

WILTSHIRE COUNCIL

STANDARDS COMMITTEE

7 March 2012

NEW STANDARDS FRAMEWORK

Purpose of Report

1. This report updates the Committee on developments since the last meeting and asks the Committee to consider the draft documentation requested at its last meeting for approval and recommendation to Council at its meeting on 15 May 2012.

Background

2. At its meeting on 25 January 2012 the Committee considered key issues in preparing to meet the requirements of the new standards framework and resolved:
 - (1) To note the action taken so far and the views of the Standards Task and Finish Group, Group Leaders and the Constitution Focus Group on the implementation of the new standards framework.
 - (2) To ask the Monitoring Officer, in consultation with the Standards Task and Finish Group and the Chairman of the Constitution Focus Group, to prepare detailed proposals on the following for the Constitution Focus Group to consider at its next meeting:
 - (i) the size and terms of reference of a proposed new standards committee;
 - (ii) the arrangements for dealing with complaints;
 - (iii) the arrangements for appointment of the independent person(s), including the number to be appointed, a job description and person specification for this role;
 - (iv) a code of conduct, subject to the regulations to be issued on interests, having regard to any national or regional models that are being developed, and the views of members.
 - (3) To oversee the arrangements for consulting and providing support to town and parish councils in the implementation of the new standards framework.

- (4) To ask the Constitution Focus Group to report back to the Standards Committee at its meeting on 7 March 2012 with a view to final recommendations being made to the Council at its meeting on 15 May 2012.
3. The Standards Task and Finish Group was due to meet on 21 February 2012, but was cancelled as many of the members were unable to attend. Those members who were available were, therefore, invited to join the Constitution Focus Group's meeting on the same day to consider the draft documents requested by the Standards Committee. These were discussed in depth and amendments were proposed by the Focus Group as shown tracked on the attached appendices.

Main Considerations

Terms of Reference for a New Standards Committee

4. There is general agreement that it would be desirable for the Council to establish a standards committee to discharge the Council's functions under the new standards regime. This should include the wider role undertaken by the existing Standards Committee, which has worked well, particularly in relation to oversight of the constitution.
5. A copy of the proposed terms of reference is attached at Appendix 1. These provide for:
- 13 elected councillors to be appointed annually by the Council on a politically proportionate basis, with provision for substitutes as permitted under the Constitution;
 - up to 8 co-opted non-voting members. One half of those appointed will be parish, town or city representatives from Wiltshire who are not officers or members of Wiltshire Council. The other half will be made up of independent members similar to those on the current Standards Committee.
 - it is proposed that the co-opted members will serve for 2 years to provide some continuity.
 - the discharge of the Council's functions under the new standards legislation and the wider responsibilities undertaken by the existing Standards Committee;
 - Hearing, Review and Dispensation Sub-Committees comprising 3 elected councillors drawn from the membership of the new standards committee and the pool of substitutes.

- It is proposed that the political balance requirements for these sub-committees will be waived by the Council to ensure cross party representation as far as possible.
- The sub-committees may, in addition, include 2 co-opted members, one of whom shall be a parish, town or city representative where the complaint involves a parish, town or city councillor.
- The co-opted members may play a full part in the hearing, review or dispensation meeting, but cannot vote on the decision.

Arrangements for dealing with misconduct complaints

6. Relevant authorities, other than parish councils, must put in place arrangements for investigating and determining complaints under the code of conduct and deciding the actions that may be taken if there is found to be a breach of the code.
7. Complaints against members of parish councils are to be dealt with under the arrangements adopted by their principal council. However, any consequential action in the event of a breach of the code will rest with the parish council.
8. The Standards Committee has agreed that any procedure adopted should be:
 - fair
 - quick and simple
 - proportionate
 - cost effective
 - serve to improve standards of conduct
9. A draft procedure is attached at Appendices 2 and 3. This aims to provide a fair and efficient process with an appropriate balance between the rights of the complainant and subject member. The draft procedure:
 - gives the member an opportunity to respond to the complaint before it is referred for initial assessment;
 - makes it clear that complaints must be lodged within 3 months of the date of the incident giving rise to the complaint;
 - delegates decision-making at the stages of initial assessment and consideration of the investigation report to the Monitoring Officer, after consultation with the Independent Person, subject to a right of review by the Review Sub-Committee;

- defines the role of the Independent Person(s) in the process;
- provides for alternative resolution, including mediation, at both these stages;
- sets out the arrangements for hearing complaints and the sanctions that may be imposed;
- gives no right of appeal against a determination of the Hearing Sub-Committee;
- covers the arrangements for complaints against parish councillors.

10. On this basis the proposed process from receipt of complaint to hearing should take less than 6 months overall. However, the exercise of the right of review, exploring alternative dispute resolution, and difficulties regarding the availability of members and parties for the hearing may inevitably lengthen the process.

Appointment of Independent Persons

11. The council must appoint at least one independent person whose views must be sought and taken into account before the council makes a decision on an allegation it has decided to investigate. The views of the independent person may also be sought on other allegations, and by a member who is the subject of an allegation.
12. It is proposed to appoint 2 independent persons, one to advise the Monitoring Officer, Review Sub-Committee and Hearing Sub-Committee, and the other to advise the subject member, as reflected in the draft procedure. It may be prudent to appoint a third as a reserve.
13. It will be necessary for the Council to determine an appropriate level of remuneration for each independent person. In setting this amount the Council will wish to have regard to what other authorities are intending to pay. Further information will be provided on this aspect when it becomes available.
14. A suggested job description and person specification is attached at Appendix 4. This reflects the statutory responsibilities of the role and the personal qualities that are considered necessary to undertake it. On further reflection, it would be useful to include the statutory restrictions which apply to the appointment of the independent person as follows:

The following persons are not eligible for appointment as an independent person

- *current members, co-opted members and officers of the Council or of any of the parish, town or city councils within its area, or their relatives or close*

friends.

- *any person who has within the last 5 years been a member, co-opted member or officer of the Council or of any of the parish councils in its area.*

15. It is understood that the Government is considering making a transitional provision which permits a principal authority to appoint a person as an independent person who, although not a member or chairman of an existing standards committee at the time of appointment (or thereafter), has held such a post within the last five years. This transitional provision would apply for the first year of the new arrangements (i.e. until 30 June 2013), and any person appointed under the transitional provisions would be able to continue to hold office after the transitional period, for whatever term the principal authority saw fit.

16. Subject to the issue of regulations to this effect, existing co-opted members of the Standards Committee may, therefore, be permitted to apply for appointment as an independent person, enabling the Council potentially to secure the benefit of their knowledge and experience in standards issues for the exercise of this new statutory role.

17. The Council may also wish to encourage current independent members from other standards committees in Wiltshire e.g. fire authority, or other adjoining authorities to seek appointment as an independent person.

18. The 2011 Act requires:

- the Council to advertise the vacancy for an independent person in such manner as the Council considers appropriate.
- applicants to submit an application for the position;
- The person's appointment must be approved by a majority of the members of the Council.

19. It is proposed that the arrangements for the advertisement of the position of independent person and the appointments process are delegated to the Monitoring Officer, in consultation with the chairman of the new standards committee.

Code of Conduct

20. The position regarding the code of conduct remains unclear. There is no sign of the regulations on interests, nor any indication as to when these might be available.
21. The National Association of Local Councils (NALC), the Association of Council Secretaries and Solicitors (ACSeS), and other bodies representing various interest groups in local government are in discussion with the Local Government Association (LGA), which represents the interests of principal authorities, to produce a national template code of conduct. No agreement has been reached on this yet and a further meeting on 14 March has been arranged to try to progress this.
22. Until the regulations have been issued and the emerging picture is clearer regarding any national template code, the Council needs a fall-back position. It is, therefore, proposed that the existing code of conduct should form the basis of the new code of conduct, amended as necessary to meet the requirements of the new legislation. This will be reviewed when the regulations on disclosable pecuniary interests are available.
23. Parish councils will continue to be encouraged to adopt the same code as Wiltshire Council.

Dispensations

24. Relevant authorities may, on receipt of a written request, grant dispensations for up to 4 years for a member to be able to participate in or vote at meetings where they have a disclosable pecuniary interest. The grounds on which a dispensation may be granted are set out in section 33 of the Act.
25. It is proposed that this function is delegated to a sub-committee of the new standards committee on the basis set out in the draft terms of reference included at Appendix 1.
26. Parish councils will need to make their own arrangements for granting dispensations.

Consultation with Parish Councils

27. Following my initial letter and briefing paper to the clerks to parish, town and city councils in December we have included an update in the February Parish Newsletter. A further update will be provided after the Standards Committee's meeting. I am also meeting with representatives of WALC and the County Branch of the Society of Clerks to discuss how we can best support our parish, town and city councils in implementing the new standards framework.
28. NALC is about to issue guidance to parish councils on the new legislation.
29. Clearly when we are clearer about the position on the new code of conduct we will be able to consult more fully.

Recommendations

30. The Committee is asked to consider the draft documentation attached to this report and, subject to any changes the Committee may wish to make, to agree to recommend Council as follows:

- (1) To establish a standards committee in accordance with the terms of reference set out at appendix 1.
- (2) To adopt the arrangements for dealing with code of conduct complaints as set out in appendices 2 and 3.
- (3) To approve the job description and person specification for the independent person as set out in Appendix 4, and to authorise the Monitoring Officer, in consultation with the chairman of the new standards committee, to take the necessary steps to secure the appointment of 2 independent persons and one reserve by the Council.
- (4) To agree an appropriate rate of remuneration for the independent person, having regard to arrangements being made by other authorities.
- (5) Pending the issue of the regulations on interests and the emergence of any national template code of conduct, to use the existing code of conduct as the basis for a new code of conduct, amended as necessary to meet the requirements of the new legislation.
- (6) To support parish, town and city councils in Wiltshire in preparing for the new standards framework and to consult them as far as possible on the proposed arrangements for Wiltshire Council.

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