

Item No. 3.2	Classification: Open	Date: February 20 2008	Meeting Name: Council Assembly
Report title:		Constitutional Issues – Standards Committee	
Ward(s) or groups affected:		None	
From:		Strategic Director of Legal and Democratic Services	

RECOMMENDATIONS

1. That council assembly notes the constitutional implications for the committee from April 2008 arising from the introduction of the “local filter” for dealing with complaints against councillors.
2. That council assembly agrees the following constitutional changes to the standards committee as set out in Article 10 of the constitution (see detailed changes in Appendix A) to take effect from April 1 2008:
 - a) The number of independent members serving on the committee should be increased from four to six.
 - b) The composition of the committee should be increased from five councillors to seven councillors. The seats would continue to be allocated to political groups based on political proportionality giving a revised allocation as follows: Labour 3 places; Liberal Democrats 3 places; Conservatives 1 place.
 - c) Political groups will be entitled to nominate reserves on the following basis:
 - The number of reserves is equivalent to the number of places on the committee.
 - d) The committee will be empowered establish sub-committees to hear “local filter” cases with the membership drawn from the pool of independent members and the pool of councillors on the committee, including reserve members. Members will be serving on the sub-committee based on an allocation system similar to licensing sub-committees, subject to availability of members and the need to hold quorate meetings.
3. That this meeting appoints new independent members, subject to the decision on recommendation 2(a) above (see separate report on this agenda).

BACKGROUND INFORMATION

4. This issue was considered by the standards committee on November 6 2007. There were two issues which provide the background to this report:
 1. The introduction from April 1 2007 of the new arrangements relating

standards of conduct of local authority members under which all complaints will come to the standards committee (rather than the standards board) for the committee to consider which should be investigated, commonly referred to as the local filter;

2. Independent member selection process.
5. It was necessary to consider both these changes together because the potential demand for standards sub-committees to deal with conduct issues impacts on the size of the standards committee, as a larger pool of both elected members and independent members will be required. The arrangements for dealing with complaints must be in place by April 1 2008, the date announced by the Standards Board for England. This means the council will need to indicate whether it wishes to increase the number of independent members. This decision is required now for new appointees to be in place by April 1 2008. A selection process to appoint up to four new independent members commenced in November 2007. The committee was advised that if the size of the standards committee is increased this would ultimately require a decision from council assembly. This report seeks approval to the relevant constitutional changes. All the changes have been considered by the constitutional steering panel and are recommended for approval.
6. The Local Government and Public Involvement in Health Act 2007 received royal assent in November 2007. Part 10 of the bill reforms the provisions of the Local Government Act 2000 (LGA 2000) that relate to standards of conduct of local authority members.
7. The selection process for new independent members is currently underway and the panel's recommendations are reported to council assembly on February 20 2008.

KEY ISSUES FOR CONSIDERATION

New arrangements for misconduct allegations

8. The Local Government and Public Involvement in Health Act 2007 removes the provision for misconduct allegations to be referred to the Standards Board for England. It provides for all allegations to be referred to the standards committee, which will then be responsible for determination. There are three stages to the process of determining allegations:

Stage 1 - An initial assessment ('first sieve') of the allegation to determine:

- Whether action should be taken;
- If action should be taken, whether to refer the allegation to the monitoring officer for investigation or to the Standards Board for England.

Stage 2 – Review of the decision reached at stage 1, should the person who made the allegation request it.

Stage 3 – Hearing of the allegation.

9. There is a potential conflict between conducting the initial assessment of the allegations and subsequently conducting a hearing of the same allegation, since part of the initial hearing will be considering whether there is a case to answer. Therefore officers have recommended to the standards committee that it should establish an assessment sub-committee to undertake this work. Furthermore those members who take part in the initial assessment would be unable to take any further part in the review of that assessment. Therefore, hearing and review sub-committees with a separate membership from the referral sub-committee would have to be established.
10. The implications of this are that the size of the standards committee will have to be increased to accommodate the changes.

Number of complaints

11. In 2007/08 the first ten months of the year generated 15 complaints (6 of which were linked), none of which led to an investigation. In planning for the possible workload for the first year of the new arrangements, we have assumed that the level of complaints will at least match those in 2007/08, partly because people are likely to wish to test the new arrangements. We have also assumed that this testing process will extend to most complainants wishing to review decisions not to investigate. We are therefore assuming a level of around 17 complaints for the full year with most complaints likely to result in either a Stage 1 and 2 hearing or a Stage 1 and 3 hearing, leaving us with up to 34 hearings. Given the need for separate members to serve at each stage potentially 6 members would be involved in each complaint (with this rising to 9 if the complaint goes to both Stage 2 and Stage 3). The recommendation would provide a pool of 20 members, which would be better able to meet this demand. The profile of total complaints received leads us to assume that about a quarter could eventually require a Stage 3 hearing. This is higher than the current number investigated by the Standards Board for England which rejects 90% of complaints received, but lower than the numbers emerging from pilots in other local authorities, based on the profile of the complaints received within Southwark last year.

Proposals for composition of standards committee

12. The changes to the composition of the standards committee are set out in full in paragraph 2 a) – d). The key features are:
 - a) An increase in the number of independent members and councillors serving on the committee to provide the larger pool required for hearing complaints.
 - b) Increase in the number of reserves on the committee to provide the larger pool. Reserve members will be able to sit on sub-committees.
 - d) The committee will be empowered to establish sub-committees to hear “local filter” cases with the membership drawn from the pool of independent members and the pool of councillors on the committee, including reserve members. Members will serve on the sub-committee based on an allocation system similar to licensing sub-committees,

subject to availability of members and the need to hold quorate meetings.

- e) To take effect from April 1 2008 (see note below).

Note: This is the date announced by the Standards Board for England as the commencement date for the new arrangements. However this date may be subject to the timing of the publication of guidance and regulations, both of which are still awaited at the time of preparing this report. The proposals in the report are based on this date as the best working assumption.

Summary of changes to composition of the standards committee

	Councillors	Independent	Councillor - Reserves	Total
Current Committee	5 councillors: <ul style="list-style-type: none"> • Labour 2 places; • Liberal Democrat 2 places; • Conservatives 1 place. 	4 Independent members	3 councillors: <ul style="list-style-type: none"> • Labour 1 places; • Liberal Democrat 1 places; • Conservatives 1 place. 	12
Proposed change	7 councillors: <ul style="list-style-type: none"> • Labour 3 places; • Liberal Democrat 3 places; • Conservatives 1 place. 	6 independent members	7 councillors: <ul style="list-style-type: none"> • Labour 3 places; • Liberal Democrat 3 places; • Conservatives 1 place. 	20

Supervision and exemption from political restriction.

13. The standards committee meeting on February 6 2008 considered a minor addition to the role and functions of the committee, which was included in the consultation document on Orders and Regulations to the Conduct of Local Authority Members in England. The issue relates to the provisions in the new Local Government and Public Involvement in Health Act 2007 requiring standards committees to grant and supervise exemptions from political restriction. A new clause 14 is included in the roles and functions of the committee to reflect this change. This requires an amendment to the council's constitution. Both the committee and the constitutional steering panel agreed to recommend this additional change to council assembly (see Appendix A).

Constitutional Steering Panel

14. The constitutional changes set out in paragraphs 12 and 13 were considered by the constitutional steering panel on January 6 and February

6 2008 respectively. The panel agreed to recommend the changes to council assembly for approval (see Appendix A).

Independent Person Selection Panel

15. The standards committee in November 2007 established an independent person selection panel to shortlist applications and carry out interviews. The panel consisted of the chair (independent person), one further independent person and a representative of each political group on the committee (5 members in total). Independent members are formally appointed by council assembly. The selection panel has submitted its nominations to this meeting of council assembly for approval.

Community Impact Statement

16. The council has a statutory duty to put in place appropriate arrangements for its standards committee. The position of independent member is required by statute and the individuals appointed play an important part in the work of the committee monitoring the probity and conduct of elected councillors.

Resource Implications

17. There are no specific costs associated with the recommendations in this report.
18. With regard to the new complaints process, it is extremely difficult to estimate the resource implications after April 1 2008. This will be subject to a number of factors such as the number of hearings and the stage to which each complaint progresses. Potential costs include clerking of meetings, printing and postage of agenda, and costs of conducting any investigations required. The costs will be monitored under the current budget and will be subject to review.
19. All statutory co-opted members (including independent members of the standards committee) are entitled to receive an allowance of £1,061. The recommendation to appoint an additional two independent members would attract the payment of two further allowances. This sum of £2,122 can be met from the existing budget.

Legal Implications

20. Section 53(4) of the Local Government Act 2000 provides that a standards committee of a London borough council must include at least two members of the authority and at least one person who is not a member or an officer of the authority or any other relevant authority. The Relevant Authorities (Standards Committee) Regulations 2001 specify that an authority must ensure that, where its standards committee has more than three members, at least 25% are independent members.
21. Section 54A Local Government Act 2003 allows the council to set up sub-committees of the standards committee for the purpose of discharging any of the committee's functions, whether or not to the exclusion of the committee. This means that work can either be delegated to them in full or in part as the committee sees fit. With regard to the membership of the

sub-committees, subsection 3 provides that the members must be appointed from among the members of the standards committee. Given that the current regulations only allow one executive member to be on the standards committee, it must therefore follow that there can only ever be one executive member on the standards committee and its sub-committees.

22. Where the council is relying on a pool of reserve members, it will need to ensure that no more than one member of those members who is a member of the executive serves on a standards committee or sub-committee.
23. Members should note that officers anticipate the publication of regulations on the arrangements for dealing with allegations of misconduct now the act has received royal assent. The standards committee will have to consider any future regulations. However at the current time it is expedient for the council assembly to consider the proposals in this report because this is the last council before the proposed start date for the new regime.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Standards committee – October 11 2006 – Previous reports on process for the appointment of an independent person	Constitutional Team, Town Hall, Peckham Road, SE5 8UB	Richard Blakeley 020 7525 7232
Standards Committee – July 10 2007 – Report on Local Government and Public Involvement Bill - Proposed system for handling complaints about members	Legal Services, Town Hall, Peckham Road, SE5 8UB	Amma Boateng 020 7525 7225
Standards Committee -November 6 2007 – Report on Constitutional Issues and Independent Member Selection Process	Constitutional Team, Town Hall, Peckham Road, SE5 8UB	Ian Millichap 020 7525 7225
Standards Committee – November 6 2007 – Constitutional Issues and Independent Member Selection Process - Appendix 3 Estimates of Frequency of Standards Sub-Committees	Ditto	Ditto

APPENDICES

	Item
A.	Extract From The Constitution – Article 10 – Standards Committee – Constitutional changes

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Legal and Democratic Services	
Report Author	Ian Millichap, Constitutional Team Manager	
Version	Final	
Dated	February 7 2008	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Legal and Democratic Services	Yes	Yes
Finance Director	No	No
Executive Member	N/A	N/A
Date final report sent to Constitutional Support Services	February 7 2008	

APPENDIX A

EXTRACT FROM THE CONSTITUTION – ARTICLE 10 – STANDARDS COMMITTEE

CONSTITUTIONAL CHANGES

Note:

This appendix includes the following constitutional changes:

1. The changes referred to in paragraph 12 of the report on the local filter are shown underlined, deletions are marked with a strikethrough.. These changes were agreed by standards committee in November 2007. The constitutional steering panel on January 6 2008 recommended the changes to council assembly.
2. An amendment on politically restricted posts referred to in paragraph 13 of the main report is shown in **bold underlined** as new clause 9.03 (14) – Roles and Functions. The constitutional steering panel on February 6 2008 recommended the change to council assembly.

Article 9 - Standards committee

9.01 Standards committee

The council will establish a standards committee.

9.02 Composition

(a) The committee will consist of:

- At least four councillors, and up to seven ~~six~~ councillors, including at least one member of each political group as defined by the Local Government and Housing Act 1989 Regulation 8 Local Government (Committees and Political Groups) Regulations 1990;
- Up to six ~~four~~ independent members, appointed in accordance with the Relevant Authorities (Standards Committee) Regulations 2001; and,
- Reserve members for the councillor members of standards committee, shall be equal to the number of places each political group has on the committee., ~~subject to a minimum of one. each political group to have one fewer reserve(s) than they have seats on the committee, subject to a minimum of one.~~

(b) The political balance rules in section 15 of the Local Government

and Housing Act 1989 do not apply to the standards committee.

- (c) Independent members must make up at least 25% of the committee's total membership.
- (d) Independent members may vote.
- (e) With ~~six~~ ~~four~~ independent members, the terms of office of each member will be for three years with each one member retiring at the end of their term. each year and members serving a maximum of two terms. Members shall serve a maximum of two terms.
- (e) The chair of the standards committee will be elected from among the independent members at the first meeting of the committee in each municipal year.
- (f) No more than one member of the executive may be a member of the committee, and no executive member may chair the committee.
- (g) The leader may not be a member of the standards committee.
- (i) The quorum for the meeting is three members, including at least one independent member.
- ~~(j) The committee is empowered to establish sub-committees to filter, review filter decisions and hear complaints of misconduct against councillors (including co-opted and independent members). The membership for each sub-committee will be drawn from the pool of independent members and councillors on the committee, including reserve members.~~
- ~~(k) Sub-committees shall be composed of three members including at least one independent member. Rules 9.02 (b) – (d) and (f) – (i) shall apply to sub-committee meetings.~~

9.03 Role and functions

The standards committee will have the following roles and functions:

1. To promote and maintain high standards of conduct by councillors, co-opted members and church and parent governor representatives.
2. To assist councillors, co-opted members and church and parent governor representatives to observe the members' code of conduct.
3. To advise the council on the adoption or revision of the members' code of conduct, the member and officer protocol and the communication protocol.
4. To monitor the operation of the members' code of conduct, the member and officer protocol and the communication protocol.

5. To advise, train or arrange to train councillors, co-opted members and church and parent governor representatives on matters relating to the members' code of conduct.
6. To grant dispensations to councillors, co-opted members and church and parent governor representatives from requirements relating to interests set out in the members' code of conduct.
7. To deal with any complaints referred to it, reports from a case tribunal or interim case tribunal and any report from the monitoring officer on any matter which is referred to him or her.
8. To consider advice and reports from the Standards Board for England and to report to the Standards Board on the operation of the committee and its sub-committees.
9. To receive reports from the monitoring officer on unlawful expenditure and probity issues.
10. To receive reports from the statutory officers under the council's whistle blowing policy.
11. To consider appointments to outside bodies (where such appointments are not a function of the executive).
12. To grant civic awards.
13. To establish sub-committees to consider complaints of misconduct against elected councillors, co-opted and independent members.
14. **To consider the granting and supervision of exemptions of posts from political restrictions.**