

**THE STANDARDS COMMITTEE:
ANNUAL REPORT (MAY 2011 – APRIL 2012)
and
HANDOVER REPORT**

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Foreword by the Chairman

This is the final report of the Standards Committee, of Surrey County Council, as constituted under the Local Government Act 2000. With effect from 1 July 2012, the Localism Act 2011 abolished the 'Standards Board regime' and put responsibility for regulating Member conduct into the hands of Members locally.

The purpose of this report is to summarise the work of the Standards Committee over the last year and so describe how the Committee has continued to contribute to maintaining good governance arrangements in Surrey County Council. The report 'hands over' the lessons learnt by the outgoing regime and makes recommendations about the future of Standards at Surrey.

The Council has taken steps to establish arrangements conforming to the requirements of the Localism Act.

Local democracy is based on trust. Trust that those we elect will discharge their responsibilities properly and in the best interests of the people they serve. While the majority will uphold the Principles of Public Life, it is an unavoidable fact that, even with the best of intentions mistakes are made, and standards do slip. Sadly, there are also a small number who will abuse their position and the trust placed in them.

For the benefit of the people of Surrey, and the officers and members of the Council, it is essential that the new standards arrangements operate with integrity to ensure high standards of member conduct and to maintain public trust. The new arrangements must be effective in promoting and enforcing high standards of member conduct, and they must be subject to open and transparent public accountability.

Finally, I should like to thank the Independent Members of the Standards Committee, who like me will be stood-down upon abolition, for the service they have provided to the people of Surrey and to the Council; and also the Elected Members of the Committee, for their support during my Chairmanship. I wish you all well for the future.

Simon Edge

Chairman, Standards Committee.

The Localism Act & the Standards Regime

In November 2011 the Localism Act ('the Act') received Royal Assent. The Act made substantial amendments to the Standards regime and framework. The requirement for Members to abide by a model Code of Conduct and for the Council to have a Standards Committee with independent representation on it has ceased. However, there remains a requirement for councils to promote and maintain high standards of conduct and to adopt a locally decided code of conduct, with provision to deal with breaches of it. A new role of 'Independent person' retains a degree of impartial contribution to the new arrangements – independent members are no longer a legal requirement and the Council has not voluntarily retained independent member contribution.

Local authorities have been required to draw up their own local code of conduct and it is now a criminal offence for councillors to deliberately withhold or misrepresent a financial interest. The benefits to this approach, as set out by the Department for Communities and Local Government (DCLG), include that councils will not have to spend time and money investigating trivial complaints, while councillors involved in corruption and misconduct will face appropriately serious sanctions. The aim of the new standards regime is to provide a more robust safeguard against unacceptable behaviour.

In December 2011 the Department for Communities and Local Government announced that the Standards Board for England would cease to regulate member standards from the end of January 2012. All other elements of the standards regime (such as the requirement to have a standards committee) were to be abolished by 1 July 2012.

The Future of the ethical standards regime at Surrey County Council

In February 2012 the Standards Committee received a report of the Monitoring Officer, which set out the key changes to Standards arrangements, as required by the Localism Act 2011. The most significant changes were summarised as follows:

- The national Code of Conduct is abolished. However, local authorities must adopt their own Codes and these must be consistent with the principles set out in section 28 of the Act.
- The Council must establish new arrangements under which allegations of Member misconduct can be investigated and it will have to appoint at least one "Independent Person" whose views must be sought before a decision on an allegation is made.
- There is no requirement to have a Standards Committee, or for it to include Independent Members. If the Council does not have a Standards Committee it will need alternative mechanisms for meeting the statutory requirement to promote and maintain high standards of conduct by its Members and Co-opted Members and for dealing with allegations of member misconduct.

- The Monitoring Officer must establish and maintain a register of the interests of Members and Co-opted Members and ensure that this is available for inspection and published on the Council website.
- Members must declare disclosable pecuniary interests (“DPIs”) on election to office. It will become a criminal offence for Members to deliberately withhold or misrepresent such interests. However, the definition of DPIs will be specified in Regulations, which have not yet been introduced.
- It is open to the Council to decide what other interests ought to be disclosed. Failure to register these interests will be a breach of the Code of Conduct, but not a criminal offence.
- There will also be new rules regarding the duty to disclose interests at meetings and when members must withdraw from meetings.
- The procedure for dealing with the grant of dispensations has significantly changed.

The Committee discussed a preliminary draft code of conduct prepared by the Monitoring Officer and commented on how they considered democratic oversight of standards issues could be maintained in the new arrangements. The Committee also considered the comments of a County Councillor not on the Standards Committee, who shared his thoughts on the future of the standards regime with Members.

Options that Members considered included whether the Council should continue to have a dedicated standards committee or whether the standards terms of reference should be combined with another committee (for example People, Performance & Development or Audit & Governance Committee) or no committee at all. Another option was a Surrey-wide Committee that acted as a custodial guardian of the code of conduct. The Committee had some concerns that a Surrey-wide committee would have to have complex terms of reference and would risk recreating something that the government had abolished. Members unanimously agreed that the new arrangements should be simpler. In closing the item Members of the Committee were asked to speak with their colleagues and political groups about the options and the future of standards arrangements.

Following the February Standards Committee, the Chairman wrote to the Leader of the Council to offer the support and advice of Committee Members, including independent representatives, when drafting the new arrangements. The Leader of the Council acknowledged the input of the Standards Committee following their discussion of the item in February 2012 in his statement to Council on 20 March 2012. A cross-party working group comprising of 3 County Council Members of the current Standards Committee was then set up to lead on this in consultation with political groups. The Independent members of the extant Standards Committee were not asked to contribute to the development of the new arrangements. The new arrangements do not envisage that a standards committee with independent representatives should continue under the new regime.

The working group met during May and June 2012 and focussed on options for a new local Member Code of Conduct, finalising the content of the Member/Officer

Protocol and the complaints handling process for allegations of misconduct. The working group have proposed to adopt a Member Code of Conduct that mirrors the Department for Communities and Local Government illustrative text. Furthermore, it has been recommended that a Standards Committee will not continue under the new arrangements. Alternative arrangements for handling complaints about Member misconduct have been proposed which include the introduction of a Member Conduct Panel which would be politically balanced but which, in line with the legislation, would not include any independent representatives.

The full report is included within the Standards Committee papers for the meeting on 2 July 2012, for the Committee Members' information. It is then planned that the report and the recommendations contained within it will be commended to County Council for adoption on 17 July 2012.

Background – History of the Standards Regime

The Local Government Act 2000 introduced a revised ethical framework for local authorities, requiring the adoption of codes of conduct for elected members and standards committees to implement the codes of conduct. The Local Government Act 2000 also established the Standards Board for England, a non-departmental public body responsible for promoting high ethical standards in local democracy.

For Surrey, this meant the introduction of a new Standards Committee. The main role of the Standards Committee has been to promote and maintain high standards of member conduct. The Committee's roles and functions have included the following:

- Assisting Members and co-opted Members in observing the Members' Code of Conduct.
- Advising the Council on the adoption or revision of the Members' Code of Conduct.
- Monitoring the operation of the Members' Code of Conduct.
- Promoting advice, guidance and training for Members and co-opted Members on matters relating to the Code of Conduct.
- Assessing any written allegation that a Member or co-opted member of the Council has failed or may have failed to comply with the Code of Conduct and determining what (if any) further action needs to be taken.
- Considering matters referred to it by the Monitoring Officer or an ethical standards officer of Standards for England (formally Standards Board).
- Granting dispensations to Members (including co-opted Members) from requirements relating to interests set out in the Members' Code of Conduct.

The Committee has had two other statutory functions and one function added by the Council. These are:

- Considering whether any council post should be exempt from political restriction (on the application of the post-holder).
- Considering applications that the Council be directed to include any post in the list of politically restricted posts maintained by the Council.
- Ensuring that the Council's complaints procedures operate effectively, and receiving any findings of maladministration by the Local Government Ombudsman.

Since its inception, the Standards Committee has consisted of a mix of elected County Councillors and independent representatives. Regulations have stated that an authority's standards committee must always have at least three people on it; with two members of the authority and one independent representative as the minimum. In recent years the standards committee has consisted of ten members: 6 elected Members and 4 independent representatives, proving a good balance and demonstrating to the public and stakeholders that the standards committee has acted fairly and impartially. Independent representatives on the Standards

Committee have been elected for a period of four years with a maximum of two terms, to ensure that they cannot be perceived as losing their independence.

The next chapters of this report focus on the work undertaken by the Committee during the year 2011/12 and, in looking to the future, summarises the lessons learnt during the current Standards Regime to help a smooth transition to the new arrangements.

Standards Committee work during 2011/12:

The Committee have continued to review complaints about Member misconduct

Since May 2011, the Standards Committee received 3 new complaints about Members. This is two less than in the previous year.

In one case a Sub Committee found that there had not been a breach of the Code of Conduct after an initial referral to the Monitoring Officer for investigation. In the two other cases a Sub Committee decided to uphold the complaints and refer them to the Monitoring Officer for investigation. The investigation is yet to conclude and the cases will continue under the new regime.

One complaint continued from 2010/11 into 2011/12. It was eventually resolved that there had not been a breach of the Code of Conduct and no further action was taken.

In March 2012, it was confirmed that a previous case considered by the Standards Committee in October 2010 had been resolved. The subject Member withdrew his appeal to the First Tier Tribunal, bringing the court case to an end. Having withdrawn his appeal the Member subsequently wrote a letter to the complainant, which complied with the Standards Committee ruling that an apology should be offered for disrespectful behaviour.

Into 2012/13, one further complaint was received and the Monitoring Officer referred it for independent investigation. The complaint was handled under the existing arrangements and the assessment Sub Committee found that there had not been a breach of the Code of Conduct.

The Standards Committee have reviewed an internal audit of elected Members' interests

An internal Audit review of elected Members' interests was undertaken during 2011/12 as part of the Internal Audit Plan. In February 2012 the Audit Performance Manager presented the audit findings to the Standards Committee. The overall opinion of the audit was 'some improvement needed', and the Audit Performance Manager advised Members that there were two key elements to his findings: administration/procedural issues that could be easily addressed and operational issues around how Councillors approach their declarations.

The Committee noted that as of 1 July 2012, elected Members' interests would have to be recorded online. Members felt that there would be a number of advantages to this, including a clear record of what had been declared and where. During the discussion, the Members raised a number of key points which they asked Democratic Services to consider:

- a) The interests form should indicate the legal status of a request for information (e.g. that request is there because it's in the code of conduct or because it is law).

- b) Democratic Services should enforce completion deadlines.
- c) The committee recommended checks on random samples of Members registers of interests under the new regime.
- d) The detail that needs to be included on the form needs to be clarified.

The Committee felt that there was a role for the Standards Committee (and its successor) in scrutinising the register. It was agreed at the meeting that one option would be to pick a random sample of registers each year, for the Committee (or its successor) to scrutinise.

The Standards Committee have reviewed and amended the Member/Officer Protocol

The Standards Committee was asked by the Council to review sections of the Member/Officer Protocol relating to Member/Officer behaviour and relations, to ensure that the Protocol adequately addressed expected behaviours. The Committee appointed a working group in April 2010 to review the Protocol. After reporting the Protocol back to the Committee in September 2010, the Committee agreed that a wider consultation was needed and that subject to the views expressed during the consultation, a revised Member/Officer Protocol would be presented to the Committee for later submission to the Council for adoption.

The consultation on the Member/Officer protocol was shared with senior officers. They were asked to feed in their views about the Protocol, broadly along the following lines:

- Does the Protocol cover the right issues?
- Is there anything else you would expect to see in the Protocol?
- Is there anything you feel could be removed from the Protocol?

Officers in Legal & Democratic Services then reviewed all comments and identified a number of themes. In December 2011, officers presented to the Committee a revised version of the Protocol that had been amended taking into account the views of the working group and the opinions gathered through the consultation exercise.

The Protocol was then placed on the County Council Agenda for its meeting in March 2012, however, following discussions between the Chairman of the Council and minority Group Leaders, it was agreed with the Chairman of the Standards Committee to defer this item to allow for further amendments to be made.

A working group, set up to consider the Council's new Standards arrangements post-Standards Board regime considered comments received from political groups and proposed changes to Council as part of their report to Council in July 2012.

The Committee have made recommendations to Council about the recruitment of Independent Representatives

During 2011/12, two independent representatives on the Standards Committee approached the end of their four year terms of office. As one independent representative had already served the maximum two terms, it was agreed that they would not seek to change the Constitution in order to reappoint, due to the uncertainty in terms of future standards arrangements at the Council. The Committee did recommend that Mr Edge be reappointed for a second four year term of office.

During 2011/12 the arrangements for dealing with complaints about Member conduct were handled by sub-committees which required at least three members (one of whom must be an independent representative) to be quorate. The Committee felt that if the number of independent representatives on the Committee was reduced to two, it would be difficult to guarantee a quorum at sub-committees, as conflicts of interest could restrict elected Members dealing with complaints about their peers. The vacancy for an Independent Member did not arise until May 2012 and the Committee felt that given the low number of complaints and potential for a wider review of the Standards process, it would be possible to manage short-term with 3 Independent Members across the 2 sub-committees if new arrangements had not been agreed by the Annual meeting. If it was agreed that if the Council was not minded to change the current arrangements in the foreseeable future, the Council could choose to recruit to this vacancy at any time.

Following the abolition of the current standards regime, the working group charged with reviewing the Council's own ethical standards arrangements have made recommendations to County Council in a report dated July 2012. The recommendations do not propose that a standards committee with independent representatives should continue under the new regime and therefore the current terms of office for the remaining independent representatives will not be continued past their final meeting on 2 July 2012.

The Committee have considered the lessons learnt in the current regime and make recommendations about the future of Standards at Surrey

A working group, set up to consider the future of an ethical standards regime at the Council will be making a series of recommendations to County Council in July 2012. It is anticipated that under the new regime there will not be a Standards Committee, however, Members of the Standards Committee are keen to ensure that the lessons learnt under the current regime are effectively handed over to the new regime. Key points are summarised below:

- The Committee strongly believe that the Members' register of interests should be actively scrutinised by the relevant body. Therefore, the Committee recommend to the Council that scrutiny of the Members' register of interest is incorporated into a committee of the Council's terms of reference.
- The Committee felt that it was important to make the Code of Conduct as simple to follow as possible and were concerned that in the past the Code had been too lengthy and complicated, making it more difficult to objectively measure Member misconduct. To avoid this problem reoccurring in the future regime, the Committee felt that a single core code for the whole of Surrey (including Districts and Boroughs) should be considered. This would be particularly beneficial to twin-hatted Members who would otherwise have to adhere to two potentially quite different local codes.
- In terms of the complaints handling procedure, the Committee believed that the process for hearing complaints had included too many levels, resulting in Members considering the same thing several times. The Committee believe that the process would need to be much simpler moving forward; it was felt that the process should only include a filter, review, decision and appeal stage.
- The independent members of the committee strongly believed that a substantial independent membership representation in the new regime was essential to maintaining the credibility of the new arrangements with the public.

Background documents

Local Government Lawyer article:

http://www.localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=8914:implementation-of-new-standards-regime-delayed-until-1st-july-2012&catid=1:latest-stories

Localism Act 2011 –report to the Surrey County Council Standards Committee in December 2011

The Localism Act 2011: A plain English guide to the Localism Act – Department for Communities and Local Government