

## **WILTSHIRE COUNCIL**

### **STANDARDS COMMITTEE**

**22<sup>nd</sup> SEPTEMBER 2010**

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## **LOCAL STANDARDS FRAMEWORK - REVIEW OF PROCESS**

### **Purpose of Report**

1. To ask the Committee to consider proposals for streamlining the process for dealing with complaints under the Code of Conduct following a review of the Council's procedures under the local standards framework.

### **Background**

2. The Committee agreed as part of its plan to review proportionality in the operation of its procedures under the local standards framework and to report to the September meeting on the outcome. The review was to have regard to a research report commissioned by Standards for England 'How proportionate is the standards framework?' issued earlier this year.
3. A copy of the executive summary of the research report is attached as Appendix 1. The full report may be obtained from Standards for England web-site:  
  
<http://www.standardsforengland.gov.uk/resources/research/>
4. The Standards Committee has previously agreed timescales for the various stages of the complaints process, as summarised in the table in Appendix 2. These incorporate the statutory time limits and those prescribed in statutory guidance issued by Standards for England. These should be borne in mind in the context of this review.
5. The Council's Procedure for the Local Determination of Complaints under the Code of Conduct was reviewed in July 2009 as part of the review of the Constitution in the transition to unitary status. The procedure closely reflects the model contained in Standards for England guidance and incorporates the requirements of the Standards Committee (England) Regulations 2008. Consequently there is little scope for making changes to this that might make the process more efficient.

### **Main Considerations for the Council**

6. Members will note the overall findings of the research report on the proportionality of the standards framework, and the suggested steps that could be taken to streamline the system and make it more effective (see in particular paragraph 2.8 of the executive summary). A number of these proposals would require a change in the legislation. This has, of course, been overtaken to a large extent by the Coalition Government's proposals to abolish Standards for England. The Government's proposals will form part of the Localism Bill, which is due to be developed from November 2010 with a view to

becoming law in November 2011.

7. It is expected that a consultation paper will be issued outlining the Government's proposals for standards but the precise timing of this is as yet unknown. It is, however, proposed to bring a report to the next meeting of Standards to give members the opportunity to discuss possible options for an alternative standards regime.
8. So far as current procedures are concerned these will remain effective until the implementation of any new legislation. As already indicated, the process for dealing with complaints is largely determined by regulations and statutory guidance, so that the scope for making changes to streamline it are fairly limited. The following paragraphs contain some suggestions on the steps that may be taken to improve efficiency in the conduct of complaints.

### **Local Resolution Before Complaints are Lodged**

9. The Standards Committee's Local Assessment Criteria recognise the importance of exploring the possibility of an early resolution prior to a formal complaint being made. Paragraph 2 provides:

*The Standards Committee is mindful that investigations are costly and time consuming. Complaints can often be dealt with more effectively if an early resolution of the matter can be achieved. The Monitoring officer may therefore encourage complainants to explore whether the matter can be resolved locally prior to a formal written complaint being made to the Standards Committee.*

10. This is already being applied. Members of the team who deal with initial enquiries from persons who are thinking of making a complaint are aware of the benefit of seeking an informal resolution and will actively explore this possibility with them where this is appropriate. The use of mediation may be a suitable option to suggest at this stage. Members strongly supported the use of mediation in resolving Code of Conduct matters, both at the pre-complaint stage and as 'other action' when this was considered at the last meeting.

### **Assessment and Review Stage**

11. This is clearly a critical stage for determining which cases should properly go forward for investigation. The Committee has already reviewed its approach at this stage and members have received training in the conduct of assessments and reviews. This has resulted in a more robust line being taken with fewer complaints overall being referred to the Monitoring Officer for investigation or other action. The use of 'other action' as an alternative to investigation is always given full consideration by assessment and review sub-committees, though the guidance from Standards for England on 'other action' tends to limit the scope of its use. Mediation as 'other action' is, again, another tool which can be used at this stage in suitable cases.
12. Amendment of the complaint form to indicate whether the complainant would be prepared to agree to mediation as an alternative to formal investigation may assist in encouraging complainants down this route, though it has to be recognised that the availability of mediation will always be subject to the willingness of the parties to agree to this.

13. The Committee has a sufficient pool of members with relevant knowledge and expertise to undertake assessment and reviews, bearing in mind that the membership of the sub-committee at each stage has to be different. This needs to be kept in mind when the size and composition of the Committee is reviewed in November.
14. The time limits for assessments and reviews are consistently met.

### **Investigation Stage**

15. The Standards Committee has agreed a target time of 6 months for investigations to be carried out from the date of the assessment or review decision to refer. This is consistent with the national average time for investigations. However, we are seeking to improve upon this target by:
  - identifying the key issues and areas of dispute at an early stage;
  - ensuring that the investigation is robust and proportionate to the issues involved;
  - interviewing key witnesses to obtain evidence relevant to the issues;
  - efficient timetabling of interviews with witnesses;
  - securing documentation which is material to the issues;
  - use of standard forms, including witness statements;

### **Consideration Stage**

16. Currently the Committee's policy is to have different members for the Consideration Sub-Committee and the Hearing Sub-Committee. This approach was agreed by the Committee in July 2009. The intention was to avoid any risk of legal challenge on the grounds of bias or pre-determination that may arise from a member being involved at both stages. In practice the risk of a successful challenge on this basis is considered to be small, bearing in mind that the task of the sub-committee is different at each stage.
17. Furthermore, Standards for England guidance suggests that there is no problem with having the same membership at the consideration and determination stages.
18. Having reviewed the position and discussed it with members who serve on both consideration and hearing sub-committees I consider that there are significant advantages to be gained from having the same membership at both stages. This will save unnecessary duplication of member time and effort in reading the papers and preparation and, where the case is referred for determination, will provide continuity of knowledge and awareness of the issues through the pre-hearing review to the final hearing.
19. Delays can arise following completion of the investigation report because of problems of availability of members and officers. Having the same three members should enable dates to be fixed in advance more easily for the consideration meeting, and any subsequent pre-hearing review and hearing. The intended use of the Deputy Monitoring Officer, Barbara Mills, Head of Legal for consideration and determination hearings will also help to ease the situation regarding availability.

20. The timescale for these final stages may be kept to a minimum by fixing the date for the consideration sub-committee when the draft investigation report is circulated to the complainant and the subject member rather than wait until it is completed as is currently the case. Further time could be saved by finalising the minutes of the Consideration Sub-committee immediately after the meeting. This would enable the pre-hearing process (which has set time limits) to begin sooner.

### **Hearings**

21. The hearings which have been held to date have proceeded efficiently and effectively and there are no recommended changes to the practice and procedure.
22. We are taking steps to ensure that the written decision and other post-hearing formalities are completed in an efficient and timely manner.

### **Environmental Impact**

23. None.

### **Equalities Impact**

24. None.

### **Financial Implications**

25. None arising directly from this report.

### **Legal Implications**

25. The proposals in this report are consistent with the requirements of the relevant legislation and guidance.

### **Proposal**

24. The Committee is asked to:

- (1) Note the outcome of the review of the Council's procedures under the local standards framework and the steps that are suggested to streamline the process;
- (2) Agree that the possibility of informal resolution at the pre-complaint stage is actively explored where this is appropriate and that the merits of 'other action' at the assessment and review stages is fully considered;
- (3) Agree that the same members are appointed to the consideration and hearing sub-committees, save where this is not reasonably practicable.

**Ian Gibbons**  
**Monitoring Officer**

Report Author: Ian Gibbons

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**The following unpublished documents have been relied on in the preparation of this Report:** None