

Taking action against Councillors

Cabinet Member: Cllr Clive Eginton
Responsible officer: Kevin Finan, Chief Executive

Reason for Report: To address the resolution of a meeting of the Standards Committee held on 28 August 2014, namely “to ask officers to provide a constitutional amendment which clarifies who can take action against Councillors, under what circumstances and to establish a right of appeal.”

RECOMMENDATION: That the Audit Committee note the clarification provided in this report.

Relationship to Corporate Plan: None

Financial Implications: None

Legal Implications: These are explained within this report.

Risk Assessment: The Chief Executive, as Head of Paid Service, has overall operational responsibility for the security of the Council’s assets and staff. In exercising that responsibility, risk assessments are made to maintain and ensure a safe, secure working environment to undertake the functions of the Council.

1.0 Introduction

- 1.1 The Standards Committee considered motion 480 by Cllr Mrs Roach that “this Council resolves to clarify who has the authority to take disciplinary actions against councillors and under what circumstances such action can be taken” on 4 June 2014.
- 1.2 Consideration centred on the decision of the Chief Executive to exclude two elected members from having free access to the operational areas of the Council’s offices.
- 1.3 Legal advice was submitted to explain the provisions within the Constitution.
- 1.4 Members of the Standards Committee accepted that the exclusion exercised by the Chief Executive was outside the scope of its powers to deal with Elected Member behaviour.
- 1.5 Officers have been asked to provide the Audit Committee with a constitutional amendment which clarifies who can take action against Councillors, under what circumstances and to establish a right of appeal.
- 1.6 The framework in respect of taking action against Councillors is set out below. Action that is taken to discipline Councillors for breaches of the Code of Conduct is dealt with by the Monitoring Officer and Standards Committee.

Action taken in respect of operational issues is dealt with through the exercise of executive functions which is delegated according to the constitution.

2.0 Standards Committee related issues

2.1 In accordance with the Constitution (Article 6.13), the Standards Committee has the following functions;

- (a) Promoting and maintaining high standards of conduct by Councillors and co-opted Members;
- (b) Assisting the Councillors and co-opted Members to observe the Member's code of conduct, copy attached at Appendix 1;
- (c) Advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) Monitoring the operation of the Members' Code of Conduct;
- (e) Advising, training or arranging to train Councillors and co-opted Members on matters relating to the Members' Code of Conduct;
- (f) Granting some dispensations to Councillors and co-opted Members from requirements relating to interests set out in the Members' Code of Conduct;
- (g) Dealing with any reports from a case and any other report from the Monitoring Officer on any matter;
- (h) Exercising of the above in relation to the parish councils wholly or mainly in its area and the members of those parish councils;
- (i) Overview of complaints handling and Ombudsman investigations; and
- (j) Overview of the Constitution.

2.2 If a Member breaches the Code of Conduct, the Standards Committee has the authority to consider the matter and take action if deemed appropriate.

3.0 Operational management related issues

3.1 Functions which are the responsibility of the Executive are determined in accordance with Section 13 of the Local Government Act 2000 (the Act). The following subsection is relevant;

3.1.1 *13(2) Subject to any provision made by this Act or by any enactment which is passed or made the day on which this Act is passed, any function of a local authority which is not specified in regulations under subsection (3) (Arrangements made by the Secretary of State) is to be the responsibility of an executive of the authority under executive arrangements.*

- 3.2 No regulations have been made in respect of who has the discretion to decide who can enter the Council offices. Ownership and management of land and property includes the right to exclude and so the power to exclude is an executive responsibility.
- 3.3 Section 15 of the Act addresses the discharge of functions where there is a leader and cabinet executive;
- 3.3.1 *Subject to any provision made under section 18, 19 or 20, (area committees, other local authorities, joint committees) any functions which, under executive arrangements, are the responsibility of a leader and cabinet executive are to be discharged in accordance with this section.*
- 3.3.2 *The executive arrangements may make provision with respect to the allocation of any functions which are the responsibility of the executive among the following persons:*
- (a) The executive*
 - (b) Any member of the executive*
 - (c) Any committees of the executive, and*
 - (d) Any officers of the authority.*
- 3.3.3 *If the executive arrangements make such provision as is mentioned in subsection (2), any person to whom a function is allocated in accordance with that provision may discharge the function.*
- 3.4 Article 11 of the Constitution provides that the Chief Executive has overall operational responsibility (including overall management responsibility for all officers) delegated to him. Therefore the Chief Executive has authority in accordance with the Constitution to decide who can enter or be removed from the Council's offices.

4.0 Conclusions

- 4.1 The powers of the Standards Committee under the current standards regime are very restricted and allow for only limited action to be taken against councillors. A constitutional amendment to clarify these actions is not proposed as any amendment can only repeat the current legislative powers.
- 4.2 The operational management responsibility falling to the Head of Paid Service is diverse and extensive. Individual judgements need to be made in different circumstances according to the needs of the Council and the perceived risks presented.
- 4.3 While it is clear from 3.4 above that the Chief Executive can be perceived to take action against councillors in the exercise of his operational management responsibilities, it is not reasonable or feasible to set out all of the possible circumstances which may give cause for such action.
- 4.4 Should any Councillor be subject to action taken by the Chief Executive, as explained above, then any review should be made to the Chief Executive as the person responsible for the security and safety of all of the Council's assets.

4.5 Should it be considered that the actions taken by the Chief Executive are unreasonable or unjustified, these concerns should then be addressed through the Leader, as line manager of the Chief Executive, or through the Chief Executive's annual appraisal.

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Circulation of the Report: Management Team, Councillor Clive Eginton

List of Background Papers: none