

STATUS OF CO-OPTED MEMBERS OF THE STANDARDS COMMITTEE

Report of the County Solicitor

Recommendation: that the report be noted.

Introduction

1. This report has been produced in order to confirm the legal position of its Co-opted Members, with regard to voting rights. Under section 13 of the Local Government and Housing Act 1989 Co-opted Members of this Committee must for all purposes be treated as non-voting Members. However, it appears permissible in law to adopt a system of informal voting as set out in this report.

Background / Scope

2. The Standards Committee consists of seven Councillors and five representatives who are referred to in this report as "Co-opted Members".

3. The Council has also appointed two 'Independent Persons' under the provisions of the Localism Act 2011, who have a statutory role under the standards regime in terms of complaints and advice in that regard. Those Independent Persons are not Members of the Standards Committee.

4. There is no provision in Law for Co-opted Members of the Standards Committee to be given voting rights. The report's intent is to suggest a process that can inform the voting process.

The previous position

5. Until 1 July 2012, section 53 of the Local Government Act 2000 required Councils to establish a Standards Committee, with a membership including at least one person who was not a Member, or an officer, of that or any other relevant authority – in this report referred to as an 'Independent Member'.

6. Members may recall that Devon's Standards Committee had a number of Independent Members and Section 53 specifically provided that the Standards Committee must be chaired by an Independent Member. It also specifically provided that Independent Members were entitled to vote at meetings of the Standards Committee, but these provisions no longer apply.

The Current Position

7. In establishing new arrangements from 1 July 2012, under the provisions of the Localism Act 2011, this Council decided to retain a non-statutory Standards Committee which was done under the general power to discharge functions by Committee contained in section 101 of the Local Government Act 1972.

8. It further decided to include the previous 'Independent Members' as Co-opted Members within the revised membership of the Standards Committee, to preserve a greater degree of independence and objectivity. This Council is clear that Co-opted Members carry out a valuable role in influencing the views of the Committee and monitoring the Councils adherence to ethical governance issues and standards generally.

9. There is a general power in section 102 of the Local Government Act 1972 to appoint a Committee including persons who are not Members of the Council – which is the power used to appoint the Co-opted Members of the Committee. However, by virtue of section 13 of the Local Government and Housing Act 1989 Co-opted Members shall for all purposes need to be treated as non-voting Members.

10. It is with regret that neither this Committee nor the Council has the power to override the statutory position and grant Co-opted Members a formal vote. The power of general competence in the Localism Act 2011 is subject to any pre-existing statutory restrictions and is therefore of no assistance here.

11. That having been said, the views of the Co-opted Members are extremely valuable, need to be respected and add an 'independent' perspective.

12. It is, however, permissible to adopt a system of informal voting. Therefore, where a vote is required the Chair would first put the matter to an informal vote by all Members of the Committee. This would allow the Co-opted Members to clearly demonstrate their views to all present and the result would be minuted accordingly. The matter would then need to be put to a second vote of elected Members only and this vote would stand as the formal decision of the Committee. Officers are of the view that this is the only lawful method of conferring some form of voting rights upon Co-opted Members.

Summary / Conclusion

13. This Committee and the Council wished to retain the services of Co-opted Members as they carry out a valuable role in influencing the views of the Committee. It is not possible to grant them formal voting rights, but it would be permissible to adopt a system of informal voting if this Committee wishes to do so.

JAN SHADBOLT

[Electoral Divisions: All

Local Government Act 1972: List of Background Papers

Contact for Enquiries: K Strahan

Tel No: 01392 382264 Room: G31

<u>Background Paper</u>	<u>Date</u>	<u>File Reference</u>
--------------------------------	--------------------	------------------------------

Nil