code (report herewith) (Pages 24 - 40)

STANDARDS COMMITTEE
10th February, 2011

Present:- Mr. M. Andrew (in the Chair); Councillors Buckley and Gilding; Mrs. A. Bingham, Mr. I. Daines, Mr. P. Edler and Ms. J. Porter and Councillors D. Bates, D. Rowley and J. Sharman (Parish Councils' Representatives)

Apologies for absence were received from Councillors Austen and Middleton, Mr. D. Foster, Dr. G. Musson and Mr. N. Sykes

The Chairman welcomed Councillor D. Rowley to his first meeting of the Committee and introductions were made.

B30 MINUTES

Resolved:- That the minutes of the meeting of this Committee held on 13th January, 2011 be approved as a correct record.

B31 STANDARDS COMMITTEE WORKING GROUP

The Committee considered the notes of the meeting of the Working Group held on 7th January, 2011.

Mrs. A. Bingham (Chair of the Working Group) outlined the basis of the Working Group's discussions and rationale behind the agreed action points. The aim to try and establish a connection with parish councils through the Parish Network meetings was highlighted.

The Assistant Chief Executive, Legal and Democratic Services, confirmed that there was no formal position yet from the YLCA or NALC regarding the future of the standards regime. However, NALC had concerns which were reflected locally regarding:-

- self governance by town and parish councils
- the proposed criminalisation/sanctions in respect of the requirement to declare 'interests'

Resolved:- (1) That the information be noted and the action points accepted.

(2) That Mrs. A. Bingham attend the next meeting of the Parish Network scheduled for 3rd March, 2011.

(3) That the Assistant Chief Executive, Legal and Democratic Services, continue to liaise with the YLCA.

B32 PARTNERSHIPS' GOVERNANCE COMPLIANCE

Further to Minutes Nos. B9 and B10 of the meeting of this Committee held on 9th September, 2010, Rob Houghton, Governance and Risk Manager, presented the submitted updated Partnership Governance Compliance – Good Practice 2011 document having taken account of, and included issues from, the Standards for England protocol for local authority partnership working.

The additions to the original document were highlighted and explained.

Resolved:- That the information be noted.

B33 FIRST TIER TRIBUNAL DECISION

The Committee considered the full decision of the First Tier Tribunal, held on 14th January, 2011, to consider the allegations against Councillor Ronald Law of Wales Parish Council.

Resolved:- (1) That the information be noted.

(2) That the Tribunal recommendation regarding the establishment and implementation of a grievance procedure be notified to all town and parish councils.

B34 CONFIDENTIAL REPORTING CODE

Further to Minute No. B53 of the meeting of this Committee held on 11th February, 2010, the Assistant Chief Executive, Legal and Democratic Services, accompanied by the Assistant Chief Executive, Human Resources, presented the submitted report reviewing the operation of the Confidential Reporting Code. The current Code was submitted.

It was reported that only two concerns had been raised since the last report which were dealt with under the Code.

Awareness of the Code was a vital factor and the results of the Ethical Standards Survey were referred to the Standards Committee Working Group.

The Working Group felt there was a need to improve further the awareness levels of the arrangements and where to find the policy and procedures and also improve confidence in employees to feel comfortable about raising concerns under the policy. Suggested action points included:-

- publication of historical data/case studies on the website incorporating the process and outcomes
- provision of a simple electronic access/intranet link to the information
- provision of a very senior figure within the Council, as guardian or champion, to support anyone wishing to raise concerns under the policy

The Working Group also requested further feedback from the survey. From discussions held at focus groups to consider the latest Employee Opinion Survey, officers were reasonably confident that concerns about serious malpractice such as fraud would be reported. Reservations expressed were more likely to relate to lower levels of malpractice and poor management such as time sheet management. It was agreed that there was work to do with managers using alerts and reminders in relation to their roles and that appropriate links to e-learning should be made.

A Team Briefing was issued by Strategic Human Resources in November, 2010 on the Code of Conduct for employees. As part of this, managers were asked to discuss the content of the briefing with all employees and advise them to make themselves aware of the contents of the Code of Conduct and to the Confidential Reporting Code. References were made to the appropriate pages on the website where the Codes could be found.

Discussion and a question and answer session ensued and the following issues were covered:-

- KPMG contact details
- inclusion of wording in the Code that the Council had a responsibility to support anyone wishing to raise concerns under the Code
- details regarding the cases cited in the report
- this Committee's awareness of cases as they were reported/investigated
- status of any potential champion figurehead
- need for a re-launch of the Code

Resolved:- (1) That the information be noted.

(2) That the textual amendments, now discussed, be approved.

(3) That arrangements should be made for a re-launch of the Confidential Reporting Code.

(4) That a full account of the case now identified be submitted, in confidence, to the next meeting of this Committee.

B35 WORK PROGRAMME

The Committee considered the submitted work programme.

Resolved:- (1) That the latest position be noted.

(2) That a report on the future of the Standards Committee, including the views of town and parish councils, be built into the work programme.



MAINTAINING HIGH ETHICAL STANDARDS IN LOCAL GOVERNMENT

The Localism Bill published on 13th December contains proposals to abolish the Standards for England regime. Whilst subject to Parliament approving the necessary legislation, the changes can be summarised as Standards for England (formally the Standards Board for England) ceasing to operate, councils no longer being required to have a local standards committee, the national code of conduct for elected members being dispensed with and council's being allowed to adopt voluntary codes of conduct.

Following the abolition of the standards regime, councils will no longer have a single body of law to refer to for dealing with elected member conduct but will, instead, be able to call upon a range of remedies, including existing criminal and civil law provisions and those provisions contained in the Localism Bill. This paper seeks to summarise the proposals contained within the Bill and outline those provisions available to authorities to call upon. The paper covers the following:

- Summary of changes proposed in the Bill
- The position of the Nolan Principles
- Registering interests
- Fiduciary duty of councillors
- Criminal and civil law including discrimination and electoral offences
- Local Government Ombudsman
- Audit Commission powers
- The common law position of bias, predisposition and predetermination

The Local Government Group acknowledges the valuable contributions of the senior members of the Association of Council Secretaries and Solicitors (ACSeS) in helping to produce this paper.

SUMMARY OF CHANGES PROPOSED IN THE BILL

The proposals outlined in the Bill are as follows:

- The Relevant Authorities (General Principles) Order 2001, which sets out the principles which govern the conduct of members and co-opted members of relevant authorities in England and police authorities in Wales, will be revoked
- The Local Authorities (Model Code of Conduct) Order 2007 (S.I 2007/1159) which prescribes the model code of conduct to apply to members of relevant authorities will be revoked
- The requirement for local authorities to have standards committees will be abolished
- Standards for England will be abolished. Established by the Local Government Act 2000 and the regulator for local authority standards committees, the Standards Board requires primary legislation to abolish it and its legislative functions. None of the Standards Boards functions will be transferred to other bodies.
- The First-tier Tribunal (Local Government Standards in England), the independent judicial tribunal established as a disciplinary body to hear and determine references and appeals concerning the conduct of local authority councillors, will lose its jurisdiction over the conduct of local authority members
- Elected members will be required to continue to register and declare personal interests and will not be allowed to use their position improperly for personal gain. The government intends that wilful failure to comply with these requirements will constitute a criminal offence.
- The requirement for local authorities to adopt a model code of conduct and for local authority members to abide by that code will be abolished. However, local authorities will be free to adopt their own, voluntary code of conduct should they so wish.
- The requirement for councils to maintain a standards committee will be abolished. However, local authorities will be free, should they choose, to establish voluntary standards committees to consider complaints about the conduct of elected and co-opted members. Such committees will, according to councils' local constitutions, be able to censure but will not be able to suspend or disqualify members from council membership.

It is anticipated that the Bill will receive Royal Assent in late 2011. The present conduct regime (a model code governing local authority members' conduct and enforced through local authority standards committees, regulated in turn by the Standards for England), will continue to function in a normal manner, considering, investigating and determining allegations of misconduct, until a fixed date ("the appointed day"), probably two months after the Bill receives Royal Assent.

This means that until the appointed day, an allegation of misconduct can be made but that after the appointed day no further allegations of misconduct can be made under the Standards for England regime. It also means that at the appointed day, allegations will be in the process of investigation and, further, that appeals against sanctions will be pending. Transitional measures are to be put in place to address this and the way in which they will operate is detailed in the following paragraphs:

- Any cases in the system at the appointed day will make their way through a transitional regime. This would meet the expectation of those who had made allegations that these would be properly dealt with. It also provides an elected member who has had an allegation made against them with the opportunity to clear their name.
- The government proposes that any investigations being undertaken by Standards for England transfer, on the appointed day, to the local authority that referred the investigation. It will be for that local authority to arrange for the conclusion of the investigation. The local authority's standards committee will remain established until the last complaint it is considering, referred either internally or from Standards for England, has been dealt with.
- Any cases with which the First-tier Tribunal (Local Government Standards in England) is dealing on the appointed day will be concluded by that tribunal. It will not receive any appeals against standards committee rulings after that date. The right of appeal will not exist for those cases standards committees deal with as they work their way through the transitional system. The government considers that the risk of protracted proceedings justifies this approach. The sanctions available to standards committees are significantly less severe than the sanctions available to the First-tier Tribunal (Local Government Standards in England).
- The government proposes that the suspension sanction is removed from standards committees for the transitional period. Hence the most a standards committee could do, for instance, is to issue a councillor with a censure or a request that they undergo training.

THE NOLAN PRINCIPLES

The **Committee on Standards in Public Life** is an advisory non-departmental public body established in 1994. The Committee's landmark First Report published in 1995 established ***The Seven Principles of Public Life*** often described as the Nolan Principles.

The Seven Principles of Public Life are:-

- **Selflessness** – Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- **Integrity** – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

- **Objectivity** – In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- **Accountability** – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- **Openness** – Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- **Honesty** – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership** - Holders of public office should promote and support these principles by leadership and example.

Whilst it is anticipated that the statutory principles will be repealed, they have the potential to continue to be utilised more informally by people looking to develop their understanding of the standards expected of those in public office.

FIDUCIARY DUTY OF COUNCILLORS

A councillor is treated as a trustee of council assets, with a fiduciary duty to apply those assets in the public interest. Where a councillor abuses that trust, for example by disposing of those assets for personal gain, he/she can be held liable for the resulting loss - as with the House of Lords landmark ruling against Dame Shirley Porter in her capacity as Leader of Westminster City Council.

REGISTERING INTERESTS

The Local Government Act 2000 requires each councillor to make a declaration of his or her interests and to ensure that any addition or amendment to that declaration is made within 28 days of any change occurring in relation to his or her interests. The Bill intends to strengthen this by making it a criminal offence for a councillor to fail to register a relevant interest or withdraw for a personal interest, although the scope of this offence awaits Regulations.

CIVIL LAW

As councillors do not enjoy legal privilege they are subject to the same laws of **libel and slander** as the rest of the population. However, a council cannot itself be libelled so this remedy would only be available for the individual claiming they have been libelled or defamed rather than the authority itself.

Misfeasance in public office is a cause of action in the civil courts. It is an action against the holder of a public office, alleging in essence that the office-holder has misused or abused his power. There are two types of misfeasance in public office. One, known as 'targeted malice', occurs when a public office holder intentionally abuses his or her position with the motive of inflicting damage upon the claimant. The second is termed 'untargeted malice' and is committed by a public office holder who acts knowing that he/she has no power to undertake the act complained of.

EQUALITIES AND DISCRIMINATION LAW

Other civil law remedies would be available to individuals, but not councils, in the area of **equalities and discrimination law** for unlawful discrimination.

Discrimination law governs the right of individuals not be treated less favourably than others on grounds that include sex, race, religion, sexual orientation, age and disability. It also deals with the duty of public bodies to promote equality although the coalition government have announced that they are to repeal the social-economic duty on council's enacted in the Equalities Act 2010.

Councillors may, of course, be specifically named as a party to proceedings by claimants in discrimination proceedings.

CRIMINAL LAW

A councillor sentenced to a term of imprisonment of not less than 3 months is disqualified from office by virtue of **Section 80 of the Local Government Act 1972**.

A councillor using their position to support or influence a planning application for a project or venture that they have a financial interest in or otherwise using their position for self financial gain would be committing an offence under the **Fraud Act 2006**. Conviction under this Act carries a maximum penalty of 10 years imprisonment or an unlimited fine or both

The **Bribery Act 2010** provides a legal framework to combat bribery in the public (or private) sectors. It replaces the fragmented and complex offences at common law and those previously contained in the Prevention of Corruption Acts 1889-1916

The new Act creates two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage in a public office. Again, the maximum penalty for individuals is 10 years' imprisonment or a fine, or both

The Crown Prosecution Service, rather than councils, would decide whether there was sufficient evidence to prosecute for criminal offences.

ELECTORAL OFFENCES

The relevant legislation relating to electoral offences can be found in the:

- The Representation of the People Act 1983 (the Act)
- The Representation of the People Act 1985
- The Political Parties, Elections and Referendums Act 2000
- The Electoral Administration Act 2006 ("EAA")

There are a number of electoral offences specified in the Representation of the People Act 1983 and 1985, with the key ones being:

Undue influence: Where an individual, directly or indirectly, makes use of or threatens to make use of force, violence or restraint; or inflicts or threatens to inflict injury, damage or harm in order to induce or compel any voter to vote or refrain from voting. This offence has been modified by the Electoral Administration Act to extend the effect of it to include intention and not just where an act has taken place. A

person may be guilty of undue influence if they impede or prevent, or intend to impede or prevent, the free exercise of the franchise of an elector.

Bribery: Where any individual, directly or indirectly, gives any money to any voter, in order to induce any voter to vote or not to vote for a particular candidate, or to vote or refrain from voting.

Treating: Where either before, during or after an election, any person, directly or indirectly, gives or provides (or pays wholly or in part the expense of giving or providing) any food, drink, entertainment or provision in order to influence corruptly any voter to vote or refrain from voting.

Personation: Where any individual votes as someone else (whether that other person is living or dead or is a fictitious person), either by post or in person at a polling station as an elector or proxy. Further, the individual voting can be deemed guilty of personation if they vote on behalf of a person they have reasonable grounds for supposing is dead or fictitious, or where they have reasonable grounds for supposing the proxy appointment is no longer in force.

Postal and proxy voting: Where an individual applies for a postal or proxy vote as some other person, otherwise makes a false statement in connection with an application for a postal or proxy vote, requests an Electoral Registration Officer or a Returning Officer to send a postal vote or associated communication to an address which has not been agreed by the person entitled to vote, or causes a postal or proxy voting communication not to be delivered to the intended recipient.

False information in nomination papers: Where a person gives false information in a nomination paper or in their consent to nomination, they are guilty of a corrupt practice.

False information in relation to registration: Where an individual, for any purpose in connection with the registration of electors, provides false information to the Electoral Registration Officer in connection with the registration of electors, that person is guilty of offence.

The Electoral Administration Act 2006 created two new offences which are:

Supplying false information to the Electoral Registration Officer, and

Making fraudulent application for a postal vote

The majority of electoral offences carry a maximum penalty of 1 or 2 years imprisonment or an unlimited fine.

AUDIT COMMISSION FOR LOCAL AUTHORITIES

Whilst powers of surcharge were abolished under the **Local Government Act 2000** an auditor appointed by the Audit Commission under the **Audit Commission Act 1998** will continue to play their role in investigating financial impropriety in local government and can recover financial losses from individuals councillors on the basis that he or she is responsible for the authority incurring unlawful expenditure. It is yet to be seen whether this power will be transferred to another body given the government's announced abolition of the Audit Commission.

LOCAL GOVERNMENT OMBUDSMAN

The Local Government Ombudsman was set up to investigate maladministration causing injustice. The law does not define maladministration but the Local Government Ombudsman currently defines its' mandate as follows:

"We can consider complaints about things that have gone wrong in the way a service has been given or the way a decision has been made, if this has caused problems for you"

Individual or collective actions or failings of councillors may amount to maladministration.

The government has announced that it intends to give the Local Government Ombudsman, the established body for investigating public complaints over the way they have been treated by their council, greater influence. For the first time local authorities will be legally compelled to implement the Ombudsman's findings.

BIAS, PREDISPOSITION AND PREDETERMINATION

This is a complex area of common law (i.e. judge-made law) that has implications for councillors individually and councils. It is wrong, therefore, to associate such matters exclusively as having been caused by Standards for England or as a direct result of the introduction of the standards regime under the Local Government Act 2000.

The long established legal position is that a councillor may not be party to decisions in relation to which he/she either is actually biased (in the sense that he/she has a closed mind and has pre-determined the outcome of the matter to be decided irrespective of the merits of any representations or arguments which may be put to him/her) or gives an appearance of being biased, as judged by a reasonable observer.

A finding of bias and/or predetermination can make a decision unlawful with costs and reputational implications for councils and the First-tier Tribunal (Local Government Standards, England (formerly the Adjudication Panel for England) has held that such a finding could be a breach of Paragraph 5 of the current code of conduct which could lead to the disqualification of a councillor.

The Localism Bill aims to clarify the rules on pre-determination and bias: the Bill provides that an indication by a councillor that he takes a particular view on a matter is not to be taken as evidence of a closed mind. The intention is that the normal activities of a councillor, such as campaigning, talking with constituents, expressing views on local matters and seeking to gain support for those views, should not lead to an unjust accusation of having a closed mind on an issue that can lead to a legal challenge. The government claims that that this will give councillors the assurance that they can campaign, discuss and vote on issues with confidence and so encourage more people to stand in local elections. In practice, the Court of Appeal has already asserted that such activities will not preclude participation in decision-making, unless the councillor is so committed that they are not even prepared to listen to the evidence, but courts may fret that, where a councillor says that he has a closed mind on a matter, the court cannot take this assertion into evidence;

The government previously announced that a power of electoral recall of councillors is also being proposed to allow for the removal of councillors mid term for cases of 'serious misconduct'; although this has also not been included in the Localism Bill.

MISCELLANEOUS

It will remain open to councils to agree local arrangements whereby councillors could be censured for breaching local codes of conduct and other local protocols; including other activity regarded as inappropriate and to remove councillors from committees, outside bodies and other appointments, when appropriate. Whilst there will be a need for local authorities to reflect constitutional changes as a result of abolition of the current standards regime, other local protocols covering, for example, member/officer relations and guidelines regarding use of council resources, will continue to have effect and be subject to any local sanctions adopted by individual councils, though there will be no statutory sanctions against an offending member and therefore no powers to suspend or disqualify councillors.

FURTHER CONTACT

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ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS
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1.	Meeting:	Standards Committee
2.	Date:	14th April 2011
3.	Title:	Future of the Standards Committee
4.	Directorate:	Chief Executive's

5. Summary

To give consideration to future arrangements within the Council should the Localism Bill be adopted in substantially its present form.

6. Recommendations

- (1) That the Council adopt a Voluntary Code of Conduct and that a further report be submitted upon the contents of such a Code.**
- (2) That a Standards Committee continue to be appointed by the Council.**
- (3) That a further report be submitted upon the suggested composition of such a Committee and its Terms of Reference, once the likely final provisions of the Localism Bill and proposed regulations regarding Members' Interests become clearer.**

7. Proposals and Details

At the meeting of the Committee on 13th January 2011, consideration was given to a report setting out in detail the changes to the standards regime contained in the Localism Bill published in December 2010. The changes are also summarised in the Local Government Association/Association of Council Secretaries and Solicitors paper "Maintaining High Ethical Standards in Local Government" which appears elsewhere on this agenda.

In my previous report, I stated that if the Bill was enacted in its current form, the Council would need to determine its response on a number of issues. One of these was whether to adopt a Voluntary Code of Conduct and the content of such a Code. Another key issue was whether to retain a Standards Committee on a voluntary basis and, if so, what should be its composition and functions, and the nature of any future working with Town and Parish Councils on standards issues.

Voluntary Code of Conduct

Under the Bill's proposals, the power for the Secretary of State to issue a Model Code of Conduct will be repealed. The Code of Conduct adopted by the Council, which is substantially based upon the Model, would cease to have effect.

The government proposes to make regulations dealing with disclosure and registration of Members' Interests and requiring the Monitoring Officer to establish and maintain a Register of Interests of the Members and Co-opted Members of the Authority. However, other areas of conduct presently covered by the Code will otherwise be left unregulated. These include:-

- Breach of Equalities
- Bullying
- Compromising impartiality of staff
- Breach of confidentiality
- Refusal of access to information
- Misuse of position for personal advantage
- Misuse of Council resources
- Have regard to advice

View expressed at recent training sessions for Members on the Code of Conduct, which included an examination of the provisions in the Localism Bill, suggests that there should be some form of Code in place to set out required standards of conduct in some, if not all, of the above areas. It is, therefore, suggested that some form of Voluntary Code should be adopted by the Council. It is recognised that the sanctions that the Council might be able to apply for breach of such a Voluntary Code may well be limited.

The form that such a Code might take will require further consideration. The present Model Code could, of course, be used as a starting point. However, the opportunity could be taken to review the provisions of the current Code, to see whether it should be amended or simplified. This opportunity has not previously been available as the

provisions of the Model Code were effectively compulsory, although they could be made stricter.

It is also not clear as yet whether national bodies will produce a model or models that might be considered for adoption on a voluntary basis. These might include the Local Government Association, or the National Association of Local Councils as regards Town and Parish Councils. The Council of the Association of Council Secretaries and Solicitors has agreed to work on a draft Model Code. Further developments in this area will be brought forward to the Committee.

The Standards Committee

Under the Bill, the requirement to establish a Standards Committee will be repealed. However, the Council will continue to be under a duty to promote and maintain high standards of conduct by Members and Co-opted Members of the Authority. It is suggested that there should be some Member body to provide leadership on ethical governance in order to ensure that the Council is able to fulfil that duty.

The retention of the Standards Committee on a voluntary basis may well be the best way of achieving this. A copy of the Committee's current Terms of Reference is attached at Appendix 1, together with commentary on how each of them will be affected by the changes proposed in the Bill. From this it appears that many of the Terms of Reference would still appear to be relevant. The principal changes relate to the arrangements for considering allegations and carrying out investigations, the references to the role of Ethical Standards Officers and Standards for England, which will be abolished, and the responsibility for carrying out functions on behalf of Town and Parish Councils.

There will, however, need to be arrangements within the Council for dealing with allegations of breach of any Voluntary Code that is adopted by the Council and this could be the responsibility of a Standards Committee appointed on a voluntary basis. As regards Town and Parish Councils, whilst the statutory responsibilities will be abolished, it may well be that they will wish to receive written support from the Borough Council on ethical standards issues, which could be negotiated on a voluntary basis through protocols or a Town and Parish Council compact.

Attached at Appendix 2 are the original Terms of Reference adopted by the Standards Committee, which was established by the Council on a voluntary basis prior to this becoming a statutory requirement under the provisions of the Local Government Act 2000. Many of the original Terms of Reference, with amendment in some cases, are still part of the Standards Committee remit and would continue to be appropriate following the enactment of the Localism Bill.

The composition of any Voluntary Standards Committee should be given further consideration. The Committee originally comprised five Members of the Borough Council and six Independent Members, appointed in similar fashion to the present Independent Members. A Parish Council representative was added to the Committee in place of one Borough Councillor upon the assumption of statutory responsibilities for Town and Parish Councillors. The number of Independent Members was increased from six to eight and two further Town and Parish Council

representatives were appointed when the Committee took over responsibility for the assessment of allegations of breach of the Code in 2008. This was to reflect the statutory requirement for Assessment and Review Panels to be differently constituted, to allow for five Members to sit on each and to allow for additional Members in the event of any conflicts of interest. The removal of the statutory responsibility for Town and Parish Councillors and the abolition of the statutory framework for making and dealing with allegations, might mean that there is no longer a need for as many Independent Members or Town and Parish Council Members, although the latter in particular might be influenced by whatever arrangements are negotiated between the Borough Council and the Town and Parish Councils.

Alternative arrangements might include a combined audit and governance committee which could deal with standards issues or some form of sub-regional committee.

As regards these, the former is a possibility and the Standards Committee has, in the past, held joint meetings with the Audit Committee on issues of mutual interest such as partnership governance. However, the present role of the Audit Committee is different from that of the Standards Committee, with strong emphasis upon financial systems, accounting standards and risk management. CIPFA advice is that the Audit Committee should be independent with direct access to the Council and should not combine its function with other Council roles and responsibilities such as standards issues or overview and scrutiny.

As regards a possible sub-regional approach, there is attached for Members consideration at Appendix 3 an e-mail from the Deputy Clerk and Solicitor and Monitoring Officer at the South Yorkshire Joint Secretariat. The Standards Committee has not hitherto expressed interest in possible joint working with neighbouring authorities, other than information sharing and mutual training events, but the proposals in the Bill would provide an opportunity to reconsider such a possibility and shared service arrangements with neighbouring authorities are increasingly being explored in a number of areas.

8. Finance

There are no financial implications arising directly from this report.

9. Risks and Uncertainties

The Bill would make significant changes to the standards regime. Relevant authorities will still be under a duty to promote and maintain high standards of conduct by their members and co-opted members. However, it will no longer be a statutory requirement to have a Standards Committee, which at the moment has the statutory responsibility for promoting and maintaining high standards of conduct. The Code of Code, which at present closely follows a statutorily prescribed model, will in future be voluntary. If such a Code is adopted, then consideration must be given to allegations of breach and, if appropriate, such allegations should be investigated. However, it is not clear what sanctions may be applied if the member is found to be in breach.

If the Bill is enacted, the Council will need to determine its position on whether to adopt a Voluntary Code and appoint a Member body to deal with ethical standards issues.

10. Policy and Performance Agenda Implications

The Council is dedicated to high standards of conduct and will be under a duty to promote and maintain such standards by Members and Co-opted Members following the passage of the Bill.

11. Background Papers and Consultation

The Localism Bill.
Report to Committee on 13th January 2011.

Contact Name :

Tim Mumford, Assistant Chief Executive (Legal and Democratic Services)
Ext 3500. e-mail: tim.mumford@rotherham.gov.uk

STANDARDS COMMITTEE – TERMS OF REFERENCE

1. To promote and maintain high standards of conduct by the members and co-opted members of the Council.
There will be a statutory duty to promote and maintain high standards of conduct by Members and Co-opted Members of the Authority.
2. To assist members and co-opted members of the Council to observe the Council's Code of Conduct.
This will still apply if the Council adopts a voluntary Code of Conduct.
3. To advise the Council on the adoption and revision of its Code of Conduct, taking into account the Model Code of Conduct, guidance from the Standards Board for England and elsewhere, and existing good practice within the Council.
This may also be applicable if a Model Code is produced by the Local Government Association or other body.
4. To monitor the operation of the Code of Conduct and recommend revisions as appropriate, and to ensure that the Code is fully understood and applied throughout the Council.
Applicable if a Voluntary Code is agreed.
5. To advise, train or arrange to train members and co-opted members of the Council on matters relating to the Code of Conduct.
As 4 above.
6. To give dispensation to Members and Co-opted Members of the Council under the Relevant Authorities (Standards Committee) (Dispensation) Regulations 2002.
Under the proposed regulations regarding Members' interests, there will be a power to grant dispensations which could remain with the Standards Committee.
7. To carry out similar functions to those above in relation to the Parish Councils for which the Council is the responsible authority and the members of those Parish Councils.
This will cease to apply, although voluntary arrangements or protocols could be agreed with Town and Parish Councils.
8. To review arrangements as to the declarations of interest of members, co-opted members and officers, to monitor the operation of such arrangements and to offer advice on their application.
This role is likely to continue, although it is dependent upon the provisions made in the proposed regulations.
9. To review and recommend such other protocols, local codes and guidance as may be considered desirable to build upon the rules contained within the Code of Conduct whilst not forming part of it.
This would still be applicable, e.g. Member/Officer Protocol, Planning Code.

10. To establish Sub-Committees:-
- (a) To carry out the initial assessment of written allegations that members of the Council or of a Parish Council have failed to comply with the Code of Conduct.
 - (b) To review at the request of the person making the allegation any decision to take no action.
 - (c) To receive the report of the Monitoring Officer (or person nominated by him) into any complaint referred to the Monitoring Officer and, following consideration of such report to take any action prescribed by the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 as amended.
- This will need to change, although if the Council agrees to adopt a voluntary Code, then a procedure will be needed for dealing with written allegations that Members or Co-opted Members have failed to comply with the Code.***
11. To consider any report made to the Committee or the Monitoring Officer by an Ethical Standards Officer following an investigation into an allegation of a breach of the Code of Conduct and following consideration of such report to take any action prescribed by the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 as amended.
- This will cease to apply following abolition of the post of Ethical Standards Officer and repeal of the regulations.***
12. To consider any other recommendations, guidance or direction referred to the Committee or the Monitoring Officer by an Ethical Standards Officer or the Standards Board for England.
- As 11 above.***
13. To provide any information required by the Standards Board for England regarding the exercise of the Committee's functions.
- This will cease to apply following abolition of Standards for England.***
14. To consider any application for exemption from political restriction made to the Committee by the holder of any post under the Council and to give directions to the Council requiring it to include a post in the list of political restricted posts maintained by the Council.
- This will cease to apply as it is proposed that this function should be referred to the Chief Executive.***
15. To establish and monitor the operation of Complaints Procedures and Whistleblowing Procedures.
- This role could still apply.***
16. To review the application of the Council's Standing Orders, Financial Regulations, contract arrangements and other such provisions.
17. To review and comment upon the Council's procedures and Codes of Practice relating to public access to information, confidentiality and arrangements for data protection.

18. To review the procedures for appointment of Council representatives to outside bodies and to make recommendations to the Council or the Cabinet as necessary.
19. To consider reports arising from external inspections, audit investigations, Ombudsman investigations, legal challenges and other sources which cast doubt on the honesty or integrity of the Council, its members or officers, and to recommend action to the full Council or Cabinet as appropriate.
20. To consider and offer advice and guidance as appropriate on other matters which in the view of the Committee or the Council's Monitoring Officer could have a bearing on public perceptions of the honesty and integrity of the Council, its members, co-opted members and officers.
21. To consider and make recommendations on such other matters as the Committee itself thinks appropriate or which are referred for attention by the Council or the Cabinet which further the aim of promoting and maintaining the highest standards of conduct within the authority.

16 to 21 – as with 15 above.

In these Terms of Reference "co-opted member of the Council" means a person who is not a member of the Council, but who:-

- (a) is a member of any Committee or Sub-Committee of the Council, or
- (b) is a member of and represents the Council on any Joint Committee or Joint Sub-Committee of the Council

and who is entitled to vote on any question which falls to be decided at any meeting of that Committee or Sub-Committee.

Standards Committee – Original Terms of Reference of the Committee (Board)

1. To advise the Council on the preparation and adoption of local Codes of Conduct for Members and officers, which build on existing good practice in the Authority and take into account national models and guidance.
2. To submit the Codes of conduct for consideration and approval by full Council; to carry out periodic reviews of the operation of the codes and to recommend revisions as appropriate.
3. To monitor the implementation of the Codes to ensure they are fully understood and applied throughout the Authority; to ensure that necessary training and guidance is provided to Members and officers in pursuit of these objectives.
4. To investigate any lapses of standards, advise on matters of fact and to make recommendations to the Council as appropriate; to investigate and deal with breaches of the Codes and such other matters referred to it by the Standards Board for England.
5. To review arrangements on Members' and officers' declarations of interest, to monitor the operation of such arrangements and to offer advice on their application.
6. To establish and monitor the operation of complaints procedures and whistle blowing procedures.
7. To review arrangements for designating politically restricted posts; to recommend a protocol on Member/employee relations and to review its operation.
8. To review and monitor the application of the Council's Standing Orders, Financial Regulations, Contract arrangements and other such provisions.
9. To maintain and review codes of practice relating to public access to information, confidentiality, and arrangements for data protection.
10. To review the Council's methods of decision-making, including the application of 'political balance' arrangements and the procedures for appointment of Council representatives to outside bodies, and to make recommendations to the Council.
11. To consider, and to offer advice and guidance as appropriate, on matters which are outside the remit of the Codes but which could have a bearing on public perceptions of the honesty and integrity of the Council, its Members and officers.
12. To consider reports relevant to the Board's general remit referred to it by the Council's Monitoring Officer; to make such comments and to agree such recommendations as it thinks appropriate before the reports are submitted to full Council for consideration and determination.

13. To consider reports arising from external inspections, audit investigations, Ombudsman investigations, legal challenges and other sources which cast doubt on the honesty or integrity of the Council, its Members or officers, and to recommend action to full Council as appropriate.
14. To consider and make recommendations on such other matters as the Board itself thinks appropriate, or which are referred for its attention by full Council, which further the aim of promoting and maintaining the highest standards of conduct within the Authority.

From: Oades Maureen [mailto:MVOades@syjs.gov.uk]
Sent: 11 March 2011 11:52
To: Mumford, Tim; Frosdick, Andrew; Bird Lynne (CEX); roger.harvey@doncaster.gov.uk
Subject: Standards Regime

Colleagues,

An email from Nicky Houseman at West Yorkshire Fire and Rescue Authority about future arrangements for Standards has reminded me that I undertook on behalf of the Police Standards Committee to write to you about this matter. Have you given any thought to this yet and if so are you thinking along the lines of individual committees, joint audit and standards committees or a joint standards committee for South Yorkshire?

We have a number of excellent co-opted members on the Police, Fire and Transport Standards Committees. I am sure a number of them would like to be involved in any future Standards framework.

Can you keep me in the loop with your thinking around Standards so that the Joint Authorities are in step with the Districts.

Kind regards

Maureen

Maureen Oades
Deputy Clerk and Solicitor and Monitoring Officer
South Yorkshire Joint Secretariat
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18 Regent Street, Barnsley S70 2HG
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STANDARDS COMMITTEE**WORK PROGRAMME – APRIL 2011**October

- *Report on First Tier Tribunal decision – Councillor N. Fulcher.*
- *Questions for Town and Parish Council Clerks – training.*

December

- *Acting or giving the impression that they are acting as a representative of the Council.*
- *Failure to treat others with respect.*
- *Questionnaire responses – Town and Parish Council Clerks*
- *Decentralisation and Localism Bill*

January

- *Town and Parish Council Compact.*
- *Future of Standards regime – Localism Bill.*

February

- *Review of the Confidential Reporting Code.*
- *Partnership template.*
- *Town and Parish Council Compact.*
- *Report of First Tier Tribunal decision – Councillor R. Law.*

April

- *Maintaining high ethical standards in Local Government.*
- *Future of the Committee*
- *Confidential Reporting Code Referral*

May

- *Annual report of the Standards Committee.*
- *Review of complaints over the past year.*
- *Review of the Member/Officer Protocol.*
- *Advice on gifts and hospitality.*
- *Draft Annual Governance Statement.*
- *Review of the Planning Code.*

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