

STANDARDS COMMITTEE
16th March 2011

Present: Councillors: Duncan England, Sheila Matthews, Pat Rutherford,
Claire Vickers

Parish Council Representatives: David Coldwell, Alan Grant,
David Herson

Independent Representatives: Eric Blackburn (Chairman), David
Tilsley

Apologies: Councillors: Andrew Baldwin, Keith Wilkins

Independent Representatives: Mary Jagger (Vice-Chairman),
Paul Byford

SC/32 **MINUTES**

The minutes of the meeting of the Committee held on 8th December 2010 were approved as a correct record and signed by the Chairman.

SC/33 **DECLARATIONS OF INTEREST**

There were no declarations of interest.

SC/34 **ANNOUNCEMENTS**

The Chairman wished the District and Parish Members of the Committee every success for the upcoming elections. In the event of their not being re-elected, he thanked them for their services to the Committee.

The Monitoring Officer announced that the election of the Chairman and Vice-Chairman of the Committee for the next municipal year would take place on 8th June 2011.

SC/35 **MINUTES OF THE LOCAL ASSESSMENT SUB-COMMITTEE ON 22ND DECEMBER 2010**

The minutes of the meeting of the Local Assessment Sub-Committee held on 22nd December 2010 were received.

SC/36 **MINUTES OF THE LOCAL REVIEW SUB-COMMITTEE ON 12TH JANUARY 2011**

The minutes of the meeting of the Local Review Sub-Committee held on 12th January 2011 were received.

SC/37 **STANDARDS COMMITTEE REPORTS AND DOCUMENTS AVAILABLE FOR INSPECTION**

The list was noted.

SC/38 **REPORT BY PARISH COUNCIL REPRESENTATIVES**

Alan Grant reported that at the most recent meeting of HALC Ian Davison had given a presentation on behalf of SALC regarding the impact of the Localism Bill on parishes. This had included information on the abolition of the Code of Conduct and the standards regime, the new statutory duty to observe and maintain high standards of conduct, the new criminal offence for failing to register interests correctly and the possibility of public bodies retaining standards committees.

Concern had been expressed about the possible legal consequences for parishes and the lack of clarity surrounding the changes. The potential lack of help from the Monitoring Officer to the parishes in the future was another concern and it had been recognised that SALC would likely be more important to parishes in the future. The possibility of NALC producing a model Code of Conduct had also been discussed and advice was awaited.

The view of the parish councils over the changes to standards regime was very varied. Some parishes, mainly those who not had many standards cases to deal with, welcomed the removal of bureaucracy. Parishes which had experienced more cases were concerned about the fact that there would be less help to combat difficult situations of conflict. The current regime provided them with the comfort of being able to refer cases to a third party, the Standards Committee. Any changes would direct time away from other important business. It was also noted that the timing was very bad since parish council elections were to take place in May 2011, following which new councillors would have to be trained on the current regime only for it to be abolished within the following six months.

The next meeting of HALC would be on 24th May 2011. Nominations for parish representatives for the Standards Committee would be made at this meeting.

SC/39 **REPORT BY MEMBERS OF THE ASSOCIATION OF INDEPENDENT MEMBERS OF STANDARDS COMMITTEES IN ENGLAND (AIMSCE)**

David Tilsley reported that AIMSCE had officially been wound up. Reports from members of AIMSCE would be removed as an item on the Committee agenda for future meetings.

SC/40 **ETHICAL FRAMEWORK UPDATE**

The Monitoring Officer reported on developments in the ethical framework that affected the role and activities of Councillors and the Council's business, including:

- **Public Bodies Bill:** The Bill had been introduced into the House of Lords on 28th October 2010 to set a statutory framework for the government's proposals to review a large number of non-departmental public bodies, some non-ministerial departments and some public corporations. The Bill was at committee stage and due to come into force two months after it received Royal Assent. Standards for England was included in the seventh schedule. Reference was also made within Schedule 24 of the Localism Bill to the repeal of the provisions in the Local Government Act 2000 regarding the creation and powers of Standards for England.
- **The Department for Communities and Local Government (DCLG) Business Plan:** This identified the progress which had been made in delivering the government's agenda, of which the Localism Bill formed a major part.
- **The Localism Bill:** On 13th December 2010 the Localism Bill had been introduced in the House of Commons. On 1st February the Bill had entered the committee stage which had been concluded by 10th March 2011. It was anticipated that the Bill would reach Royal Assent sometime in the autumn. Some provisions would become effective on Royal Assent, others within two months of Royal Assent and some in the spring 2012.

The Bill contained 171 pages together with 406 pages of schedules. The scope of the Bill covered five broad areas:

- Decentralisation and the strengthening of local democracy (Part 1) – this part included a general power of competence, changes to governance arrangements, provision of directly elected mayors, pre-determination and abolition of the standards regime, pay accountability and abolition of bin taxes.
- Community Empowerment (Part 4) – this part included a right to veto excessive council tax rises by referendum, a community right to challenge, a community right to buy and power to instigate local referendums on local issues.
- Reform of the planning system (Part 5) – this part included the abolition of Regional Strategies, changes to the Community Infrastructure Levy, Local Plan reform, introduction of Neighbourhood Plans, a community right to build, duty to co-operate between public bodies, pre-application consultation by developers, enforcement and replacement of Infrastructure Planning Commission;
- Social Housing Reform (Part 6) – this part included social housing allocation reform, reform of homeless legislation, social housing tenure reform, reform to council housing finance, the introduction of a national home swap scheme, reform of social housing

SC/40 Ethical Framework Update (cont.)

- regulation, facilitating moves out of the social rented sector and the abolition of home information packs; and
- London (Part 7) –This part included a range of powers designed to strengthen London’s governance arrangements.

The provisions relevant to the proposed revised standards regime were principally contained in clauses 14-20 and schedule 4 to the Bill.

The DCLG had produced an impact assessment: Impact Assessment “Localism Bill: The abolition of the Standards Board regime, clarification of the law on predetermination and the requirement to register and declare interests”, which provided an insight into the government’s policy and the evidence base for their proposals. It was considered that the assessment implied that local authorities would retain at least some aspects of the current standards regime. It included a risk assessment which recognised that the abolition of the code of conduct could result in standards of conduct falling. This implied that a code of some sort would be necessary but no model code was proposed.

A separate paper outlining the key implications for standards and the ethical framework contained in the Bill had been presented to Members. Members discussed the implications and the challenges they would present to both the District Council and the parish councils:

The Bill proposed a number of key changes:

1. the repeal of large sections of the Local Government Act 2000 and Local Government and Housing Act 1989 resulting in authorities being allowed to make their own decisions as to how to regulate the conduct of their members; and
 2. the introduction of a duty to promote and maintain high standards of conduct; and
 3. the adoption of a Code of Conduct would become voluntary; and
 4. the introduction of a criminal offence for failing to register and disclose interests appropriately.
- It was proposed that the first port of call in relation to complaints concerning a failure to register and declare interests correctly (whilst subject to a criminal sanction) would be the Monitoring Officer “or equivalent” of the authority concerned. This could result in a conflicting role for the Monitoring Officer if expected to be both the investigator and a potential witness. It appeared that “the equivalent” in relation to parish councils would be the parish clerk.
 - The Code of Conduct adopted by each authority would cease to have effect. However, it was considered that it would not really be possible to promote and maintain high standards of conduct without adopting some form of a voluntary code. Some professional associations such as the Association of Council Secretaries and Solicitors were looking at creating a model code of conduct whilst others, such as the Local Government Association, considered that there should not be a model code. It was considered that the lack of a code may weaken the personal discipline of members. The Code

SC/40 Ethical Framework Update (cont.)

provided a structure and councillors knew whether they were operating inside or outside the rules.

- There would be a host of problems in administering any voluntary code for parish councils. The existence of a code would necessitate a complaints mechanism to deal with alleged breaches. Since Horsham District Council would no longer be required to deal with such complaints on the behalf of the parish councils they would potentially need to extend their complaints procedures or set up a separate panel of members. This would be particularly problematic for smaller parishes with a restricted number of members and it would difficult to provide an appeal mechanism. It was suggested that the parishes should raise their particular concerns with their local MP.
- The relationship between the new provisions on registering interests and any voluntary code of conduct was unclear. The government seemed to intend to split the two completely but as drafted the Code could still contain elements relating to interests.
- Undertakings to comply with the Code would also cease to have effect when the relevant codes ceased to have effect. This would result in newly elected councillors following local elections in May 2011 being expected to sign undertakings which would then cease to have effect.
- If a local authority wanted to adopt a voluntary standards committee, it would appear it could only be comprised of elected councillors. Although independent and parish members could technically still sit on such a committee they would not have any voting powers- the legislation which gave such members voting rights was to be repealed.
- It was noted that any voluntary standards committee would not have the power to suspend councillors for behaving below the standard expected. It was considered that the sanctions which would be available would not be a sufficient deterrent for poor behaviour.
- It was considered that the proposals with regard to criminal sanctions for interests would put people off standing to be councillors.
- Any decisions on the future of standards at the Council would not be made until after the local elections in May 2011. However, it was considered that:
 1. a code of conduct should be retained to satisfy the duty to promote and maintain high standards of conduct; and
 2. a standards committee may need to be retained to receive, investigate and make decisions on written complaints on a local code, promote the code through training, act as first port of call for complaints relating to failures to disclose or register interests, assist members to avoid criminal sanctions about interests and comply with regulations on interests.

SC/40 Ethical Framework Update (cont.)

- **Government proposals to reform law on bias and predetermination:** Clause 13 of the Localism Bill sought to 'clarify' the law on bias in relation to local councillors. The proposals were actually changes to the rules on evidence. Acts or anything said by councillors would no longer be admissible in court as evidence of predetermination.
- **Guide to Maintaining High Ethical Standards in Local Government:** The Local Government Association, in association with the Association of Council Secretaries and Solicitors, has issued a guide for authorities: "Maintaining High Ethical Standards in Local Government". The guide summarised the Localism Bill's standards proposals and outlined other conduct controls which existed in addition to it which justified the abolition of the Code of Conduct, including fiduciary duties, interests and libel. It provided a summary of the corporate governance controls existing in addition to the statutory regime.
- **Code of Recommended Practice on Local Authority Publicity:** The Code of Recommended Practice on Local Authority Publicity was originally introduced in 1988 and amended by the last government in 2001. The government had been consulting on a new Code, intended to replace the existing Code for all local authorities in England. Local Authorities were required to have regard to the Publicity Code in coming to any decisions on publicity. The Members' Code of Conduct provided in paragraph 6(c) that a member must have regard to any applicable local authority code of publicity made under the Local Government Act 1986.

There was no proposal to change the statutory provisions so the revised Code would be based entirely on current legislation and would be issued under powers conferred on the Secretary of State under section 4(1) of the Local Government Act 1986.

The Department for Communities and Local Government Select Committee had undertaken an inquiry into the revised Publicity Code and published a report which questioned some of the provisions in the Government's Draft Code of Recommended Practice on Local Authority Publicity which they considered ran counter to "localist" principles and had potentially negative implications for local democracy.

The revised code provided specific rules which prevented municipal newspapers being published more often than four times a year (monthly in the case of a parish council) and to prevent the hiring of lobbyists. The revised code included seven central principles which make sure that council publicity is lawful, cost effective, objective, even handed and appropriate and that it has regard to equality and diversity and is issued with care during periods of heightened sensitivity.
- **Forthcoming District/Parish referendum/election:** The Monitoring Officer had provided guidance around the elections "purdah period" now more appropriately referred to as the "pre-election period". Copies had been sent to District Councillors and also some parish council clerks. The pre-election period would commence on 25th March 2011 and conclude on Thursday 5th May 2011 (Polling Day).

SC/40 Ethical Framework Update (cont.)

- **Parish Clerks' Meeting:** The Monitoring Officer had attended the Society of Local Council Clerk's meeting on 15th February 2011 and provided an update arising from the Committee's last meeting in December 2010. A general update had also been provided on the Coalition Government's proposals in the Localism Bill in relation to the standards regime and in particular the government's desired abolition of Standards for England. The Clerks had been concerned about the potential loss of support to parish councils in relation to member conduct cases from Horsham District Council.
- **Local Assessment, Review, Other Action, Investigations and Determinations:** Since the last meeting in December one new complaint had been received for assessment. No other action had been directed by the Local Assessment Sub-Committee. Five requests for a review of the decision of the Local Assessment Sub-Committee had been received. It had been necessary to co-opt Councillor Graham Tyler, a Member from Arun District Council's Standards Committee. The Chief Executive had exercised delegated authority in consultation with the Chairman of the Council and the Chairman of this Committee. The Local Review Sub-Committee had upheld the original decision in all five cases.
- **Freedom of Information Requests:** The government had consulted on the Code of Recommended Practice for local authorities on data transparency. Consultation had closed on 14th March 2011. All items of expenditure over £500 were now published on the Council's website on a monthly basis, in line with the Local Government Group guidance. This had generated lots of requests. It was noted that the requirement applied equally to parish councils. Lots of parish councils did not have websites on which to publish such data. However, as long as such information was collected and was made available on request this would suffice. Publishing the expenditure on a notice board or somewhere similar would also suffice.
The Ministry of Justice had announced the intention of the Government to extend the scope of the Freedom of Information Act 2000 so that it applied to more public bodies. This was contained in the Protection of Freedoms Bill Part 6.
- **Performance Management:** The Complaints and Information Officer had attended the Performance Management Working Group meeting on 2nd February 2011 to report on details of all complaints, compliments and suggestions to the Council from 1st October to 31st December 2010. During that period the Council had received 54 complaints, 0 suggestions and 37 compliments. During the previous monitoring period of 1st July to 30th September 2010 the Council had received 64 complaints, no suggestions and 75 compliments.
- **Data Protection:** One complaint had been received since the last meeting of the Committee. This alleged that the Council had breached the Data Protection Act by not providing a requestor with a recording of telephone calls they had made to the Council offices and also by

SC/40 Ethical Framework Update (cont.)

discussing details of their benefit claims with the complainant's partner without their consent. The Data Protection Officer was looking at data protection issues across both the Council and CenSus and training was to be provided.

The Information Commissioner's Office had written to all councillors to urge them to check if they are fulfilling their obligations. Advice about Elected Members' obligations under the Data Protection Act had been published in the Members' Bulletin in January 2011.

- **Regulation of Investigatory Powers Act 2000 (RIPA):** The Office of Surveillance Commissioners (OSC) had released a new Procedures and Guidance document which formed the basis upon which inspections would be conducted and performance assessed by the OSC. The OSC had stated that the document must be "properly promoted by and made accessible to all members of each public authority...and Authorising Officers are expected to retain a personal copy". This document had been published on the intranet and hard copies were to be sent to each Authorising Officer. The Scrutiny and Overview Committee, which had a role in RIPA oversight, would be made aware of the new document. The OSC would be conducting an inspection of the Council's policies and procedures on 16th June 2011.
- **A Local Government Ombudsman's case update for January to March 2011** was presented.
- **A Standards for England case review for January to March 2011** was presented.
- **Membership of the Committee:** The terms of two Independent Members, Paul Byford and David Tilsley, would expire in June 2011. The Standards Committee (England) Regulations 2008/1085 and Standards for England guidance provided that independent members could serve no more than two terms of four years, could not be automatically reappointed, and must go through a recruitment process. In view of the changes proposed to the standards regime Standards for England had issued revised advice stating that as long as the original appointment of independent members had been carried out in accordance with all the correct legal requirements at the time an authority could extend that term for a further period. This could only be done during the term of office of an existing independent member and by approval from full Council. The Committee considered that the terms of both Paul Byford and David Tilsley should be extended until June 2012 or until such time as the Standards Committee was disbanded or reconstituted, whichever was the sooner. The Committee resolved to recommend this to Council for approval.
- **Committee on Standards in Public Life:** The Independent Committee on Standards in Public Life had published its response to the consultation paper prepared by the Independent Parliamentary Standards Authority for their first review of the MP's expenses and allowances scheme. Some of the principles the Committee explained would be relevant to the council's member expenses arrangements.

SC/40 Ethical Framework Update (cont.)

- **Constitution update:** Following the management team restructure the Scheme of Delegation to Officers had been revised. Council had approved changes promoted by the Director of Corporate Resources to the Scheme of Delegation to Officers in April 2010. Consequential amendments to the remainder of the Constitution arising from the restructure had also been approved and were being prepared by the Director of Corporate Resources. A Constitution Advisory Group had also been formed to keep abreast of further changes to the Constitution which were either required as a result of legislation or considered desirable by members. A further constitution update report would be presented to Council in April 2011 by the Director of Corporate Resources.
- **Members' Bulletin.**
- **Duty to Promote Standards:** A press release had been published in February 2011 highlighting the fact that the current standards regime would continue to operate until the relevant provisions in the Localism Bill came into force. Until such a time complaints regarding the conduct of elected members would still be considered by the Standards Committee.
- **Standards Annual Report:** In 2008 and 2009 the Standards Annual Report had been presented to Council in the form of an oral report by the Chairman. This year, in addition to the usual oral report, the Standards Annual Report would be a written document. A preliminary draft had been prepared. The final version would be presented to Council on 13th April 2011.
- **Register of Interests annual update:** Since the last meeting the majority of the outstanding forms had now been received.

RESOLVED

- (i) That the matters set out in the report be noted.
- (ii) That the exercise of the Chief Executive's delegated authority be noted.

REASON

To ensure that the Committee, the Members of the Council and others to whom the report is circulated are kept up to date with developments in the ethical framework.

SC/40 Ethical Framework Update (cont.)

RECOMMENDED TO COUNCIL

That the terms of Paul Byford and David Tilsey as independent members of the Standards Committee be extended until June 2012 or until such time as the Standards Committee is disbanded or reconstituted under the Localism Bill, whichever is the sooner.

REASON

To enable the Standards Committee to effectively deal with its statutory responsibilities under the Standards Committee (England) Regulations 2008.

SC/41 THE OMBUDSMAN UPDATE – MARCH 2011

The Monitoring Officer reported on the developments, volume and nature of complaints about the Council to the Local Government Ombudsman, including figures for the 2010/11 reporting year.

Fourteen complaints had been received about the Council in the previous 11 months from 1st April 2010 to 28th February 2011; this compared to fourteen which had been received in the 12 months preceding this. The meeting of the Committee was earlier this year than it had been in 2010, which led to the comparison of an 11 month period with a 12 month period.

Six of the complaints had been deemed premature since they had not yet been through the Council's corporate complaints mechanism. Five had been determined as having no or insufficient evidence of maladministration. Two had been determined as Ombudsman's discretion. One was ongoing.

The Annual Review Letter from the Ombudsman was due to be received by the Council at the end of March 2011.

SC/42 URGENT ITEMS

There were no urgent matters to be considered.

The meeting finished at 11.35am having commenced at 10.03am.

CHAIRMAN