

REPORT OF STANDARDS COMMITTEE

(Meetings held 27 February and 10 April 2001)

1. CONSULTATION PAPER ON THE DRAFT MODEL CODE OF CONDUCT FOR MEMBERS (REPORT A - 10 APRIL 2001) (MINUTE NO.19).

The Committee has considered a proposed response to a Government consultation paper on a Draft Model Code of Conduct for Members and Co-opted Members of Local Authorities in England. Responses were required by 20 April. When the Model Code has been agreed by the Government and by both Houses of Parliament, the Council will, within six months, have to adopt a local Code of Conduct incorporating the mandatory elements of what will then be the new national Model Code.

All members of the Council received copies of the report considered by the Committee. This set out the officers' detailed recommendations for the Council's response. The officers' recommendations were agreed, together with some additional comments the Committee wished included. A copy of the agreed response has been circulated to all members of the Council.

2. COMPLAINTS PROCEDURE FOR MEMBERS (REPORT B - 10 APRIL 2001) (MINUTE NO. 20).

The Council's Standards Panel has responsibility for dealing with complaints against Members. The procedures for dealing with these complaints and operational arrangements for the Panel were agreed by the Council on 28 February 2000.

The agreed procedures require a Monitoring Team comprising the Chairman of the Standards Committee, the Chief Executive and the Head of Legal and Democratic Services to look at any complaints and to come to a judgement on whether there is a prima facie case to answer which requires a hearing by the Standards Panel. This process was designed to filter out any frivolous or vexatious complaints. The Committee recommends amendments to this procedure in the light of the Human Rights legislation. It is imperative, following the implementation of the Human Rights legislation that individuals (including Members) obtain a fair and impartial hearing that adheres to the rules of natural justice.

The Committee has heard the officers' view that it is inappropriate for members of the Monitoring Team (the Chairman of the Standards Committee, the Chief Executive and the Head of Legal and Democratic Services), having assessed whether or not there is a prima facie case to answer, to take part in any proceedings of the Standards Panel if the matter is referred to a Panel for hearing. As it is considered inappropriate to exclude the Chairman of the Committee and the Head of Legal and Democratic Services from participation in hearings of the Panel, the Committee recommends a change in the composition of the Monitoring Team. It is proposed that, in future, the Team comprise one member of the Standards Committee (who will not then be entitled to sit on any Panel hearing that might result), selected by the Chief Executive, and the Chief Executive.

A few other minor changes to the procedures to reflect the Monitoring Team's role are recommended. These are shown in the attached Appendix 1, with additional words shown in bold italics.

The Committee wishes the Council to be aware that legislation regulating how Standards Committees and Panels will operate is expected in the near future. It might therefore prove necessary to amend further the procedures for hearing complaints in line with that legislation.

RECOMMENDED:

- (a) ***That the Monitoring Team be reconstituted to include the following persons:-***
- ***The Council's Chief Executive or another Director nominated by him.***
 - ***A Member of the Standards Committee, selected by the Chief Executive, who will not be a member of the Standards Panel.***
- (b) ***That the Monitoring Team be simply charged with the responsibility of sieving out those complaints which are considered to be frivolous or vexatious with a view to referring to the Standards Panel only those complaints which require further investigation or consideration.***
- (c) ***That the Council's procedure be amended to reflect these changes in accordance with Appendix 1 to this report.***

3. REVIEW OF MEMBERS' ALLOWANCES SCHEME (REPORT B - 27 FEBRUARY 2001) (MINUTE NO. 15) (REPORT C - 10 APRIL 2001) (MINUTE NO. 21)

Following the Council's request on 30 October 2000 for the new Members' Allowances Scheme to be reviewed after six months, the Committee has considered the results of a preliminary questionnaire sent to members in February 2001.

37 Members responded to the questionnaire. The majority of those who responded felt that more experience of the new political management structure needed to be gained before undertaking a full review of the Scheme. Members were also mindful of the fact that the Government is shortly to publish new regulations on allowances. The Committee considered that it was too soon to undertake a comprehensive review of the Allowances Scheme, but asked for further details of possible job evaluation of members' roles. This information was submitted to the Committee on 10 April. A model and scoring mechanism could be set up (the services of a Consultant would be required for this), and this would need to be followed by the scoring of individual members' roles.

A significant development between meetings of the Committee was the publication of a DETR Draft Guidance document on Members' Allowances, which has implications for the job evaluation exercise.

The Government intends to require Councils to establish and maintain an Independent Remuneration Panel whose role it will be to make recommendations on Members' Allowances Schemes to the Authority. This is to enable a body of individuals, totally independent of the authority, to assess what members should be paid. Local Authorities must have regard to the advice of the Panel and will not be able to amend, revoke or adopt a scheme without having received advice from the Panel. This Council has already had a Panel to advise on the current scheme, which could remain in place until 31 March 2002. However, the Draft Guidance says that Councils will need to begin the process of establishing and appointing their

panels from 4 May 2001. In the light of this the Committee accepts that progressing with any work on evaluation of members' roles would be premature, given that it will be for the Independent Panel to decide on the type of information they wish to use in formulating a scheme of allowances. The Committee therefore intends, once the Regulations on Members' Allowances are available, to consider the appointment of the Panel and then to refer to the Panel the question of whether or not job evaluation should be undertaken.

The Committee reiterated concerns at the Government's intention to require all Councils to appoint and maintain an Independent Review Panel. These had been expressed in response to earlier consultation from the Government. However, if Panels are to be required, members felt there might be a benefit to this Council using a joint panel with another authority/ies. Depending on the content of the new Regulations, this might be pursued with the Hampshire and Isle of Wight Local Authorities.

At its December meeting, the Committee requested officers to make enquiries among other local authorities on Member Accountability Schemes. Apart from the 'clawback' scheme at Leicester Council (details of which have already been reported to the Council and which is not favoured) officers were unable to find any council currently operating such a scheme. There are some Councils actively considering schemes and the officers are to monitor the situation and report back to the Committee in due course.

RECOMMENDED:

- (a) ***That the feasibility of undertaking a technical evaluation of members' roles be noted and that the question of whether or not to proceed with such an evaluation be referred to the proposed Independent Remuneration Panel, when appointed;***
- (b) ***That no steps be taken at this stage to introduce a scheme of member accountability, but that the position be kept under review;***
- (c) ***That further consideration be given to the appointment of the Independent Panel, possibly in conjunction with other authorities in the area, once the new Regulations on Members' Allowances are available.***

4. MEMBERS' ALLOWANCES SCHEME – DEPENDENT CARERS' ALLOWANCE (REPORT B - 27 FEBRUARY 2001) (MINUTE NO. 15) (REPORT D - 10 APRIL 2001)(MINUTE NO. 22)

The Council has agreed to the payment of a dependent carer's allowance with effect from May 2001. The allowance is payable in certain defined circumstances and is subject to councillors who claim the allowance declaring that the minder is not an immediate member of the family and is over 16 years of age. A definition of "immediate member of the family" has been sought and the Committee recommends that the definition set out in recommendation (b) below be agreed.

The Committee also suggests that, for further clarification, the allowance be paid when the Councillor is undertaking an "approved duty" as set out in Government guidance.

RECOMMENDED:

- (a) *That the Scheme of Members' Allowances be amended to include provision for the Dependent Carer's Allowance to be paid only whilst the Councillor is undertaking Approved Duties;*
- (b) *That the Scheme of Members' Allowances be amended to include the following definitions:*

"immediate member of the family" shall mean a member of the Councillor's own household, living at the same address as the Councillor and the dependant requiring care;

"approved duty" shall mean -

- A meeting of the Executive*
 - A meeting of a committee of the Executive*
 - A meeting of the authority*
 - A meeting of a committee or sub-committee of the authority*
 - A meeting of some other body to which the authority makes appointments or nominations*
 - A meeting of a committee or sub-committee of a body to which the authority makes appointments or nominations*
 - A meeting which has both been authorised by the authority, a committee or sub-committee of the authority of a joint committee of the authority and one or more other authorities, or a sub-committee or a joint committee and to which representatives of more than one political group have been invited*
 - A meeting of a local authority association of which the authority is a member*
 - Duties undertaken on behalf of the authority in pursuance of any standing order requiring a member or members to be present while tender documents are opened*
 - Duties undertaken on behalf of the authority in connection with the discharge of any function of the authority conferred by or under any enactment and empowering or requiring the authority to inspect or authorise the inspection of premises*
- (c) *That these and other amendments to the scheme agreed for implementation in May 2001 take effect from 22 May 2001 (the day following the Annual meeting of the Council).*

Councillor C A Wise
CHAIRMAN

(270201/100401)

RECOMMENDED GUIDELINES FOR OPERATION OF STANDARDS PANEL AND ASSOCIATED PROCEDURES

~~1. The Standards Panel shall comprise of three members, one from each political group represented on the Council. These three members shall be drawn from the members or the named substitutes of the Standards Committee and will be appointed by the Chief Executive on each occasion.~~

~~2. The Panel will consider complaints against a Councillor by members of the public, another member or an employee where it is alleged that that Member's conduct has fallen below the standards set out in-~~

- (a) The National Code of Local Government Conduct (**or any replacement of this Code**)
- (b) The New Forest District Council's Local Code of Conduct for Member/Officer Relations
- (c) The New Forest District Council's Local Code of Conduct for Councillors and Officers dealing with Planning Matters
- (d) The New Forest District Council's Protocol on the Housing Stock Transfer Review
- (e) The New Forest District Council's Policy on the use of the Internet, Intranet and E-mail

or where it is alleged that the member has failed to demonstrate that he or she has met the high standards expected of persons holding public office or has brought the District Council into disrepute. **At the present time the Panel can only censure a Member if the complaint is upheld.**

3. All complaints against a member should be made on a form that will be provided, on request, by the District Council for this purpose. Complaints should be submitted as soon as possible, but generally no later than 3 months following the complainant becoming aware of the alleged breach or action complained of. A complaint submitted later than this will not normally be allowed except in exceptional circumstances as determined by the Monitoring Team. Completed complaint forms must be submitted to the Chief Executive/~~Monitoring Officer~~ of New Forest District Council. ~~The Chief Executive/Monitoring Officer will refer all complaints received to the Monitoring Team.~~ **The Monitoring Team will consider the complaint in line with the procedure set out below.**
4. ~~The Monitoring Team will comprise the Chief Executive/Monitoring Officer and the Council's Head of Legal and Democratic Services in consultation with the Chairman of the Council Standards Sub-Committee~~ **and a Member of the Standards Committee, selected by the Chief Executive, who will not be a member of the Standards Panel that would hear the complaint, if the complaint is referred to a Panel.**
5. (a) ~~Complainants must demonstrate to the satisfaction of the Monitoring Team that a member's conduct appears not to have met the standards as set out in paragraph 2 above, before the matter is referred to the Standards Panel for consideration. The decision of the Monitoring Team is final. In respect of a~~

~~complaint made by a member of the Council against another member of the Council, the complaint must be countersigned by not less than 4 members of the Council.~~

The Monitoring Team will be responsible for sifting out those complaints that they consider are frivolous or vexatious or a misuse or abuse of the process and will refer matters onto the Standards Panel only where they consider that there is an issue which requires further investigation and consideration by the Standards Panel. The decision of the Monitoring Team is final.

- (b) In the event of no complaint being received but where the Monitoring Officer believes that a member appears not to have met the standards set out in paragraph 2 above, she may refer the matter to the Monitoring Team for consideration with a recommendation that it be referred to the Standards Panel for determination.

6. *The Monitoring Team or the Standards Panel, after appointment, may at any time in the process refuse to progress the complaint if they consider that the complaint is malicious, frivolous, vexatious, or any abuse or misuse of the process.*

7. The cost of any attendance or representation at the hearing must be borne by the parties concerned. The Panel has no power to award costs or expenses to any party.

8. The Standards Panel may consider verbal or written representations from the member or the complainant. Neither party has to appear in person to present their case before the Panel, if they wish to rely on written representations

9. **Pre-hearing Procedure**

- (a) The Chief Executive/~~Monitoring Officer~~ will acknowledge the complaint and copy it to the member concerned.
- (b) The member will have 28 days in which to submit his/her written response to the Monitoring Team. If, after receipt of the Member's response, the Monitoring Team considers that **there is an issue which requires further investigation or consideration** ~~the member has a prima facie case to answer~~ they will refer the matter to a hearing of the Standards Panel.
- (c) Both the member and the complainant will be invited to appear before the Panel. Both may present their own case or they may be represented. They may produce witnesses. Written statements of the witnesses must be lodged with the ~~Chief Executive/~~Monitoring Officer at least 10 days before the hearing.
- (d) All written submissions, including witness statements, will be circulated to the member and the complainant by the ~~Chief Executive/~~Monitoring Officer at least 7 days before the hearing.

10. Procedure at the Hearing

- (a) The Panel will elect a Chairman for the meeting.
- (b) It will be assumed that those involved will have read all papers circulated in advance to them. Written statements will not be read to the hearing.
- (c) The proceedings of the Panel will be in public unless issues are to be discussed or evidence presented which meet one (or more) of the criteria set out in part 1 of Schedule 12A of the Local Government Act 1972. In these circumstances the public and the Press will be excluded from the meeting while only the parties directly involved in the case, as well as other members of the Council who might be present at the meeting will be permitted to remain.
- (d) The complainant will be permitted to address the Panel **and call witnesses (if any)**.
- (e) The member will be permitted to ask questions of the complainant **or their witnesses**.
- (f) Members of the Panel will be permitted to ask questions of the complainant **or their witnesses**.
- ~~(g) The complainant's witnesses (if any) will be permitted to address the Panel.~~
- ~~(h) The member will be permitted to ask questions of the complainant's witnesses.~~
- ~~(i) Members of the Panel will be permitted to ask questions of the complainant's witnesses.~~
- (g) The member will be permitted to address the Panel **and call witnesses (if any)**.
- (h) The complainant will be permitted to ask questions of the member **or their witnesses**.
- (i) Members of the Panel will be permitted to ask questions of the member **or their witnesses**.
- ~~(m) The member's witnesses will be permitted to address the Panel.~~
- ~~(n) The complainant will be permitted to ask questions of the member's witnesses.~~
- ~~(o) Members of the Panel will be permitted to ask questions of the member's witnesses.~~
- (j) The complainant will be permitted to sum up.
- (k) The member will be permitted to sum up.
- (l) The Panel will go into private session to receive legal advice and to reach its conclusion. The decision will be announced in public.

- (m) The complainant and the member will be informed of the decision in writing.

(Note: Reference in the procedures to the complainant, the member or members of the Panel is deemed to include any persons representing them.)