



Report of the Assistant Chief Executive (Corporate Governance)

Standards Committee

Date: 8th July 2009

Subject: Proposals for the creation of a Consideration and Hearings Sub-Committee

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

1. On 10th August 2008 the Standards Board for England published updated guidance on Standards Committee Determinations, which included a recommendation that Standards Committees establish a Consideration and Hearings Sub-Committee to receive completed investigation reports and conduct hearings. The guidance is issued under the Standards Committee (England) Regulations 2008, the Regulations are mandatory and this guidance must be taken into account by the Council.
2. The purpose of this report therefore is to ask Members of the Standards Committee to consider options for how the Committee might both receive and consider completed investigation reports and how hearings might be conducted. The options presented are to establish both a Consideration Sub-Committee (to receive completed investigation reports) and a Hearings Sub-Committee (to conduct hearings in relation to Leeds City Councillors and Parish and Town Councillors), or to establish a Consideration and Hearings Sub-Committee to carry out both functions. The Standards Committee are asked to reconsider this issue in light of the recent increase in the membership of the overall Committee and the updated guidance from the Standards Board for England.
3. Members of the Standards Committee are asked to consider the options and other procedural matters contained in this report, and to determine whether to appoint one or more Sub-Committees, and to authorise the Assistant Chief Executive (Corporate Governance) to make the necessary amendments to the Standards Committee Procedure Rules and Standards Committee Media Protocol to reflect these decisions. The detailed recommendations are set out in paragraph 7.1 in this report.

1.0 Purpose Of This Report

- 1.1 The purpose of this report is to ask Members of the Standards Committee to consider options for how the Committee might both receive and consider completed investigation reports and how hearings might be conducted. The options presented are to establish both a Consideration Sub-Committee (to receive completed investigation reports) and a Hearings Sub-Committee (to conduct hearings in relation to Leeds City Councillors and Parish and Town Councillors), or to establish a Consideration and Hearings Sub-Committee to carry out both functions. Members of the Standards Committee are asked to reconsider this issue in light of the recent increase in the membership of the overall Committee and the updated guidance from the Standards Board for England.

2.0 Background Information

- 2.1 The last time this issue was considered on 19th January 2006, the Standards Committee resolved that initially no hearings sub-committee should be established to deal with cases involving Leeds City Councillors and that the whole Committee should have the opportunity to be involved. The Committee also resolved that in the event of a tied vote, the Chair should have the casting vote.
- 2.2 However Members should note that at the time of the above decision the Standards Committee had a membership of six (plus two non-voting reserve members). Since the Annual Meeting on 21st May 2009, the membership of the Standards Committee has increased to 14 (plus one non-voting reserve member). Therefore the Standards Committee may wish to reconsider their decision.
- 2.3 On 16th March 2006, the Standards Committee resolved to create a Parish Council Hearings Sub-Committee, which was supported by the majority of Parish and Town Councils in Leeds. This Sub-Committee had a membership of four, including two Independent Members, one Parish Member and one City Councillor. This Sub-Committee never met and was dissolved by the Standards Committee on 1st July 2008 so that all cases would be considered in the same way.
- 2.4 On 10th August 2008 the Standards Board for England published updated guidance on Standards Committee Determinations, which included a recommendation that Standards Committees establish a Consideration and Hearings Sub-Committee to receive completed investigation reports and conduct hearings. The guidance reflects the Standards Committee (England) Regulations 2008, the Regulations are mandatory and this guidance must be taken into account by the Council. It should be noted that the establishment of a Sub-Committee to deal with the consideration of final investigation reports and to conduct hearings in relation to alleged breaches of the Members' Code of Conduct is not compulsory. However, the Standards Board for England states in their guidance that the Standards Committee "should appoint a sub-committee (the consideration and hearing sub-committee) to consider a Monitoring Officer's investigation report and to hold determination hearings." In the light of this guidance, the Standards Committee may wish to consider establishing one or more sub-committees to carry out these functions, as well as amend the terms of reference for the Assessment Sub-Committee (which currently include the function of considering completed investigation reports).

3.0 Main Issues

Establishment of one or more Sub-Committees

- 3.1 As set out at paragraph 2.4 above, the Standards Board guidance on Standards Committee Determinations recommends that the Standards Committee should appoint a Consideration and Hearings Sub-Committee to consider a Monitoring Officer's investigation report and to hold determination hearings.
- 3.2 A possible advantage of creating a Sub-Committee to consider such matters would be that meetings could be convened more quickly and easily with a smaller membership, and therefore determination hearings would be more likely to be held within the statutory timescales. In addition a smaller number of Members may be find it easier to reach a decision and would be less intimidating for the subject Member during a hearing.
- 3.3 If Members are of the view that a Sub-Committee should be established to carry out these functions they are invited to consider whether it should be one or two sub-committees which are established. Members may wish to consider the following factors in this regard:-
- 3.3.1 Although the Standards Board for England guidance refers to the creation of only one sub-committee the Standards Board for England have confirmed that it would be equally appropriate to establish two sub-committees: one to consider final investigation reports, and the other to conduct determination hearings.
- 3.3.2 Separation of the functions between two Sub-Committees would allow greater clarity and transparency in terms of the procedure adopted by the Standards Committee when dealing with an investigation report as set out in the Standards Committee Procedure Rules. Instead of one Consideration and Hearings Sub-Committee dealing with both the receipt of a final investigation report and the potential hearing in relation to the same matter, a Consideration Sub-Committee would receive the final investigation report, determine whether there is need for a hearing in relation to the matter and consider whether, on the basis of the report, there were any lessons to be learned for the Council.
- 3.3.3 The matter would then be referred on to the Hearings Sub-Committee, which would deal with any necessary pre-hearing matters, conduct the hearing, and apply any sanction in the event of a finding that the subject Member had indeed breached the Members' Code of Conduct. Some matters in the pre-hearing process can be decided by the Monitoring Officer in conjunction with the Chair of the Sub-Committee prior to the hearing. If the consideration and hearings functions are to be delegated to separate sub-committees, it will be necessary for there to be some certainty over the identity of the Chair of the Hearings Sub-Committee so that these decisions can be made as quickly as possible. Therefore it is proposed that the Chair of the Hearings Sub-Committee will usually be the Chair of the Standards Committee, unless they are prevented from doing so by virtue of a personal and prejudicial interest.
- 3.3.4 When the Consideration Sub-Committee receives the final investigation report into an alleged breach of the Members' Code of Conduct, the Standards Committee (England) Regulations 2008 require them to make one of three decisions, namely:
- (a) that it accepts the monitoring officer's finding of no failure ("a finding of acceptance"); or

(b) that the matter should be considered at a hearing of the standards committee conducted under regulation 18; or

(c) that the matter should be referred to the Adjudication Panel for determination.

Option (a) only applies in the event of the investigation report containing a finding of no failure. Clearly therefore, if the investigation Report contains a finding of breach, the Sub-Committee need only decide whether the hearing should be held locally or whether the matter should referred to the Adjudication Panel for determination.

- 3.3.5 If the investigation is conducted by an Ethical Standards Officer then the matter will only be referred to the Standards Committee if the ESO concludes that there has been a breach of the Code, and that that breach should be the subject of a hearing by the Standards Committee. If the ESO concludes that there has been no breach, or that there has been a breach but that there is no need for any further action, then the matter will not be referred back to the Standards Committee. Similarly if the ESO concludes that there has been a breach but that the breach should be the subject of a hearing by the Adjudication Panel, they will refer the matter straight to the Adjudication Panel for England. There is not therefore any need for the Standards Committee to discharge the consideration function in respect of investigation reports prepared by the Ethical Standards Officer.
- 3.3.6 Guidance from the Standards Board for England is clear that the same Members are able to perform both functions of consideration and hearing. There are therefore no legal restrictions or concerns in relation to the same Member being involved in both the consideration and hearing functions.

Proposed Membership of the Sub-Committee/s

- 3.4 The Standards Committee (England) Regulations 2008, make provision in relation to the composition of Standards Committees and their Sub-Committees. As with the Assessment and Review Sub-Committees, the quorum for the Sub-Committee/s would be three Members, including one Leeds City Councillor and one Independent Member. At least 25% of the Members of the Sub-Committee/s should be Independent Members and the Sub-Committee/s must be chaired by an Independent Member of the Standards Committee.
- 3.5 The Sub-Committee/s are not required to have a fixed membership, and a Parish Member need not be present unless the case under consideration concerns a Parish or Town Councillor. Further to this, as the Assessment and Review Sub-Committees make no findings of fact, a Member involved at the initial assessment stage or the review stage of the original complaint may participate in the subsequent stages of consideration and hearing, because a conflict of interest does not automatically arise. Guidance from the Standards Board for England is clear that the same Members are also able to perform both functions of consideration and hearing. There are therefore no legal restrictions or concerns in relation to the same Member being involved in both the consideration and hearing functions.
- 3.6 The Standards Board do not currently provide guidance on the number of Members who should sit on the Sub-Committee: however in their previous guidance on Standards Committee Determinations (published in 2003), the Standards Board recommended that either three or five Members should conduct local hearings in the interests of fairness and efficiency. An odd number of Members would make it easier for the Sub-Committee to reach consensus and would avoid a situation where the Chair has to use his casting vote.

- 3.7 The Standards Committee should note that regardless of the membership they decide on for the Consideration and Hearings Sub-Committee/s, the quorum for the meeting will always be three Members, including one Independent Member (who must Chair), one Leeds City Councillor¹, and one Parish Member (if the case involves a Parish Councillor).

Consideration Sub-Committee

- 3.8 If Members of the Standards Committee were minded to split the functions between two separate Sub-Committees, it is recommended that the membership of the Consideration Sub-Committee be as for the Assessment and Review Sub-Committees, which is as follows:

- 1 Independent Member (Chair of the Sub-Committee);
- 1 Parish Member (who, in terms of the quorum requirements, only needs to be present when matters relating to Parish and Town Councils are being considered);
- 2 Leeds City Councillors.

- 3.9 An advantage of this composition would be that Members could use one of their monthly diarised Sub-Committee meetings to hold the Consideration Sub-Committee meeting which would avoid delays in the process.

Proposals for either the Consideration and Hearings Sub-Committee or the Hearings Sub-Committee

- 3.10 If Members of the Standards Committee are minded to create a separate Hearings Sub-Committee it is proposed that the Chair of the Sub-Committee would be the Chair of the Standards Committee, unless this was not possible due to a personal and prejudicial interest. This would provide certainty over the identity of the Chair in relation to the pre-hearing process.

Sub-Committee/s of three Members.

- 3.11 In order to comply with the legislation as set out above, a Sub-Committee of three Members would need to comprise one Independent Member, one City Councillor and one Parish member. Such a Sub-Committee would be less imposing and therefore more likely to put the subject Member at their ease. However, should one Member of the Sub-Committee become ill, or have to withdraw as the result of some conflict (for example because they know one of the witnesses), this would leave the Sub-Committee inquorate and the hearing would not be able to continue. For this reason the Assistant Chief Executive (Corporate Governance) does not recommend a Sub-Committee of three.

Sub-Committee/s of four Members

- 3.12 A Sub-Committee of four Members would have the same membership as the Assessment and Review Sub-Committees which is as follows:

- 1 Independent Member (Chair of the Sub-Committee);

¹ As set out in Regulation 3(b) of the Standards Committee (England) Regulations 2008.

- 1 Parish Member (who, in terms of the quorum requirements, only needs to be present when matters relating to Parish and Town Councils are being considered); and
- 2 Leeds City Councillors.

This would not be in line with the guidance issued by the Standards Board which recommends an odd number of Members on a Sub-Committee, assisting the Members to reach consensus and therefore avoiding use of a casting vote.

Sub-Committee/s of five Members

3.13 A Sub-Committee of five Members would be comprised as follows:

- 2 Independent Members (one of whom is the Chair of the Sub-Committee);
- 1 Parish Members (who, in terms of the quorum requirements, only needs to be present when matters relating to Parish and Town Councils are being considered); and
- 2 Leeds City Councillors.

3.14 In the event of establishing Sub-Committee/s of four or five Members, Members of the Standards Committee will also need to decide whether they wish a Parish and Town Councillor to be a Member of the Sub-Committee/s regardless of whether the case involves a Parish Council, or whether they would wish to indicate that the Parish Member need not attend where the subject Member is a City Councillor. It should be noted that in a Sub-Committee of only four Members, if the Parish Member were not to attend the Sub-Committee would be vulnerable to the issues in relation to quorum set out at paragraph 3.11 above.

3.15 Apart from Leeds, three of the other Core Cities have Parish Councils within their boundaries, whose Consideration and Hearings Sub-Committees are comprised as follows:

- (a) Birmingham City Council – the Sub-Committee is comprised of six members (two independent members, three City Councillors and one Parish Councillor), regardless of whether the case involves a Parish Council;
- (b) Newcastle City Council – the Sub-Committee is comprised of four members. If the case involved a City Councillor, it would consist of two independent members and two City Councillors. If the case involved a Parish Councillor, it would consist of two independent members, one City Councillor and one Parish Councillor; and
- (c) Sheffield City Council – do not currently have a Consideration and Hearings Sub-Committee, however they have indicated that a Sub-Committee would be set up as required, and would consist of five members (two independent members, two City Councillors and one Parish Councillor).

3.16 These options were presented to the Leader and Deputy Leader of Council who favour the option outlined in paragraph 3.13.

Terms of Reference of the Sub-Committee/s

- 3.17 Currently the Assessment Sub-Committee have been delegated the function of receiving completed investigation reports, and the full Standards Committee has retained the function of holding determination hearings. The appropriate terms of reference for any Sub-Committees which the Standards Committee resolve to establish can be approved by the Standards Committee without reference to the General Purposes Committee and Full Council. Draft terms of reference for a Consideration and Hearings Sub-Committee are attached at Appendix 1a and alternative terms of reference for a Consideration Sub-Committee and separate Hearings Sub-Committee are attached as Appendix 1b.
- 3.18 Draft terms of reference for the Assessment Sub-Committee (with the consideration function removed) are attached as Appendix 2. Again these can be approved by the Standards Committee without requiring further approval from the General Purposes Committee or Full Council.

The Standards Committee Procedure Rules

- 3.19 The procedures to be adopted by the Standards Committee and its Sub-Committees in relation to allegations that Members have failed to abide by the Members' Code of Conduct are set out in the Standards Committee Procedure Rules. It will be necessary to amend these rules to give effect to the decision of Members in relation to the establishment of one or more Sub-Committees to discharge the functions of considering investigation reports and holding determination hearings. Members are requested to authorise the Assistant Chief Executive (Corporate Governance) to make the necessary amendments to bring their resolutions into effect.
- 3.20 In addition the Assistant Chief Executive (Corporate Governance) has noted the following matters which arise from a close reading of the guidance issued by the Standards Board for England. Members are requested to consider the matters raised and to indicate how they would wish to proceed. Members are then asked to authorise the Assistant Chief Executive (Corporate Governance) to make the appropriate changes to the Standards Committee Procedure Rules to bring these resolutions into effect.

The Pre-Hearing Process

- 3.21 The pre-hearing process is intended to ensure that the hearing can be dealt with as fairly and economically as possible. It does so by alerting the parties and the Sub-Committee to potential areas of difficulty and allows them to be resolved before the hearing itself. The pre-hearing process is used to:
- Identify whether the subject Member disagrees with any of the findings of fact in the investigation report;
 - Identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide;
 - Identify whether evidence about those disagreements will need to be heard during the hearing;
 - Decide whether there are any parts of the hearing that are likely to be held in private; and
 - Decide whether any parts of the investigation report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain 'exempt' information.

- 3.22 Some matters in the pre-hearing process can be dealt with in writing, with decisions made by one person. The key matters to be decided in this way are the date, time and location for the hearing. The guidance recommends that these decisions are made by the Monitoring Officer or other suitable officer. However the Standards Committee Procedure Rules, as currently drafted, give the power to make these decisions to the Chair of the Committee. It is recommended that in order to comply with the guidance these decisions are expressed as being made by the Monitoring Officer in consultation with the Chair.
- 3.23 The remaining issues within the pre-hearing process fall to be dealt with by the Sub-Committee. Members are asked to resolve whether they are content for this to be the case or whether they would wish to delegate any of the matters set out in paragraph 3.21 above to the Monitoring Officer to decide in consultation with the Chair of the Sub-Committee.
- 3.24 Members should note that decisions regarding whether the Sub-Committee consents to the subject Member being represented by a non-legally qualified representative, and the determination of the number of witnesses to be called, can only be made by the Sub-Committee carrying out the hearing. The Standards Board have advised that the Standards Committee could ask the Monitoring Officer to make an initial decision and recommendation to the Sub-Committee on these issues. The Monitoring Officer could consult with the Sub-Committee Chair in making the recommendation. The subject Member should then be informed of the recommendation and the reasons for it before the meeting. The decision will then need to be made formally by the Sub-Committee at the commencement of the hearing, and the Sub-Committee are able to reject any recommendation they see fit.
- 3.25 The Standards Committee Procedure Rules, as currently drafted, require the chair of the Sub-Committee to prepare the pre-hearing summary for the parties. It is recommended that this summary should, for practical reasons, instead be drafted by the Monitoring Officer, in consultation with the Chair.

Application of the Local Government Act 1972

- 3.26 Regulation 8 of the Standards Committee (England) Regulations 2008 deals with how Part 5A of the Local Government Act 1972 applies to meetings of the Standards Committee or its sub-committees in relation to allegations of failure to comply with the Members' Code of Conduct. In particular Regulation 8(6) allows the Sub-Committee's consideration of an investigator's report to be considered as exempt information, as long as the Sub-Committee consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The provision applies similarly to determination hearings. These decisions will clearly need to be made on a case by case basis.
- 3.27 The Consideration and Hearings Sub-Committee will differ from the Assessment and Review Sub-Committees in this regard, whose meetings are not subject to the usual notice and publicity requirements contained in the Local Government Act 2000, and instead are subject to the requirements outlined in Regulation 8(5) of the Standards Committee (England) Regulations 2008. As such they meet in private and all reports and considerations are also private.

The Hearing

- 3.28 The consideration meeting will always be separate from the meeting at which the hearing is conducted. The hearing must take place within three months of the final

investigation report being received, but no sooner than 14 days after the subject Member receives a copy of the report (unless they agree that it can be held sooner).

- 3.29 The Standards Committee Procedure Rules make provision for dealing with disputes as to the findings of facts which have been identified through the pre-hearing process. The Standards Board guidance makes additional provision for dealing with disputes which arise after the pre-hearing process, enabling the sub-committee to determine whether they should be heard (either at the current time or at an adjourned meeting of the sub-committee) or whether the late disputed facts should be accepted as set out in the report. Members are asked to indicate whether they are content for the Standards Committee Procedure Rules to be amended to include these additional provisions.
- 3.30 There are provisions throughout the recommended procedure set out in the Standards Board for England Guidance enabling the sub-committee to ask questions of the parties and to seek appropriate legal advice. Members are asked to confirm that they would wish the Standards Committee Procedure Rules to reflect these recommended provisions.

Consequential amendments to the Constitution

- 3.31 If Members of the Standards Committee are minded to create a Consideration and Hearings Sub-Committee, or separate Consideration Sub-Committee and Hearings Sub-Committee, and to remove the function of receiving completed investigation reports from the Assessment Sub-Committee, these changes will need to be reflected in both the Standards Committee Procedure Rules and the Standards Committee Media Protocol.
- 3.32 The amended Media Protocol is not attached to this report, although Members are asked to approve the appropriate name changes. The Standards Committee has the authority to approve amendments to both of the above documents without further reference to the General Purposes Committee or Full Council.

4.0 Implications For Council Policy And Governance

- 4.1 The updated guidance from the Standards Board reflects the Standards Committee (England) Regulations 2008. The Regulations are mandatory and according to Regulation 18(1)(a) when conducting hearings the guidance must be taken into account by the Council.

5.0 Legal And Resource Implications

- 5.1 The proposals in this report will require a number of changes to the Constitution, some of which can be approved by the Standards Committee, and others which need to be amended by the Assistant Chief Executive (Corporate Governance) under her delegated powers. These changes are outlined in the main body of the report and in the recommendations.
- 5.2 There are no resource implications to this report.

6.0 Conclusions

- 6.1 Members of the Standards Committee are asked to consider creating one or more Sub-Committees to receive completed investigation reports and conduct hearings in relation to Leeds City Councillors and Parish and Town Councillors. The Standards

Committee are being asked to reconsider this issue in light of the recent increase in the membership of the overall Committee and the updated guidance from the Standards Board for England.

- 6.2 On 10th August 2008 the Standards Board for England published updated guidance on Standards Committee Determinations, which included a recommendation that Standards Committees establish a Consideration and Hearings Sub-Committee to receive completed investigation reports and conduct hearings. The guidance reflects the Standards Committee (England) Regulations 2008, the Regulations are mandatory and this guidance must be taken into account by the Council. The Standards Board for England has confirmed that it would be appropriate to establish more than one sub-committee to discharge these functions. In the light of this guidance, the Standards Committee may wish to consider establishing a Consideration and Hearings Sub-Committee, or separate Consideration Sub-Committee and Hearings Sub-Committee, as well as amend the terms of reference for the Assessment Sub-Committee (which currently include the function of considering completed investigation reports).
- 6.3 A close reading of the guidance indicates a number of areas in relation to which there is slight divergence between the guidance and the existing Standards Committee Procedure Rules. These areas of divergence need resolution and Members are invited to consider the relevant points, in order that the Standards Committee Procedure Rules can be amended as appropriate.

7.0 Recommendations

- 7.1 Members of the Standards Committee are asked to:
- Determine whether to appoint one or more Sub-Committees to discharge the functions of receiving final investigation reports and to hold determination hearings. (The Consideration and Hearings Sub-Committee, or the Consideration Sub-Committee and the Hearings Sub-Committee);
 - Determine the membership of the proposed Sub-Committee/s (including whether, if the Standards Committee decide to create two separate Sub-Committees, the Chair of the Hearings Sub-Committee should normally be the Chair of the Standards Committee);
 - Determine the Terms of Reference of the proposed Sub-Committees;
 - Approve the amended Terms of Reference of the Assessment Sub-Committee;
 - Authorise the Assistant Chief Executive (Corporate Governance) to make the necessary amendments to the Standards Committee Procedure Rules in relation to:
 - Where responsibility for matters in the pre-hearing process (which can be dealt with in writing) should rest;
 - Which matters set out in paragraph 3.21 should be delegated to the Monitoring Officer to decide in consultation with the Chair of the Sub-Committee;
 - Whether the pre-hearing summary should be prepared by the Monitoring Officer in conjunction with the Chair of the Sub-Committee;

- The further Standards Board guidance on the handling of disputes over the findings of fact which arise after the pre hearing process;
- The addition of the further provisions to enable the Sub-Committee to ask questions of the parties and to seek appropriate legal advice throughout the hearing process outlined in the Standards Board for England's model procedure; and
- Authorise the necessary consequential amendments to the Standards Committee Media Protocol.

Background Documents

"Standards Committee Determinations" by the Standards Board for England (published August 2008)

"Standards Committee Determinations" by the Standards Board for England (published 2003)

Standards Committee (England) Regulations 2008

Minutes of the Standards Committee, 19th January 2006

Minutes of the Standards Committee, 16th March 2006

Minutes of the Standards Committee, 1st July 2008