

Item 8 Ethical Framework Arrangements

Report of the Head of Legal and Democratic Services

Recommended:

- 1. That the Employment Appeals Sub-Committee be renamed the Employment Appeals and Ethics Sub-Committee and has the powers and duties set out in Annex 1 delegated to it.**
- 2. That the Arrangements for Dealing with Complaints set out in Annex 2 be approved.**
- 3. Authority to deal with complaints in the circumstances referred to in sections 2 and 3 of the Arrangements for Dealing with Complaints (set out in Annex 2) be delegated to the Head of Legal & Democratic Services as Monitoring Officer.**
- 4. That the complaint form and guidance notes set out in Annex 3 and 4 respectively be approved.**
- 5. The Monitoring Officer be designated the Proper Officer for the purpose of Section 33 of the Localism Act 2011.**
- 6. Authority to grant dispensation to Members of Test Valley Borough Council pursuant to Section 33(2)(a), (b) and (d) be delegated to the Head of Legal & Democratic Services (LD01), the Common Law Solicitor (LD03) , the Assistant Solicitor (LD05) and the Head of Administration (LD02).**
- 7. Authority to grant dispensations to Members of Test Valley Borough Council pursuant to Section 33(2)(c) and (d) be delegated to the Employment Appeals & Ethics Sub-Committee.**
- 8. Authority be delegated to the Head of Legal & Democratic Services to make minor amendments to the Arrangements for Dealing with Complaints in consultation with the Chairman of the General Purposes Committee.**

SUMMARY:

- The Localism Act 2011 changes the ethical framework that applies to Councils within England.
- Each Council is free to adopt its own arrangements and procedures for dealing with complaints alleging failure to comply with a Council's Code of Conduct and for granting dispensations to its Members.
- This report provides for the arrangements and procedures for dealing with complaints and the granting of dispensations.

1 Introduction

- 1.1 The Localism Act 2011 (the Act) abolishes the Standards framework that was introduced by Local Government Act 2000.
- 1.2 On 4 July 2012 the Council approved a new Code of Conduct and delegated functions relating to ethical framework issues to this Committee.
- 1.3 This Committee has the task of determining the delegation of some of the elements of the functions to a sub-committee and the Monitoring Officer. The various elements are considered separately.

2 Complaints

- 2.1 Complaints alleging breach of the Member Code of Conduct by both Test Valley Borough Councillors and Parish and Town Councillors within the borough will undoubtedly be received. The Act provides that Councils must have arrangements for dealing with such complaints and that they can only be dealt with in accordance with the arrangements.
- 2.2 Under the previous regime the Council received a total of 12 complaints in the period since May 2008 of which 3 resulted in no action, 5 resulted in action other than an investigation (usually training of the councillor or whole council) and 4 were referred for investigation.
- 2.3 The arrangements that have been drawn up and are proposed are less bureaucratic than those under the previous Standards regime and it is likely some complaints can be dealt with by the Monitoring Officer. However, there will inevitably be a need for some complaints to be considered by a Committee. This Committee has 11 members and this is too many people to consider a complaint in the first instance and also to conduct a hearing, if necessary, after an investigation. The Employment Appeals Sub-Committee has 5 members which is considered an optimum number. This allows for unavailability of members when a Committee meeting is called and conflict of interest. It is therefore recommended that the functions of the Employment Appeals Sub-Committee are extended to include those set out in Annex 1 to the report and that it is renamed the Employment Appeals and Ethics Sub-Committee.

3 Arrangements for dealing with Complaints

- 3.1 As indicated above, the Act requires Councils to have arrangements for dealing with complaints. These have to cover all aspects, namely receipt of complaints and their initial consideration through to the procedure where a hearing is required. The arrangements are therefore necessarily detailed to provide for this. The arrangements for dealing with a complaint once received are divided into four parts. These are:

3.1.1 Initial action by the Monitoring Officer.

Initial action by the Monitoring Officer includes being able to dismiss complaints in the specified circumstances. Provision is also made for a copy of a complaint to be sent to the Member complained about and for him/her to be invited to submit some initial comments. The Monitoring Officer can also ask for further information to clarify the complaint. The purpose behind this is to enable the Monitoring Officer and Sub-Committee to have more information than has hitherto been available in deciding what further action, if any, to take in relation to a complaint. It is at this stage that the Monitoring Officer will also ask the Member if he/she wishes the view of the Independent Person to be invited. In the event that the complaint relates to Disclosable Pecuniary Interest, the Monitoring Officer is given the discretion, after consultation with the Independent Person, of referring it to the Police.

3.1.2 Alternative action by the Monitoring Officer.

This will enable the Monitoring Officer, with the agreement of the complainant, to try and negotiate an apology by the Member concerned to the complainant.

3.1.3 Initial assessment of the complaint.

This sets out the arrangements for the Sub-Committee to consider the complaint and to decide what further action should be taken. It is proposed there should be no right of appeal from this decision. Under the previous Standards regime, the legislation provided for an appeal against the initial assessment. This right was never exercised in relation to complaints considered by the Standards Assessment and Review Sub-Committee and it is not considered necessary, especially as more information should be available for the initial assessment.

3.1.4 Decision options at the initial assessment stage.

It will be noted that the Sub-Committee has four options open to it. These are to take no action, to attempt to resolve the matter informally between the parties, to arrange a hearing for the Sub-Committee and the independent person at which the parties can each state their case or, where the complaint is potentially complex, to arrange a formal investigation. With regard to the investigation, it is proposed that if the investigator considers there has not been a breach of the code, the Monitoring Officer will issue a formal finding to that effect after consultation with the Independent Person.

3.2 Appendix 1 to the arrangements sets out the circumstances in which the Sub-Committee will, at initial assessment stage, decide no further action should be taken.

- 3.3 The procedure for hearings, whether as a result of the Sub-Committee deciding at initial assessment stage that a hearing should take place, or following an investigation is set out in Appendix 2 to the arrangements. The intention is that both parties to the complaint should have the opportunity to put their case to the Sub-Committee. Under the previous Standards regime where a complaint had been investigated there was no provision in the legislation for the complainant to address the Sub-Committee at the hearing stage. Their case could only be put by the investigator. Some complainants felt somewhat aggrieved by this and it is considered appropriate, therefore, that this should be addressed by the procedures to be adopted for the future.
- 3.4 The Committee is asked to consider these arrangements and, if they consider them appropriate, approve them.

4 Complaint Form and Guidance

- 4.1 It is not essential that complaints are made on a specified form. However, it is helpful as it ensures that the complainant addresses the relevant issues. A complaint form and guidance for completing this are attached at Annex 3 and 4 respectively. These are based on the form and guidance used under the previous Standards regime.
- 4.2 Members are asked to consider these and approve them for use.

5 Dispensations

- 5.1 The Acts provides for the granting of dispensations to Members with pecuniary interests in matters to enable them to take part and vote in items in which the interest arises. Dispensations can only be granted in specific circumstances. If a dispensation is granted it must be for a specified period of time which cannot exceed four years. Any request for a dispensation must be made in writing to the Proper Officer of the authority.
- 5.2 Section 33(2) provides as follows:

A relevant authority may grant a dispensation under this section only if, after having had regard to all relevant circumstances, the authority:

- (a) considers that without the dispensation the number of persons prohibited by section 31(4) from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;
- (b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;
- (c) considers that granting the dispensation is in the interests of persons living in the authority's area;

- (d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the authority's executive; or
 - (e) considers that it is otherwise appropriate to grant a dispensation.
- 5.3 The reasons for granting the dispensations set out in sub-sections (a), (b), (d) are numerical. It is considered therefore appropriate that the power of granting such dispensations should be delegated to the Head of Legal & Democratic Services (post LD01), those lawyers that attend Committee, namely the Common Law Solicitor (LD03) and the Assistant Solicitor (LD05) and for occasions where there is no lawyer at a committee, the Head of Administration (LD02). The proposed delegations reflect this.
- 5.4 The reasons given in sub-sections (c) and (e) are however, of a different nature and it is considered appropriate that these should be determined by the Employment Appeals and Ethics Sub-Committee. Again, the delegation reflects this.
- 5.5 It is recommended that the Proper Officer for the purposes of Section 33 of the Localism Act 2011 should be the Monitoring Officer

6 Risk Management

- 6.1 An evaluation of the risks associated with the matters in this report indicate that further risk assessment is not needed because the issues covered previously are similar to those considered by the Standards Committee when it considered the procedures to be adopted in relation to the previous Standards regime.

7 Resource Implications

- 7.1 There are none other than the possible occasional costs of an investigation.

8 Legal Implications (Note: Of the chosen option)

- 8.1 The Council is required to put in place arrangements for dealing with complaints alleging failure to comply with the code of conduct.

9 Wards/Communities Affected

All wards and communities within the Borough are affected.

10 Conclusion

- 10.1 The Council is required to put in place arrangements for dealing with allegations of failure to comply with the Code of Conduct by both Borough Councillors and Parish and Town councillors within the Borough. It is appropriate that some elements of the procedures are delegated to a Sub-Committee and some to Officers. This report sets out those proposed delegations and they are recommended for approval.

Background Papers (Local Government Act 1972 Section 100D)

None

Confidentiality

It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.

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| Officer: | Susan Tovey | Ext: | 8401 |
| Report to: | General Purposes Committee | Date: | 25 July 2012 |