

BABERGH DISTRICT COUNCIL

**FROM: Monitoring Officer and Head of Legal
and Administrative Services**

REPORT NUMBER **E22**

TO: STANDARDS COMMITTEE

DATE OF MEETING 13th May 2005

LOCAL STANDARDS HEARING

1. **SUMMARY**

The Standards Board for England has referred to me for local determination a complaint against a Parish Councillor. A Sub-Committee of the Standards Committee will conduct the hearing. It is now necessary to establish the Sub-Committee, agree a provisional time and date for the hearing and adopt a procedure to apply to this and any subsequent local hearings.

2. **RECOMMENDATIONS**

- 2.1 That the Standards Committee appoint a Case Sub-Committee comprising one independent member (to act as Chairman of the Sub-Committee), three District Council members and one Parish Council representative, and determine who those members are to be. The minimum quorum for the Sub-Committee to be three members.
- 2.2 That the Standards Committee establish for future hearings a District Council Case Sub-Committee and Parish Council Case Sub-Committee to hear individual referred complaints, comprised as follows:
- (a) The District Council Case Sub-Committees to comprise 5 members of the Standards Committee, including two independent members, one of whom is to chair the hearing if present, and three District Council members, no two of whom are to be drawn from any one party political group;
 - (b) The Parish Council Case Sub-Committees to comprise 5 members of the Standards Committee, including one independent member, who is to chair the hearing if present, three District Council members, no two of whom may be drawn from any one political party group, and one Parish Council representative; and
 - (c) That the Head Legal and Administrative Services is to call upon members of the Standards Committee to serve on these Sub-Committees in rotation, moving on to the next member in rotation who is available on the relevant dates.

The Committee is able to resolve this matter.

3. **FINANCIAL IMPLICATIONS**

- 3.1 There will be financial implications, as indicated in 4(d) below.

4. **KEY INFORMATION**

(a) Reference to the Monitoring Officer

In this case, the complaint is against a Parish Councillor, and the complaint has been investigated by an Ethical Standards Officer on behalf of the Standards Board for England, who has prepared a final report in which he has concluded that the Parish Councillor did fail to comply with the Parish Council's Code of Conduct for Members. I am now required to conduct a pre-hearing and arrange for the matter to be reported to a Case Sub-Committee for a formal hearing to determine whether the Parish Councillor has actually failed to comply with the Parish Council's Code of Conduct and, if so, to determine and apply any appropriate sanction.

The Standards Committee, and any Case Sub-Committee which it may appoint, has power to impose sanctions up to and including 3 months' suspension from acting as a member of the relevant Local Authority. A national Case Tribunal would have powers to impose sanctions of up to 12 months' suspension or 5 years' disqualification from membership of any Local Authority. Accordingly, there is a presumption that this matter is within the band for which a sanction of no more than 3 months' suspension would be appropriate, but the Case Sub-Committee would be entitled to request the Standards Board for England to resume responsibility for the matter if they felt that it merited a more serious sanction than they were able to impose or if they felt that they were unable to conduct the hearing themselves for any reason. However, the Case Sub-Committee is not bound to follow the findings of the Ethical Standards Officer if they conclude on the evidence at the hearing that he has failed to prove that the member failed to comply with the Code of Conduct.

(b) Pre-hearing Process

In preparation for the hearing, in accordance with the guidance of the Standards Board for England, a letter has been sent to the Parish Councillor to check whether he agrees or disagrees with the conclusions of the Ethical Standards Officer, whether there is any additional evidence which he wishes to produce at the hearing and whether he wishes to be legally represented or to call any witnesses. This pre-hearing process is intended to narrow down the issues, which the Sub-Committee will need to address, and enable me to ensure that the Sub-Committee has all the evidence, which it needs in order to be able to come to a decision on the day. The outcome of this pre-hearing process will be reported to the Sub-Committee.

In future, the Monitoring Officer will report regularly to the Standards Committee to advise that she has, say, two referred cases under investigation in respect of District Councillors and three cases under investigation in respect of Parish Councillors. Members will be asked whether they would be available on particular dates to attend a District Council Case Sub-Committee or a Parish Council Case Sub-Committee, but otherwise will be given no more details about individual complaints until they receive a full pack of papers on an individual case as part of the agenda at least 5 clear days in advance of the Case Sub-Committee hearing.

(c) Case Sub-Committee

The Standards Board recommends that Standards Committees should appoint Case Sub-Committees of between 3 and 5 members to conduct particular hearings. It would be convenient to set up a Sub-committee of 5 members with a minimum quorum of 3 members, in case a particular member is unable to attend on the day. The Regulations provide that the Sub-Committee must include at least one independent member from the Standards Committee and, if it is hearing a complaint against a member of a Parish Councillor, at least one Parish Council representative.

(d) Investigation of Referred Complaints

It is likely that further matters will be referred to the Monitoring Officer for Local Determination from time to time. Ethical Standards Officers will have investigated some of these cases, so that a full report will be available when they are referred to the Monitoring Officer. In other cases, the complaints will not have been investigated and the Monitoring Officer will be required to arrange for their investigation. The Regulations provide that the Monitoring Officer may delegate her functions in this regard to another person, and in practice would arrange for someone else to conduct the investigation as it would be incompatible for the Monitoring Officer to act as a source of advice to members on standards of conduct and then act as investigating officer. The appropriate person to conduct a particular investigation will depend on the seriousness and complexity of the particular matter, and the Monitoring Officer may draw on other officers of the authority, borrow officers from other authorities, or appoint private sector investigators in appropriate cases. Such investigations will have to be paid for. Even where the case relates to allegations of misconduct by a Parish Councillor, it is the District Council, which has to meet the cost of investigation. At the moment we do not know how many cases will be referred for local investigation, but in future years it will be necessary to make appropriate budgetary provision for the cost of such investigations. If the Monitoring Officer is to borrow investigating officers from other authorities, this authority will have to be prepared to allow its officers to act as investigating officers for other authorities in return.

(e) Appointment of Future Case Sub-Committee

It will be necessary to arrange future Case Sub-Committees, which have to be appointed by the Standards Committee. It would be convenient to have a standing District Council Sub-Committee and a standing Parish Council Sub-Committee, each of which can be convened as necessary. To spread the load, to ensure impartiality and to enable all members of the Standards Committee to participate in such hearings, it is suggested that the District Sub-Committee comprise two independent members, one acting as Chairman of the Sub-Committee, and three District Councillors, no two members being drawn from one political party group. The Parish Sub-Committee might comprise one independent member, acting as chairman, three District Councillors, no two members being drawn from one political party group, and one Parish Council representative. It is suggested that the Head of Legal and Administrative Services be authorised to call upon the members of the Standards Committee to participate in such Sub-Committees in rotation, moving on to the next member in rotation who is available on the relevant dates.

5. **APPENDICES AND BACKGROUND PAPERS REFERRED TO:**

- (a) Local Government Acts 2000 and 2003.
- (b) Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 - SI 2003 No. 1483.
- (c) Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 - SI 2004 No. 2617.
- (d) Standards Board for England Guidance - Standards Committee Determinations, Guidance for Monitoring Officers and Standards Committees (Link: <http://www.standardsboard.co.uk/TheCodeofConduct/Guidance/Guidanceforlocalauthorities/filedownload,263,en.pdf>).

Note: Documentation in respect of the particular referred complaint is exempt information and is not to be disclosed in advance of the hearing.

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