



Agenda item:

STANDARDS COMMITTEE on 14 January 2010

Report Title: **Ethical Conduct Training Programme for Members of the Standards Committee and Other Elected Members**

Report of: **The Monitoring Officer**

Wards(s) affected: **All**

Report for: **Non Key Decision**

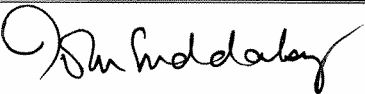
1. Purpose

1.1 To present proposals to the Standards Committee for further training of Standards Committee Members and to outline a training programme for all elected Members on Ethical Conduct and Governance matters in 2010/11.

2. Recommendations

2.1 It is recommended that the Standards Committee:

- (i) consider the training topics outlined in the report and summarised in bullet point form below at paragraph 8.2, and
- (ii) indicate the priority to be given to each training topic and the timing for each topic, including a view as to whether the topic should fall within the training programme for 2010/11 or be available before the end of the current municipal year, and
- (iii) agree that the Head of Local Democracy and Member Services circulate a schedule of training activities with a list of proposed dates, having taken into account Members' decisions on (i) and (ii) above and having checked Members' availability.

Report Authorised by: 

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3. Local Government (Access to Information) Act 1985

3.1 Background papers used in the preparation of this report were:

The Local Government Act 2000, The Local Government and Public Involvement in Health Act 2007 and relevant regulations made under these Acts.

4. Background

- 4.1 The last written report on Member training was considered by the Standards Committee on 23 March 2009. At that meeting the Committee agreed a programme of training for the municipal year 2009/10 and indicated the priority for each training topic. Most of the training was intended specifically for Standards Committee Members but some of the topics were also to be available to all Members of the Council. The extract from the minute of the meeting on 23 March which sets out the agreed training programme for 2009/10 is attached to this report as the Appendix.
- 4.2 At the Committee's meeting on 2 July 2009 the Monitoring Officer presented an oral update on progress with training and the forthcoming training dates.
- 4.3 There was a session by way of a general introduction to the Members' Code of Conduct held on 10 June. On that date and on 28 July there was training on the local assessment of complaints covering the functions of Assessment and Review Sub-Committees. In preparation for the local determination hearings in October there was a "mock hearing" exercise involving a scenario of bullying and treating officers with disrespect that took place on 10 September. Linked to this hearing training, there was a presentation on Natural Justice, including issues relating to bias and fairness, held on 9 September.
- 4.4 There has been a need to prioritise the training relating to the initial assessment of complaints and to local determination hearings. There has also been greater than usual pressure on the time of Standards Committee Members resulting from the number of complaints and investigation reports to be considered and the number of hearings to be conducted. Furthermore, the promised amendments to the Members' Code of Conduct have been delayed longer than previously anticipated.
- 4.5 Consequently, the originally agreed training programme for 2009/10 has had to be modified. But it should prove possible for those training topics from the 2009/10 programme, which have yet to be covered in training sessions, to be included in the 2010/11 programme or, if practicable, be made available before the end of the 2009/10 municipal year.

Amendments to the Member Code of Conduct

- 4.6 The long awaited amendments to the Members' Code of Conduct, which were the subject of consultation with local authorities last year, are expected to be brought into force towards the end of this year but past experience suggests that there could be further delay. The main changes are likely to be an extension of the Code to cover Members in

their non-official capacity where their conduct would amount to a criminal offence. At the same time the Government is likely to bring into force in England changes to legislation (already set out in section 183(4) of the Local Government and Public Involvement in Health Act 2007) that will enable the Code to cover criminal conduct in a private capacity.

- 4.7 When these changes to the Code are published in their final form and with a date for taking effect, then a briefing will be circulated to Standards Committee Members and also to all other Members of the Council. There will be opportunities for the Standards Committee and other Members to ask questions of the Monitoring Officer and his staff. Depending on what appears appropriate, this could be arranged during the course of a Standards Committee meeting or through a special training session.

Basic Training on the Members Code of Conduct

- 4.8 All Members of the Council will have received basic training on the provisions of the current Members' Code of Conduct (May 2007) either as part of their induction or by attending a more detailed presentation. At this late stage in the Councillors' 4 year term, there is little point in offering further training before the 2010 Council elections except to the limited extent needed to make known any amendments to the Code as noted above. Further training sessions on the Code will be available to all Members in June/July 2010 and there will be strong encouragement for any newly elected Councillors and the new independent Standards Committee Member to attend. Any recent amendments to the Code on "conduct in a private capacity" will be pointed out and incorporated into the presentation.

Disclosure of Confidential Information

- 4.9 The Standards Committee was asked last year by the Standards Board to consider additional guidance for Members in cases where a Member sought independent professional advice on a matter and disclosed confidential Council information to the professional adviser for this purpose. The Code at paragraph 4 (a)(iii) requires the Member to obtain the agreement of the independent professional adviser not to disclose the confidential information to any other person (i.e. beyond those already having it legitimately).
- 4.10 The Standards Board said that the extra guidance should recommend to a Member in this situation that they confirm with their professional adviser that the adviser has no conflict of interest involving another client. Otherwise, the receipt of confidential information by the adviser could result in allegations that this information had improperly benefited that other client.
- 4.11 It is proposed that there will be a training topic devoted specifically to confidential information. This will cover the points in the two paragraphs above. The topic will also deal with the "public interest defence" in paragraph 4 (iv) of the Code and the very limited and special circumstances in which a Member could legitimately disclose confidential information outside the Council as part of a "whistle-blowing" exercise. This issue has been brought into prominence by the recent Hearing Panel decisions in the case of complaint SC3/089. A short "one off" pilot course could be offered to all Members of the Council in January/February 2010. The material could then be incorporated into the Basic Training on the Code of Conduct for new Members in June/July as described in paragraph 4.8 above.

- 4.12 The other issue brought into focus by the Hearing Panel decisions in the case of complaint SC3/089 is the extent to which Members can disclose confidential information to each other without seeking prior approval from the Monitoring Officer or other “official permission”. There is obviously a lack of clear guidance in the Council’s Constitution and there are various procedures by which a Councillor can obtain an exempt report to a body on which he/she is not a Member (for example under section 100F of the Local Government Act 1972 or by attending the relevant Committee with the Chair’s consent). This has caused confusion.
- 4.13 Exempt information is the “property” of the Cabinet or the Committee which receives a report and has the matter within its terms of reference. It is within the power of the Cabinet or Committee to determine the extent of disclosure to Councillors who are not Cabinet or Committee Members and who cannot otherwise demonstrate a “need to know”.
- 4.14 In order to avoid potential conflicts of jurisdiction and to achieve maximum transparency, it is desirable to set out the rules on disclosure of exempt information/reports as clearly and comprehensively as possible in the Council’s Constitution. In order to start the process of amending the Constitution, there has already been a Briefing Paper for Chief Executive’s Management Board. If there are any significant developments in the process of constitutional amendment, these will be reported orally to the meeting of the Standards Committee.
- 4.15 As Members will be aware, the Code of Conduct itself does not expressly prescribe the permissible extent of the disclosure or sharing of exempt information among Councillors. There is no express prohibition on showing exempt reports to non-Committee Members. Paragraph 4 of the Code simply prohibits the unauthorised disclosure of confidential information, subject to certain limited exceptions. The remit of the Standards Committee is to encourage and enforce compliance rather than to attempt to define the permissible limits of disclosure. However, any views the Standards Committee may have will be conveyed to other Members in the course of the process of amending the Constitution. This aspect is covered in the separate report to this meeting on “Outcome of Local Determination Hearings” at agenda item 7.
- 4.16 It is difficult to predict how long the process of amending the Constitution will take since this is a potentially sensitive and complex matter. Once the amendments on the disclosure/sharing of exempt information have been formally adopted by full Council, there will be training for both the Standards Committee and all other Members.

Local Assessment Training

- 4.17 As noted in paragraph 4.3 above, there has already been local assessment training on the operation of Assessment and Review Sub-Committees for all Members of the Standards Committee. In view of the importance of these procedures in the early stages of investigating any complaint, it is proposed that the same local assessment training be offered to all Members of the Council once the newly elected Councillors have undertaken the basic training on the Code of Conduct.
- 4.18 This local assessment training would start with the presentation on the new local

procedures in force since May 2008. It could include the examples of real past cases from Standards for England and/or hypothetical scenarios if there proved to be sufficient time and demand for these. This training could form part of the training programme for 2010/11.

- 4.19 We have received a DVD from Standards for England entitled “Assessment made clear – Local Assessment of Complaints”. This lasts 44 minutes and may form the basis of a training session for Members. It is recommended that an opportunity for Standards Committee Members to view this DVD be arranged at some time in January 2010.

Outside Bodies Training

- 4.20 The Council appoints many Members to bodies other than its own Cabinet, Committees and Sub-Committees. These bodies, known collectively as “outside bodies”, are diverse and include Community and Voluntary Organisations, Local Charities and Trusts, Partnership Bodies, such as the Haringey Strategic Partnership, and Joint Committees with other Boroughs to co-ordinate the discharge of statutory functions. Outside bodies may be trustee boards or limited companies or simply unincorporated associations. Some have charitable status while others do not. Councillors can be appointed either as mere “observers” responsible to the Council or as trustees and/or directors in which case they would owe duties to the trust/company which they were managing.

- 4.21 Training sessions have been held in previous years to assist Members in undertaking these potentially complex and challenging roles outside their normal responsibilities as Councillors. This was not done under the “umbrella” of ethical conduct training. However, part of the training does include matters such as the declaration of Members’ interests, how to handle conflicts of interest involving outside bodies and other ethical governance issues. For this reason it is suggested that future training sessions be offered to all Members of the Council within the programme of ethical conduct training for 2010/11 overseen by the Standards Committee.

Planning, Licensing and “Bias” Training

- 4.22 The report to the Standards Committee on 23 March proposed training on Town Planning issues because this was a relatively high risk area for controversy and complaints about Members’ conduct. The Committee considered that this training could usefully include the Council’s licensing duties which are also a regulatory function and involve similar risks to Planning.

- 4.23 The 23 March meeting considered a separate training topic on “bias” which would look at matters such as the rules of Natural Justice, pre-disposition and pre-determination and their relationship to Members having a “personal” or a “prejudicial” interest under the Code of Conduct. While there has been some training already on this topic on 9 September, there would be significant benefit in a more detailed examination of these issues. Since the procedures relevant to Planning and Licensing decisions frequently involve issues of Natural Justice, pre-disposition and pre-determination, it is now proposed to combine all these topics in a composite training session.

- 4.24 This training would be intended primarily for the Standards Committee, rather than as specialist training for Planning or Licensing Committee Members, but it would be available to all Members of the Council as part of the 2010/11 training programme.

Exemption of Officers from Political Restrictions

- 4.25 The Local Government and Public Involvement in Health Act 2007 has transferred, from the national “independent adjudicator” to each local Standards Committee, the functions of (i) considering applications from officers for exemption from political restrictions and (ii) giving directions to include any post on the list of politically restricted posts.
- 4.26 Political restrictions formerly applied to all posts at or above SCP 44. They prevented a politically restricted officer from standing for, or holding, elected office and from canvassing, speaking or publishing on behalf of a political party. These political restrictions on posts, only because they are graded at or above SCP 44, have been repealed with effect from 12 January 2010 by the Local Democracy Economic Development and Construction Act 2009.
- 4.27 Political restrictions will continue to apply automatically to Chief Officers and Deputy Chief Officers and any officer with duties that involve: - (a) giving regular advice to Member bodies, or (b) speaking regularly to the media on behalf of the Council.
- 4.28 It would appear that these changes to the legislation substantially remove the scope for any application to the Standards Committee for political exemption. Consequently, it is not now considered worthwhile to provide specific training on this topic.

5 Financial Implications

- 5.1 The financial implications of Member training will be covered by the Members’ training budget.

6 Legal Implications

- 6.1 The legal implications are set out in the body of this report

7. Equalities Implications

- 7.1 There are no specific equalities implications.

8. Recommendations

- 8.1 It is recommended that the Standards Committee:
- (i) consider the training topics outlined above in the report and summarised in bullet point form below, and
 - (ii) indicate the priority to be given to each training topic and the timing for each topic, including a view as to whether the topic should fall within the training programme for 2010/11 or be available before the end of the current municipal year, and

- (iii) agree that the Head of Local Democracy and Member Services circulate a schedule of training activities with a list of proposed dates, having taken into account Members' decisions on (i) and (ii) above and having checked Members' availability.

8.2 The training topics proposed in the report can be summarised as follows:

- Basic Training on the Members' Code of Conduct – for all Members of the Council but especially those newly elected – suggested for June/July 2010.
- Amendments to the Members' Code of Conduct – Briefing for Standards Committee and all other Members as soon as practicable – amendments to be incorporated into Basic Training on the Code (above).
- Disclosure of Confidential Information to include disclosure to independent professional advisers and the “public interest defence” – for all Members of the Council – suggested “one off” pilot course in January/February 2010.
- Disclosure of Confidential Information – specifically new/confirmed rules on the sharing of exempt information among Members - Briefing for Standards Committee and all other Members as soon as practicable – this topic to be incorporated into the other training on Disclosure of Confidential Information (above).
- Local Assessment Training – for all Members of the Council – suggested as part of the 2010/11 programme.
- Showing of Standards for England DVD on local assessment of complaints – for Standards Committee Members – January 2010.
- Outside Bodies Training - for all Members of the Council – suggested as part of the 2010/11 programme.
- Planning, Licensing and Bias Training – primarily for Standards Committee Members but available for all Members of the Council – suggested as part of the 2010/11 programme.

9. Use of Appendices / Tables / Photographs

The Appendix Extract from the minutes of the Standards Committee meeting on 23 March 2009 setting out the training programme for 2009/10.

APPENDIX

EXTRACT FROM THE UNRESTRICTED MINUTES (STC049) OF THE STANDARDS COMMITTEE MEETING ON 23 MARCH 2009 – REPORT ON TRAINING PROGRAMME FOR STANDARDS COMMITTEE MEMBERS 2009/10

RESOLVED

- i. that officers be authorised to prepare a schedule of training activities to take place in the new municipal year 2009/10 as prioritised below, with a programme of suggested dates for each activity:
 - a. Briefing to members of SC on amendments made to the Code of Conduct (as and when amendments are published)
 - b. Briefing to all members (at political group meetings) on amendments made to the Code of Conduct (as and when amendments are published).
 - c. Training for new and existing members of the Standards Committee on the assessment and review of complaints processes and in addition for new independent members on the Code of Conduct (to take place within a month of the Council AGM in May) & training for all members of the Standards Committee on determination hearings (June)
 - d. Training for all members of the Standards Committee on the law relating to bias and pre-determination in a local authority context (at a special meeting of the Standards Committee to be held before the Summer break)
 - e. Training for all members of the Standards Committee on the authority's planning and licensing functions. (Training open to all members of the Council on the two issues of bias and pre-determination and confidential information (Autumn 2009) and consideration of what roles if any individual members of the committee would wish to play in running this training.
 - f. Training for all members of the Standards Committee on their functions in determining applications for posts to be exempted from political restriction (at Committee meeting in Autumn).
- ii. that in respect of the minimum training requirements for individual Committee members prior to their participation at each stage of the assessment, review and determination stage of complaints, that Members attend and complete the training prior to participation as detailed in (i) (c) above.