

STANDARDS COMMITTEE

2nd September 2004

PRESENT:-

District Council Members

Councillors Bale, Dunn and Mrs. Mead.

Parish Members

Mrs. C. Barker and Mr. R. Buxton.

Independent Members

Mr. P. Dawn and Mr. D. R. Williams.

SC/1. **APPOINTMENT OF CHAIR**

RESOLVED:-

That Mr. D. R. Williams be appointed Chair of the Committee for the remainder of the municipal year.

SC/2. **APOLOGY**

An apology for absence from the Meeting was received from Mr. L. Taylor (Independent Member).

In view of Mr. Taylor's continuing absence due to health reasons, the Monitoring Officer was requested to contact him to assess the likelihood of him being in a position to return to the deliberations of the Committee.

SC/3. **APPOINTMENT OF VICE-CHAIR**

RESOLVED:-

That Mr. P. Dawn be appointed Vice- Chair of the Committee for the remainder of the municipal year.

SC/4. **MINUTES**

The Open Minutes of the Meeting held on 13th August 2003 were taken as read, approved as a true record and signed by the Chair.

SC/5. **MEMBERS' PLANNING CODE OF GOOD PRACTICE**

It was reported that at its Meeting held on 24th August 2004, the Council's Development Control Committee had considered a proposed Members' Planning Code of Good Practice. The proposed Code had been adapted for this Council's purposes from the model Code prepared by the Association of Council Secretaries and Solicitors and was designed to assist and protect Members during their involvement in the various stages of the planning

process. The Code would supplement the existing Members' Code of Conduct, which all Members had agreed to observe in a written undertaking.

It was felt that the Code of Good Practice should be referred to this Committee for any comments prior to final consideration and adoption by the Full Council. It was noted that Article 8.02 of the Council's Constitution provided that a role of the Standards Committee related to promoting and maintaining high standards of conduct for Councillors and Co-opted Members.

Members of the Committee reviewed the document and suggested several amendments to improve clarification. It was felt that the document should be reviewed periodically to consider any appropriate amendments. Prior to the submission of the Code to the Full Council, the amended version would be circulated to Members of the Committee.

RESOLVED:-

That the Members' Planning Code of Good Practice, incorporating the suggested amendments, be referred to the Full Council for adoption.

SC/6. **LOCAL DETERMINATION OF ALLEGATIONS BY THE STANDARDS COMMITTEE**

It was reported that under the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 ("Section 66 Regulations"), Ethical Standards Officers ("ESOs") could refer completed investigation reports to Monitoring Officers, for Standards Committees to decide whether or not a Member had failed to follow the Code of Conduct and, if so, what penalty should be applied, if any. At that time, it was agreed that a further report would be submitted to this Committee to establish a procedure to be applied to any such referred allegations in order that all parties were clear as to how the matter was to be dealt with and when they would have an opportunity to contribute to the process. The Standards Board for England ("SBE") had issued guidance, including practical procedural information for Standards Committees on how to hold a hearing relating to a referred allegation. Under the Section 66 Regulations, Standards Committees must take this guidance into account.

On the introduction of the Section 66 Regulations, the Derbyshire Secretaries and Solicitors Group, comprising the Monitoring Officers representing the City, County and District Councils, agreed to consider adopting a common procedure for dealing with matters under the Section 66 Regulations. Hopefully, this example of joint working would ensure a consistency of approach across the County and in particular, allow authorities with small Legal Departments the opportunity to ensure that an appropriately experienced Officer was available to advise the Standards Committee if there was a conflict of interest with an authority's own Officers. The SBE had recommended in guidance that such joint working arrangements with neighbouring authorities should be explored and the Group had now produced a draft procedure for dealing with determinations under the Section 66 Regulations, a copy of which was considered by Members of the Committee.

The process for local determinations was detailed to Members and it was reported that the SBE received allegations and decided whether they should be investigated. In this event, it requested an ESO to investigate and decide which of the following four findings was appropriate:-

- (1) There was no evidence that the Member had failed to follow any part of the Code of Conduct.
- (2) No action needed to be taken in relation to the matters investigated.
- (3) The matter should be referred to the Monitoring Officer of the relevant Authority for local determination.
- (4) The matter should be referred to the Adjudication Panel for England.

Matters that the ESO were likely to refer for local determination included matters of an entirely local nature which did not affect broader national issues and matters that did not appear to need the heavier penalties available to the Adjudication Panel for England.

The Standards Committee must hold a hearing in relation to an allegation within three months of the Monitoring Officer receiving the ESO's report. When the Monitoring Officer received a report, he or she must give a copy of that report to the Member who was the subject of the allegation. Normally, a hearing should take place at least fourteen days after the Member who was the subject of the allegation had received a copy of the ESO's report from the Monitoring Officer. If the Standards Committee did not hear the matter within three months of receiving the ESO's report, the Committee would be failing in its legal duty and may face Judicial Review proceedings. The Standards Committee could not refer the matter back to the SBE.

Authorities should use a pre-hearing process to decide the following issues:-

- (1) Whether the Member the subject of the allegation disagreed with any of the findings of fact in the ESO's report.
- (2) Whether or not these disagreements were significant to the hearing.
- (3) Whether or not to hear evidence about these disagreements during the hearing.
- (4) Whether or not there were any parts of the hearing that should be held in private.
- (5) Whether or not any parts of the ESO's report or other documents should be withheld from the public.

The Monitoring Officer would write to the Member concerned to propose a date for the hearing, outline the hearing procedure and the Member's rights. They should also ask for a written response from the Member, within a specified period, to ascertain whether or not he or she:-

- (1) Disagreed with any of the findings of fact in the ESO's report, including the reasons for any disagreements.

- (2) Wanted to be represented at the hearing by a solicitor, barrister or any other person.
- (3) Wanted to give evidence to the Standards Committee, either verbally or in writing.
- (4) Wanted to call relevant witnesses to give evidence to the Standards Committee.
- (5) Wanted any part of the hearing to be held in private.
- (6) Wanted any part of the ESO's report or other relevant documents to be withheld from the public.
- (7) Could attend the hearing.

The SBE recommended that the Standards Committee should also invite the relevant ESO to comment on the Member's response, within a specified period, to advise whether or not he or she:-

- (1) Wanted to be represented at the Meeting.
- (2) Wanted to call relevant witnesses to provide evidence to the Standards Committee.
- (3) Wanted any part of the hearing to be held in private.
- (4) Wanted any part of the ESO's report or any relevant documents to be withheld from the public.

The Standards Committee may also arrange for any other witnesses to be present who may help in determining the case, including the person who made the original allegation. However, the Committee could not order witnesses to appear or give evidence.

When the Monitoring Officer had received a response from the Member concerned and the ESO, the Monitoring Officer should then write to everyone involved at least two weeks prior to the hearing to set the date, time and place of the hearing, summarise the allegation, outline the main facts of the case that were agreed, outline the main facts which were not agreed, note whether the Member concerned or the ESO would attend or be represented at the hearing, list those witnesses, if any, who would be requested to provide evidence and outline the proposed procedure for the hearing.

The Standards Committee may establish a Sub-Committee under the provisions of Section 55 of the Local Government Act 2000 ("the Act") to consider matters relating to Parish Councils. Section 113 of the Act now also allowed Standards Committees to delegate any of their functions to a Sub-Committee in order that a Sub-Committee could be established to hear a complaint against a Member of that Authority. The SBE had advised that a hearing on an allegation of failure to comply with the Code of Conduct should be conducted by a small number of Members. A Meeting of the Standards Committee was not quorate unless at least three Members of the Committee were present for the duration of the Meeting, including at least one Independent Member. If the Committee was responsible for Parish Council

matters, it must include at least one Parish Council representative amongst its Members. However, it was only a requirement that the Parish representative was actually present when the Committee was dealing with a Parish matter. It was felt that local determinations should be dealt with by a Sub-Committee of this Committee, being chaired by the Chair of the Standards Committee together with two other Members. If the matter for determination involved a Parish Council Member, then one of the other two Members of the Sub-Committee must be a Parish Council representative.

The recommended hearing procedure agreed by the members of the Derbyshire Secretaries and Solicitors Association was attached for the Committee's information and had been based on the SBE guidance.

Following a hearing, the Standards Committee could make one of the following findings:-

- (1) The Member had not failed to follow the Authority's Code of Conduct.
- (2) The Member had failed to follow the Authority's Code of Conduct but no action was required to be taken.
- (3) The Member had failed to follow the Authority's Code of Conduct and should be penalised.

In the case of (3) above, the Standards Committee may decide any one or a combination of the following:-

- (1) Censure the Member, which was the only form of penalty available when dealing with a person who was no longer a Member of the Authority.
- (2) Restrict the Member's access to the resources of the Authority for up to three months, which could include limiting his or her access to the premises of the Council.
- (3) Suspend or partly suspend the Member for up to three months.
- (4) Suspend or partly suspend the Member for up to three months on the condition that the suspension or partial suspension would end if the Member apologised in writing, received any training or took part in any conciliation that the Standards Committee ordered.

Conciliation would involve an independent person helping the relevant people to try and reach an agreement on the matter set out by the Standards Committee. Suspension or partial suspension would normally start immediately after the Standards Committee had made its decision. However, if the Standards Committee chose, the penalty may start at any time up to six months following its decision. This may be appropriate if the penalty would otherwise have little effect on the Member, for example in the case of a suspension or partial suspension if there were no Authority or Committee meetings which the Member would normally attend in the period following the conclusion of the hearing. Periods of suspension or partial suspension determined by the Standards Committee did not count towards the six months limit for absences from Authority Meetings, after which a Member

would normally be removed from office under Section 85 of the Local Government Act 1972.

The Standards Committee must arrange for a summary of the decision and reasons for that decision to be publicised in one or more newspapers circulating in the area. If the Committee found that a Member did not fail to follow the Authority's Code of Conduct, the public summary must state this and the reasons for this finding. In these cases, the Member involved was also entitled to ask that no summary of the decision should be passed to local newspapers. If the Standards Committee found that a Member failed to follow the Code of Conduct but no action was required, the public summary must state that the Member failed to follow the Code, outline what happened and provide reasons for the Committee's decision to take no action. If the Committee found that a Member failed to follow the Code and it set a penalty, the public summary must state that the Member failed to follow the Code of Conduct, outline what happened, explain what penalty had been set and provide reasons for the decision made by the Standards Committee.

The Standards Committee's reports should be made available for public inspection for a period of six years following the hearing. However, sections of documents relating to parts of the hearing held in private would not have to be made available for public inspection. The Member who was the subject of a Standards Committee finding may apply in writing to the President of the Adjudication Panel for England for permission to appeal against the finding. The President must receive the Member's written application within 21 days of the Member receiving written notice of the Standards Committee's decision. In the Member's application, the Member must outline the reasons for the proposed appeal and whether or not he or she wanted the appeal carried out in writing or in person.

The Monitoring Officer advised that details of a training course entitled 'Local Determination Hearings – Training for Members on Standards Committees' had recently been received from the East Midlands Regional Local Government Association. This would be held on Friday, 15th October 2004 at Melton Mowbray and Members of the Committee were requested to indicate their availability accordingly.

RESOLVED:-

- (1) That the procedure for local hearings attached at Annexe 'A' to these Minutes be adopted.***
- (2) That the Monitoring Officer be authorised to make arrangements with other Authorities within Derbyshire and their Monitoring Officers/Deputies for mutual cover in the event of clear conflicts of interest arising, as outlined in the report.***
- (3) That the Independent Chair of the Standards Committee (or in his/her absence or availability, another Independent Member) chair all local determination hearings.***
- (4) That local determinations be considered by establishing a Sub-Committee of this Committee consisting of three Members (including at least one Independent Member and at least one Parish Member if the matter relates to a Parish issue).***

(5) That arrangements be made for Members of the Committee to attend the training session on 15th October 2004.

SC/7. **DISPENSATIONS FOR DISTRICT AND PARISH COUNCILLORS AND CO-OPTED MEMBERS**

It was reported that the one of the functions of the Standards Committee was to grant dispensations to Councillors and Co-opted Members from requirements relating to interests set out in the Members' Code of Conduct. The mandatory provisions of the Model Code required all Members and Co-opted Members to register such financial and other interests as specified in the mandatory provisions. These provisions also required any Member or Co-opted Member who had either a personal or prejudicial interest to disclose that interest prior to participating in any business of the Authority. If a prejudicial interest was declared, the Member must withdraw from the room where the Meeting was being held, unless he had obtained a dispensation from the Authority's Standards Committee, and must not seek improperly to influence a decision on that matter.

The Secretary of State had given authority to Standards Committees to grant dispensations to enable Members with interests in an item of business to participate in decision making, despite that interest, under the Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002. Such a request for dispensation must be received in writing by this Committee which may, subject to exceptions outlined below, grant a dispensation to a Member where:-

- (a) the transaction of business would otherwise be impeded because:-
- the number of Members prohibited from participating exceeded 50% of the Members entitled or required to participate;
 - or
 - the Authority was not able to comply with political balance principles, and
- (b) the Member had submitted a written request to this Committee, explaining why it was desirable.

The Standards Committee could conclude that, having regard to the matters mentioned in paragraph (a) and the application made under (b) and to all the other circumstances of the case, it was appropriate to grant the dispensation.

A dispensation could not be granted by the Committee in respect of business conducted more than four years after the date on which the dispensation was granted or where the effect would allow a Member of an Overview or Scrutiny Committee to participate in the scrutiny of another Committee's decision in which he or she was involved.

If a dispensation was granted, this Committee must ensure that the existence, duration and nature of any dispensation was recording in writing and in any event, this may not be for a period of more than four years. A record must also be kept with the Register of Interests. This Committee

would deal with requests for dispensations received not only from Councillors and Co-opted Members of this Authority, but also Parish Councillors throughout the District. Councillors and Co-opted Members who had been granted a dispensation by the Standards Committee should still declare a personal interest in the matters for which they had been granted that dispensation. As a matter of good practice, they should also state that they had been granted a dispensation. All requests to this Committee for dispensations were totally at the Committee's discretion and it was noted that the Standards Board for England could not grant dispensations.

In order that the business of the Authority was not delayed, Councillors and Co-opted Members were urged to seek a dispensation well in advance of the date when the matter in question was to be discussed. As such requests would be on an ad-hoc basis, the Standards Committee would need to be convened as necessary to deal with them.

RESOLVED:-

That the procedure for dealing with written requests for dispensations for District and Parish Councillors and Co-opted Members, as outlined above, be adopted.

SC/8. **THIRD ANNUAL ASSEMBLY OF STANDARDS COMMITTEES – 13TH-14TH SEPTEMBER 2004**

It was reported that the Third Annual Assembly of Standards Committees was to be held on 13th and 14th September 2004 at the ICC Birmingham. This year, the Committee would be represented by Dudley Williams (Chair) together with Andrea McCaskie (Monitoring Officer) and Neil Betteridge (Principal Democratic Services Officer). A copy of the advance programme for the event had been circulated to Members and a report on the issues arising would be submitted to the next Meeting.

The Monitoring Officer reported that the regular bulletins produced by the Standards Board for England were now also circulated to all Clerks to Parish Councils.

RESOLVED:-

That details of the arrangements for attendance at the Annual Assembly of Standards Committees be noted.

SC/9. **TRAINING**

Members were advised that following the report to the last Meeting on the training session for Parish Councils on the new ethical framework on 14th July 2003, further sessions on ethics and probity had been held in conjunction with the Derbyshire Association of Local Councils on 17th November 2003 and 20th July 2004. Members received a copy of the presentation slides for information.

All Members of the District Council had been provided with the opportunity to attend various courses and seminars organised by the East Midlands Regional Local Government Association under the Modern Members Development Programme. Several Members had taken the opportunity to

attend the courses on topics such as Scrutiny and Overview, Local Government Finance, Community Involvement and Advanced Performance Management and Challenge Techniques for Elected Members.

Since the last Meeting, various training sessions and seminars had been held for District Councillors, as follows:-

- 2nd and 4th December 2003 – Awareness training on the Codes of Conduct for Members and Employees and the Member/Employee Protocol.
- 10th March 2004 – Liquor licensing (this function was shortly to be transferred to the responsibility of the local authority).
- 6th and 7th April and 29th June 2004 – Equalities and Diversity.
- 21st April 2004 – Local Government Finance.
- 18th and 19th May 2004 – Council policies.
- 7th June 2004 – Planning Update (by the Planning Co-operative).
- 16th June 2004 – Implementing Electronic Government.

During December 2003, a Meeting was held with a nominated Member from each of the two political groups together with the Council's Training and Development Officer to discuss Members' training needs. This indicated that overall, Members felt that training and development was addressed well and that they were content with the level of training and support.

The Monitoring Officer referred to the Equalities and Diversity training and it was suggested that this could also be provided to Members of the Standards Committee.

RESOLVED:-

- (1) That details of the training provided to District Councillors and Parish Councils since the last Meeting be noted.***
- (2) That arrangements be made for Members of the Committee to receive training in Equalities and Diversity.***

SC/10. **REGISTER OF INTERESTS**

It was reported that all District Councillors had recently been requested to review their existing entries in the Register of Members' Interests and either confirm that there were no amendments and the information was correct, or complete a new form, as appropriate. During the course of the last year, several Members had made ongoing amendments to their entries, as appropriate.

With regard to Parish Councillors, a similar letter had recently been sent to Parish Clerks advising them to undertake the same action outlined above in respect of their Councillors.

RESOLVED:-

That details of the monitoring undertaken on the Register of Interests for District and Parish Councillors since the last Meeting be noted.

SC/11. **REAPPOINTMENT OF INDEPENDENT MEMBERS – JUNE 2005**

It was suggested that when the Independent Members were re-appointed in June 2005, consideration should be given to staggered terms of office to ensure a level of continuity.

SC/12. **FUTURE MEETINGS**

It was suggested that future Meetings should be held at least every six months to enable feedback to be provided on various matters.

D. R. WILLIAMS

CHAIR

The Meeting terminated at 7.05 p.m.