

# EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

**Committee:** Standards Committee **Date:** 2 July 2008

**Place:** Committee Room 1, Civic Offices, High Street, Epping **Time:** 7.30 - 9.04 pm

**Members Present:** Ms M Marshall (Independent Member) , G Welch (Independent Member), M Wright (Independent Member), Councillor B Surtees (Parish or Town Council Deputy), Councillor Mrs D Borton (Parish or Town Council Representative), Councillor B Rolfe (Epping Forest Council Appointee), Councillor Mrs P Smith (Epping Forest Council Appointee)

**Other Councillors:**

**Apologies:**

**Officers Present:** G Lunnun (Allegations Determination Manager), C O'Boyle (Monitoring Officer) and I Willett (Deputy Monitoring Officer)

## 1. CHAIRMAN OF THE COUNCIL

The nomination of Ms M Marshall as Chairman of the Committee having been formally moved and seconded, it was:

**RESOLVED:**

That Ms M Marshall be elected Chairman of the Committee for the municipal year 2008/09.

## 2. APPOINTMENT OF VICE-CHAIRMAN

The Committee was asked to consider whether it wished to appoint a Vice-Chairman for the coming year. A Vice-Chairman had not been appointed in the past but it was considered prudent to make an appointment to cover for the Chairman when necessary. The Committee noted that such an appointment would require a change to the Council's Constitution and would therefore be subject to Council approval.

The nomination of Mr G Welch as Vice-Chairman of the Committee having been formally moved and seconded, it was:

**RESOLVED:**

That, subject to Council approval, Mr G Welch be appointed Vice-Chairman of the Committee for the municipal year 2008/09.

### 3. MINUTES

The Chairman welcomed Councillor Rolfe to his first meeting of the Committee and acknowledged the contribution to the work of the Committee which had been made by Councillor Mrs J H Whitehouse.

#### RESOLVED:

That the minutes of the meeting of the Committee held on 24 April 2008 be taken as read and signed by the Chairman as a correct record.

### 4. DECLARATIONS OF INTEREST

No declarations of interest were made pursuant to the Council's Code of Member Conduct.

### 5. LOCAL ASSESSMENT OF ALLEGATIONS OF MISCONDUCT BY COUNCILLORS

The Committee considered a report on the local initial assessment of complaints of misconduct by members. Previously a complaint of misconduct by a member had been submitted to the Standards Board for England (SBE), and the referrals unit of the SBE had determined whether the allegation appeared to disclose a failure by a member to comply with the authority's Code of Conduct and whether the allegation merited investigation. From 8 May 2008, all such complaints were now to be made to the Standards Committee of the authority with an expectation that each allegation be would assessed within 20 working days of receipt.

The Committee considered the issues which needed to be addressed in order to meet the new requirements.

Members noted that the legislation required the establishment of a Sub-Committee (the SBE had advised that this should be known as the "Assessments Sub-Committee") which would undertake the initial assessment and decide whether the complaint showed an apparent failure to comply with the Code of Conduct and, if so, whether that complaint merited investigation or other action. If the Assessments Sub-Committee decided to take no action in respect of an allegation, the complainant then had 30 days within which to request the authority to review that decision. The Act required the setting up of a second Sub-Committee (the "Reviews Sub-Committee) to conduct that review. No member could sit on the Reviews Sub-Committee in respect of complaint if they had served on the Assessments Sub-Committee for the same complaint. If the matter was then referred for investigation a hearing would be held. The SBE had recommended that such hearings should be held before a Sub-Committee (a "Hearings Sub-Committee"). Members noted that whilst the legislation prohibited any member from sitting on both the Assessments and Reviews Sub-Committee on the same case there was no similar statutory prohibition in respect of the Hearings Sub-Committee. In addition the SBE had advised that if a member had been involved in the case either at the Assessments Sub-Committee or the Reviews Sub-Committee stage there was no reason why they should be precluded from serving on the Hearings Sub-Committee.

The Committee considered the composition of the required Sub-Committees taking account of the need for:

- (a) at least 25% of each Sub-Committee to be independent members, one of whom must be present to chair the meeting;
- (b) at least one elected member of the District Council to be present at each meeting; and
- (c) at least one member to be a parish or town council representative if the Sub-Committee was dealing with a complaint in respect of the conduct of a councillor in the capacity of a local council member.

The Committee considered terms of reference for the Assessments Sub-Committee and the Reviews Sub-Committee.

The Committee determined that having regard for the need to call meetings of the Assessments Sub-Committee urgently to comply with the 20 day time limit the membership of such Sub-Committees should be determined by the Monitoring Officer in consultation with the Chairman of the Standards Committee on an ad hoc basis. Members considered this to be preferable to a fixed membership which could make it more difficult to convene a meeting quickly in the event of absence of a member for any reason. Members noted that any review of a decision by the Assessments Sub-Committee had to be conducted within three months of a request being made. Also a Hearings Sub-Committee had to be held within three months of receipt of the investigation report. Acknowledging that there was more flexibility to arrange such meetings on a date to suit the available members, the Committee determined that the arrangements for appointing the Reviews and Hearings Sub-Committee meetings should be conducted in the same way as for the Assessments Sub-Committee.

The Deputy Monitoring Officer reported that the legislation provided for authorities to appoint joint committees to discharge all or any of their functions in relation to complaints without maintaining their own separate Sub-Committees. Members noted that such joint working might be more acceptable in terms of the initial assessment and the review, rather than the actual hearings which might benefit from a more "local" approach. However, the regulations bringing these provisions into force had not yet been made.

The Committee considered the steps to be taken to notify a councillor of the receipt of a complaint taking account of advice of the SBE.

The Deputy Monitoring Officer reported that there was no formal process for local resolution of complaints in the legislation, although regulations enabled the Assessments Sub-Committee to propose conciliation or some other course as an alternative to a formal investigation. However, in a situation where the member concerned had acknowledged that his/her conduct was at fault and had apologised, and the complainant had accepted that the complaint should not proceed to formal investigation, the Assessments Sub-Committee could determine that no further action was required. In order to cover this situation, the Committee considered the adoption of a local protocol authorising the Monitoring Officer to seek such local resolutions in appropriate cases. The Committee noted that SBE experience had been that the large number of complaints received did not relate to the Code of Conduct for members. The legislation provided that the function of initial assessment of complaints had to be conducted by the Standards Committee or by a Sub-Committee and did not allow for delegation of this function to the Monitoring Officer. The Committee agreed that where the Monitoring Officer identified that a complaint had clearly related to a request for an additional service from the authority or as a statement of policy disagreement she should be authorised to respond to the

complainant on how the matter could be dealt with, only reporting to the Assessments Sub-Committee if the complainant insisted that the matter be dealt with as a Standards complaint.

The Deputy Monitoring Officer reported that there was nothing in the legislation which required a complaint to be signed by the complainant. Members noted that the SBE had entertained some anonymous complaints but that this had given rise to concern. The Committee considered whether anonymous complaints should be entertained.

The Committee noted that it was not uncommon that a single event gave rise to similar complaints from a number of different complainants. The legislative position was that each separate complaint had to be considered and that even where a meeting of the Assessments Sub-Committee had previously decided that no action be taken upon an identical complaint, a subsequent complaint had to be considered by the Sub-Committee.

The Deputy Monitoring Officer emphasised that the Assessments Sub-Committee had to decide whether an allegation appeared to disclose a failure to comply with the Code of Conduct and whether it merited investigation. He suggested that where the Sub-Committee had only a letter of complaint it would not always be easy to assess whether there was any substance to the allegation. In some situations there might be information which might substantiate, or contradict the allegation and so make it easier for the Sub-Committee to determine whether the complaint had any substance. The Committee considered whether the Monitoring Officer should be authorised to check publicly available information between receipt of the complaint and the meeting of the Assessments Sub-Committee in order to assist the process.

The Committee considered whether meetings of the Assessments, Reviews and Hearings Sub-Committees should be held in public or private. The Committee also considered aspects of the Data Protection Act and the Freedom of Information Act in relation to complaints about members. Attention was drawn to the requirements in relation to notification of initial assessment and review of initial assessment decisions. Members noted that previously where the Monitoring Officer's investigation had concluded that there had not been a failure to observe the Code of Conduct, the Monitoring Officer's report had to be submitted to the Standards Committee for a decision on whether it accepted that conclusion, or whether it wished to conduct a formal hearing. In cases where the Monitoring Officer's investigation had concluded that there had been a failure to observe the Code of Conduct, the previous regulations had provided for the matter to proceed directly to a local hearing. Members noted that the new regulations added an extra step. The Monitoring Officer's report now had to be reported to the Standards Committee or a Sub-Committee to decide what action should be taken before an actual hearing could be arranged. Members considered the process for undertaking this step.

Members noted that appropriate publicity had already been given to the new arrangements. The Committee also noted the resource implications of undertaking the new procedures.

#### **RESOLVED:**

##### **Assessments Sub-Committee**

- (1) That an Assessments Sub-Committee comprising three members of the Standards Committee be established to carry out initial assessments of complaints;

(2) That the terms of reference for the new Sub-Committee be approved as set out in Appendix 1 to these minutes and reported to the Council for noting;

#### **Reviews Sub-Committee**

(3) That a Reviews Sub-Committee be established comprising three members of the Standards Committee to carry out reviews of decisions by the Assessments Sub-Committee;

(4) That the terms of reference of the new Sub-Committee be approved as set out in Appendix 2 to these minutes and reported to the Council for noting;

#### **Standards Committee**

(5) That a report be submitted to the Council recommending:

(a) that the number of District Council members of the Standards Committee be increased to three and an appointment to the additional place be made at the Council meeting;

(b) that the number of parish/town council representatives be increased to three, with the present deputy becoming one of the members;

#### **Hearings Sub-Committee**

(6) That Hearings Sub-Committees be convened as and when required;

#### **Appointments to Assessments Sub-Committee, Reviews Sub-Committee, and Hearings Sub-Committee**

(7) That the Monitoring Officer, in consultation with the Chairman of the Standards Committee make appointments to the Assessments, Reviews and Hearings Sub-Committees when required and in accordance with statutory requirements;

#### **Joint Working**

(8) That further consideration be given to a policy for joint working with other local authorities when further Government regulations are published;

#### **Notifications to Councillors and Complainants**

(9) That the Monitoring Officer be authorised:

(a) to notify the relevant councillor of the receipt of a complaint, the name of the complainant and a summary of the complaint prior to the despatch of case details to the Assessments Sub-Committee, notification to include, where necessary any decision regarding confidentiality;

(b) to acknowledge receipt of allegations to complainants at the same time as notification under (9)(a) above;

(10) That the Monitoring Officer be required to consult the Chairman of the Standards Committee on any cases where delayed notification is appropriate;

#### **Local Resolution of Complaints**

(11) That the local protocol set out in Appendix 3 to these minutes be adopted to enable the Monitoring Officer to seek local resolution of complaints where possible in advance of an Assessments Sub-Committee meeting;

#### **Assessment Criteria**

(12) That the criteria for initial assessments of complaints as set out in Appendix 4 be approved;

#### **Anonymous Complaints**

(13) That, as a matter of policy, complaints made anonymously be not considered;

(14) That the Monitoring Officer be authorised, in consultation with the Chairman of the Standards Committee, to keep the identity of a complainant confidential where she feels that this would be in the public interest;

#### **Pre-Investigation by the Monitoring Officer**

(15) That the Monitoring Officer be authorised to obtain and supply to the Assessments Sub-Committee any publicly-available information which is considered helpful in the consideration of any complaints;

#### **Meeting Arrangements – Assessments, Reviews and Hearings Sub-Committees**

(16) That the Assessments and Reviews Sub-Committee meetings be held in private session unless there are exceptional circumstances which warrant the proceedings being held in public;

(17) That as a matter of policy, all meetings of the Hearings Sub-Committee be held in public session unless there are clear statutory grounds for its proceedings to take place in private session, subject in the case of a hearing where the member who is the subject of the complaint is not present, the officers ensuring that the decision is made known to that member prior to any media announcement of the decision;

#### **Results of Investigations**

(18) That the functions of determining whether to accept a finding by the Investigating Officer of no breach of the Code of Conduct or to proceed to a local hearing in cases where the finding is that a breach of the Code has been found be delegated to the Assessments Sub-Committee members who undertook the initial assessment with the Monitoring Officer sending them details by post and only calling a formal meeting of those members in the event of there not being unanimous support for the action recommended in the Investigating Officer's report;

### **Interim Arrangements**

(19) That, pending the adoption of the revised Constitution for the Standards Committee and the appointment of additional members of the Committee, the Monitoring Officer, in consultation with the Chairman of the Standards Committee, be authorised to convene meetings of any Sub-Committee in compliance with statutory requirements when any complaint is received; and

### **Review of Arrangements**

(20) That these arrangements be reviewed by the Standards Committee after a period of 12 months of operation.

## **6. CONSTITUTION - ARTICLE 9 - THE STANDARDS COMMITTEE - REVISIONS**

The Committee considered a proposed revised Article 9 of the Council's Constitution reflecting the new duties.

### **RESOLVED:**

That a report be submitted to the Council recommending adoption of the revised Article 9 attached as Appendix 5 to these minutes.

## **7. ADMINISTRATION OF THE LOCAL ASSESSMENT SCHEME**

The Committee noted that the Standards Board for England had issued guidance on the administration of the local assessment scheme. In compliance with that guidance the new system had already been published:

- (a) on the Council's website;
- (b) by placing a public notice in the local newspaper;
- (c) by placing an article in the Council's own magazine, the Forester; and
- (d) by issuing a press release.

The Committee also noted that the Standards Committee and the Local Democracy web pages on the Council's website now included a link to a new page on councillor conduct which gave information about the scheme.

The Committee considered a suggested complaint form to be included on the website.

The Committee also noted that the Standards Board for England had set up a reporting system for local complaints. Local authorities' Standard Committees were required to submit a return at the end of each quarter on the number and types of complaints. The system would also enable the tracking of complaints and the results of the assessments, reviews, and hearings to be monitored.

**RESOLVED:**

- (1) That the steps being taken by the Local Assessment Officer to introduce the new procedures for dealing with complaints against councillors be noted;
- (2) That the notes accompanying the proposed complaint form be amended to reflect the views of the Committee; and
- (3) That the clerks of parish and town councils be advised of the new procedures and invited to contact District Council officers for clarification, if required.

**8. DATES OF FUTURE MEETINGS**

The Committee noted that the calendar for 2008/09 provided for meetings of the Committee on 15 July 2008, 13 October 2008, 27 January 2009 and 14 April 2009.

Members were advised that in the light of this additional meeting there was no business to be considered at the meeting scheduled for 15 July 2008.

**RESOLVED:**

That the meeting scheduled for 15 July 2008 be cancelled.

**9. ASSESSMENTS SUB-COMMITTEE**

The Committee was advised that there was a need to hold a meeting of the Assessments Sub-Committee as three complaints relating to two District Councillors had been received since the new procedures had come into force.

The Committee considered the make up of an Assessments Sub-Committee and the date for a meeting.

**RESOLVED:**

- (1) That arrangements be made for a meeting of the Assessments Sub-Committee comprising Mr M Wright (Chairman), Councillor Mrs P Smith and Councillor Mrs D Borton; and
- (2) That the meeting be held on 15 July 2008 commencing at 10.00 a.m.

**CHAIRMAN**