

Standards and Audit Committee

Tuesday 9 September 2008 7.30pm

**Committee Room
Runnymede Civic Centre, Addlestone**

Members of the Committee

Councillors I O Angell, A J Davis, Mrs L M Gillham, A D Mills and A P Tollett

Additional Non-Elected Members of Standards and Audit Committee

Mrs C A Spurling and Mr S Tully

In accordance with Standing Order 29.2 any non-member of the Committee who is considering attending the meeting should first request the permission of the Chairman.

A G E N D A

Notes:

- i) Any report on the Agenda involving confidential information (as defined by section 100A(3) of the Local Government Act 1972) must be discussed in private. Any report involving exempt information (as defined by section 100I of the Local Government Act 1972), whether it appears in Part 1 or Part 2 below, may be discussed in private but only if the Committee so resolves.
- ii) The relevant "background papers" are listed after each report in Part 1. Enquiries about any of the Agenda reports and background papers should be directed in the first instance to **Miss C Pinnock, Administration and Leisure Department, Committee Section, Civic Centre, Station Road, Addlestone (Tel: Direct Line: 01932 425627). (Email: clare.pinnock@runnymede.gov.uk).**
- iii) Agendas and Minutes are available on a subscription basis. For details, please ring Mr B A Fleckney on 01932 425620. Agendas and Minutes for all the Council's Committees may also be viewed on www.runnymede.gov.uk.
- iv) In the unlikely event of an alarm sounding, members of the public should leave the building immediately, either using the staircase leading from the public gallery or following other instructions as appropriate.

LIST OF MATTERS FOR CONSIDERATION

PART I

Matters in respect of which reports have been made available for public inspection

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PART II

Matters involving Exempt or Confidential Information in respect of which reports have not been made available for public inspection.

a) Exempt Items

Exempt Appendices 'A' and 'B' to Item 8 'Internal Audit – Review of Service Performance'

b) Confidential Items

(No items to be considered under this heading).

1. ELECTION OF CHAIRMAN

To elect a Chairman for the remainder of the Municipal Year 2008/09.

The Committee is reminded that from May 2008 and in accordance with Section 53 of the Local Government Act 2000, as amended by Section 187 of the Local Government and Public Involvement in Health Act 2007, the Chairman of the Standards and Audit Committee must be one of the non-elected Independent members of the Committee; in this case either Mrs Spurling or Mr Tully.

2. ELECTION OF VICE-CHAIRMAN

To elect a Vice-Chairman for the remainder of the Municipal Year 2008/09.

Members are advised that only an independent member may chair meetings of the Committee (see above), at least in respect of its Standards Committee functions. Accordingly the practical effect is that the Committee must appoint as Vice-Chairman the independent Member who is not elected Chairman. It would be possible to appoint an elected Member as a second Vice-Chairman provided that their functions were restricted to business which did not by statute have to be handled by the Standards Committee.

3. FIRE PRECAUTIONS

The Chairman will read the Fire Precautions, which set out the procedures to be followed in the event of fire or other emergency.

4. MINUTES

To confirm and sign the Minutes of the Meeting held on 12 February 2008 which were included in the April 2008 Minute Book previously circulated.

5. APOLOGIES FOR ABSENCE

6. DECLARATIONS OF INTEREST

If Members have an interest in an item, please record the interest on the form circulated with this Agenda and hand it to the Legal Representative or Committee Administrator at the start of the meeting. A supply of the form will also be available from the Committee Administrator at meetings.

Members who have previously declared interests, which are recorded in the Minutes to be considered at this meeting, need not repeat the declaration when attending the meeting. Members need take no further action unless the item in which they have an interest becomes the subject of debate, in which event the Member must leave the room if the interest is personal and prejudicial.

7. STATEMENT OF ACCOUNTS 2007/08 AND AUDITOR'S ANNUAL LETTER TO THOSE CHARGED WITH GOVERNANCE (DF)

(Ref: Minutes of the Standards and Audit Committee, September 2007, page 305, para. 217)

1. Purpose of Report

1.1 **The purpose of this report is to present the Committee with the Statement of Accounts and the report to those charged with governance issued by KPMG following the conclusion of their audit of the financial statements for the year ended 31 March 2008.**

2. Report

2.1 The Statement of Accounts was approved by Corporate Management Committee on 26 June 2008. KPMG commenced their audit of the statements on 23 June 2008. There were no significant changes to the Statements. However, a small number of minor amendments were identified by KPMG (listed in the auditor's report) and improvements to format and clarity of wording were made where appropriate during the course of the audit. The Statements have been circulated separately with this agenda to Members of the Committee only.

- 2.2 The Council's appointed auditor is Neil Thomas, a Director of KPMG, and he presented his report to the Corporate Management Committee on 4 September. This was reproduced as Appendix 'B' on the Corporate Management Committee agenda and a slightly updated version has been circulated separately to the Members of this Committee.
- 2.3 The Statement of Accounts for the 2007/08 financial year and the Auditor's report are presented for consideration by this Committee so that Members can be satisfied that the Council has adequately discharged its reporting and governance responsibilities.
- 2.4 KPMG and the Audit Commission will issue an Annual Audit and Inspection Letter for 2007/08 later in the year when their combined work on inspection and performance assessment has been concluded.

(FOR INFORMATION)

Background Papers

None stated.

8. INTERNAL AUDIT – REVIEW OF SERVICE PERFORMANCE (DF)
(Ref: Minutes of the Standards and Audit Committee, September 2007, page 302, para. 214)

1. **Purpose of Report**

The purpose of this report is to:

- i) **report the achieved audit coverage and performance against the 2007/08 plan.**
- ii) **review the recommendations made in audit reports issued, and the progress made in their implementation.**
- iii) **note Internal Audit's assessment of the adequacy, reliability, and effectiveness of the internal control system and the extent to which the Council can rely on it; and**
- iv) **update Members with recent and current events that affect Internal Audit and or the Council's control environment.**

2. Background Information

2.1 In June 1996, the Council's former Policy and Resources Committee approved a bi-annual reporting process. Since then, Members have been provided with two reports each year:

- one presenting the annual Internal Audit plan for approval;
- another reporting actual work performed compared to that plan.

2.2 To fit in with the current meeting schedule for the Standards and Audit Committee, the annual Internal Audit plan is presented in February and performance is reported in September.

2.3 The primary purpose of this report is to review audit coverage for the last financial year and matters arising from these audits. The 2007/08 audit plan was presented to the Standards and Audit Committee in February 2007.

3. Internal Audit Coverage and Performance for 2007/08

3.1 Each year, the Chief Internal Auditor provides an Annual Report on Internal Audit report to the Director of Finance. The report for 2007/08 is attached at Exempt Appendix 'A'.

3.2 In considering the report to the Director of Finance, it might be helpful for Members to refer to the following table, which provides some background information on the five parts of the 2007/08 Internal Audit plan.

Plan	Work	Examples
Part 1 - Systems audits	Assess controls in operational areas to manage identified risks.	Council Tax, Museum, Leisure Centre, Benefits.
Part 2 - Computer audits	Technical work on IT systems carried out by bought in specialist skills.	Operating system security, system configuration, prevention of access to 'hackers'.
Part 3 - Contract audit	Verification of final accounts for contracts and compliance with Standing Orders for Contracts.	Contracts for external decorations to housing stock.
Part 4 – Corporate work	Anti Fraud & Corruption work, Data Matching	Act on fraud notifications from external bodies, supply data for Audit Commission Data Matching exercises.
Part 5 - unplanned & consultancy work	Investigations re possible fraud. Advice on request.	Cash shortage identified, request for help with setting up controls for a new system.

4. Progress in Implementing Audit Recommendations

- 4.1 Previously reported recommendations where progress has been made in their implementation, together with recommendations made in more recent audit reports, are tabled in Exempt Appendix 'B'.
- 4.2 The audits are listed in order of the audit opinion determined by the conclusions formed from conducting each audit. The opinions range from 'good' to 'critical' and a definition of each appears on the last page of Exempt Appendix 'B'.

5. Adequacy of Internal Control

- 5.1 An analysis of the audit opinions on the 31 audits completed during 2007/08 is shown in paragraph 3.5 of Exempt Appendix 'A'. No reports were issued with an opinion of 'unsatisfactory' or 'critical'.

6. Current / Recent Issues

Internal Audit Provision

- 6.1 The section is currently staffed by two Officers, with a top up service by an external contractor. It has recently been necessary to review this arrangement for two reasons:
- i) the Internal Auditor is leaving to take an accountancy post at another Council in September, leaving a vacancy;
 - ii) the contract with the external provider terminates on 31 March 2009.
- 6.2 As previously reported to this Committee, the contract with the external provider was originally let for three years with an option for a further two. The contract has been extended twice, making the total contract period five years. Extending the contract further would break EU procurement rules.
- 6.3 Two alternative ways of providing the service would be to either outsource the section or pursue some form of partnership working with neighbouring councils or others. Any re-tendering of the work being proposed for an external provide would be set against a costed proposal from the Audit Partnership of Spelthorne/Surrey Heath/Elmbridge.
- 6.4 The vacant post of Internal Auditor has also been advertised. Past experience has shown that given the budget available and the external market, the most realistic option for filling the

post will be for the Council to recruit a candidate with no audit experience who is attracted by the prospect of professional training. However, experience also suggests that despite generous professional training packages, the Council is fortunate if Internal Auditors stay for more than two years. Reasons for this are considered in paragraphs 2.32 and 2.33 of Exempt Appendix 'A'.

- 6.5 Issues relating to contract staff and partnership working were considered in the report to the Director of Finance in April this year (see Exempt Appendix 'A', paragraphs 2.20 to 2.39).

External Audit

- 6.6 In carrying out their review of Internal Audit work for the Council's key financial systems, the new external auditors (discussed in paragraphs 2.1 to 2.9 of Exempt Appendix 'A') required more time than usual to answer questions and explain systems.
- 6.7 However, they felt they were able to place reliance on the work, and were complimentary about the standard of Internal Audit's working papers.
- 6.8 The ability to satisfy external audit in 2008/09 could be adversely affected by the timing of the Internal Auditor's departure and the capacity of the contractor to provide replacement resources while the post is vacant.

7. Policy Implications

- 7.1 There is an overriding duty to procure goods and services in a way that secures the best value for the Council.
- 7.2 The Council has a policy of developing partnership arrangements with neighbouring councils.

(FOR INFORMATION)

Background Papers

Internal Audit reports (exempt)

9. DATA MATCHING (DF)

1. Purpose of Report

- 1.1 **The purpose of this report is to inform Members of the changing legal framework within which the forthcoming national Data Matching exercise will be conducted.**

2. Background Information

- 2.1 The Audit Commission runs a data matching exercise as part of a National Anti Fraud Initiative (NFI). The Council participates in this exercise, which to date has been a biennial event.
- 2.2 When the NFI commenced in 1996, the objective was to combat Benefit fraud. Since then, the scope has been broadened to cover fraud in a wide range of public services. Information requested for the forthcoming 2008 exercise is set out below:

Dataset	Data
Payroll	Details of Officers and Members' pay and bank account details.
Trade creditors	Details of creditors paid and payments made.
Housing - rents	Tenant details
Housing – sold Council houses	Details of purchasers of Council houses.
Transport passes - concessionary travel.	NEW for 2008 Details of pass holders

Dataset	Data
Licences - Market trader/operator, Taxi drivers	NEW for 2008 Currently, Runnymede has none of these so there is no data to supply.
Personal licences to supply alcohol	NEW for 2008 Details of licence holders
Transport passes - residents' parking permits	Following a number of emails with NFI, it has been agreed that Runnymede does not need to supply this data as this Council simply sells 'season' tickets.
Insurance claimants	NEW for 2008 Data relating to claims for slips and trips. This data will be supplied direct by the Council's insurers. As Runnymede no longer has a Highways Agency Agreement, there will be very few of these.
Council Tax Required 2009	Details of Council Tax payers with discounts (especially Single Person Discount).
Electoral register Required 2009	This data was first required in 2007. It has not yet been supplied due to concerns that this would be contrary to Electoral Registration legislation.

2.3 Data sets are provided by a number of public sector organisations and matched against each other to identify. For example:

- employees of public sector organisations not having UK visas,
- tenants exercising their Right to Buy who are in receipt of Benefit or have rent arrears,
- duplicate payments,
- fraudulent
 - Benefit claims,
 - pension payments,
 - insurance claims,
 - parking permits.

2.4 It must be stressed that a data match does not necessarily mean that a fraud has been committed. At this stage, the output from the exercise has simply reported that there are two records in two systems where the details (e.g. a name, address or date of birth) are the same. Where there is a data match the onus is on the participating organisations to investigate the reasons for the match to establish whether or not there is any evidence of fraud.

3. Report

3.1 The data matching exercise used to be conducted within the framework of legislation relating to External Audit. This prompted a number of challenges, the most recent of which concerned the Audit Commission's demand for Electoral Registration details.

3.2 As a result, the Audit Commission has successfully lobbied the Government and data matching has been embodied into the Serious Crime Act 2007. It is now a criminal offence:

- i) not to provide the data specified by the Audit Commission for Data Matching exercises;

ii) to provide data contrary to the Data Protection Act.

3.3 A Code of Practice has been drafted jointly by the Audit Commission and the Information Commissioner to assist Data Matching participants balance these two requirements. This has been formally approved by Parliament.

3.4 Through its NFI arm (National Fraud Initiative), the Audit Commission carries out pilot studies (usually in London Boroughs) of new matches. Results found to indicate fraudulent activity are added to the list of data matches to be rolled out across the country. It is likely that the exercise will become an even more significant piece of work for the Council, which will raise resourcing issues.

3.5 The only provision made in the Act for not providing data that has been specified is if a participant has 'reasonable excuse'. Whilst participants may have views on the necessity and usefulness of any particular match, only the courts can decide if a refusal is reasonable.

3.6 Officers wish to draw two issues to Members' attention.

Concessionary Bus Passes

3.7 The first is a match added for the 2008 exercise which relates to travel passes.

3.8 It is considered that Runnymede has strong controls in this operational area.

- The bus pass team already receives a weekly list of Runnymede residents that have passed away. On receipt, Officers check their database, remove any matching bus pass holders and then put them on a separate list. This is used to ensure that the card will not be renewed when it reaches its expiry date.
- The bus pass production team is informed and that pass is then stopped. This means that on buses equipped with a card reader, the pass is rejected.

3.9 At best the exercise will only identify any pass holder who has moved a significant distance away and later died. The risk of anyone finding, fraudulently amending the embedded photograph and using the pass is considered only as likely as someone fraudulently creating a pass.

3.10 This argument has been made to the Audit Commission. Whilst accepting that this Council has strong controls in this service area, it is still insisting that the data is provided. It is believed that this view will be taken with any reasonable argument not to supply data.

3.11 Although most other data sets are matched with data sets provided by other participating bodies, travel pass data is being matched to a list of deceased persons. It cannot be argued therefore that this is being used to verify data held by other organisations.

3.12 Officers are concerned about how to deal with matched entries. The Council may not have details of the next of kin. Where it does, it is considered insensitive to contact a grieving family to request the return of a bus pass.

Payroll Data

3.13 The second issue relates to payroll data. Previously, only limited personal payroll data has been provided by Runnymede. Requested information regarding bank account details and actual pay has not been provided because:

- i) Officers had concerns that the information may get into the wrong hands;
- ii) the core information being provided (name, address, date of employment, etc.) seemed to be more than adequate to produce worthwhile matches without the need to disclose more sensitive personal data;
- iii) it avoided challenge on data protection grounds.

- 3.14 This information has only been provided when cases have been identified that needed further investigation. Over the past four NFI exercises, only 1 data match has arisen at Runnymede that has required releasing some of this detail.
4. Resource Implications
- 4.1 The NFI has expanded in scope with each new exercise. It now takes up a significant amount of Officer time, especially in the Finance and Housing and Community Services Departments.
- 4.2 Initially, the work involves reviewing the NFI specifications and ensuring that Officers are able to download the data required to those specifications. The position at the start of August 2008 is that the Chief Internal Auditor (who co-ordinates the exercise), had already used 8 days for this element of the work. Ten days are allowed in the current year audit plan for her involvement in the entire exercise, a figure based on previous experience.
- 4.3 At the specified time (6 October 2008 for this year's exercise), data has to be provided to the NFI. This used to be transferred by email or discs. Now, there is a direct upload facility to the NFI website. If data files provided by Officers are in time and in the specified format and order, it should in theory be possible to carry out this element of the work in less than a day. However, this has not been achieved in previous exercises because of the difficulties in extracting some of the data and because of the availability of key staff to download the data for the specified date.
- 4.4 Data Matches are now reported through the NFI website. Investigating these is resource intensive for Officers across the Council. From the 2006 exercise, the following data matches were notified to Runnymede.

Datasets

Number of Matched data items

Housing Benefits

Housing Benefit Claimants to Student Loans, high quality, between bodies	4	
Housing Benefit Claimants to Payroll, high quality, within bodies	6	
Housing Benefit Claimants to Payroll, high quality, between bodies	54	
Housing Benefit Claimants to Payroll Pensions, high quality, between bodies	56	
Housing Benefit Claimants to Payroll Pensions, medium quality, between bodies	1	
Housing Benefit Claimants to Payroll, address quality, within bodies	11	
Housing Benefit Claimants to Payroll, address quality, between bodies	53	
Housing Benefit Claimants to Payroll Pensions, address quality, between bodies	227	
Housing Benefit Claimants to Asylum Seekers, high quality, between bodies	2	
Housing Benefit Claimants to UK Visas, medium quality, between bodies	2	
Housing Benefit Claimants to Housing Benefit Claimants, high quality, between bodies	9	
Housing Benefit Claimants to Housing Rents, medium quality, within bodies	19	
Housing Benefit Claimants to Housing Rents, medium quality, between bodies	1	
	<i>sub total</i>	445

Payroll

Payroll to Payroll, high quality, between bodies	25	
Payroll to Payroll, medium quality, between bodies	1	
Payroll to UK Visas, medium quality, between bodies	6	
Payroll to Housing Benefit Claimants, high quality, between bodies	9	
Payroll to Payroll Pensions, high quality, between bodies	20	
Payroll to NI Number Check, within bodies	6	
	<i>sub total</i>	67

Housing Rents

Housing Rents to Housing Rents, medium quality, within bodies	1	
Housing Rents to UK Visas, medium quality, between bodies	1	
Housing Rents to Housing Benefit Claimants, high quality, between bodies	3	
Housing Rents to Housing Benefit Claimants, medium quality, between bodies	4	
Housing Rents to Rent Arrears, medium quality, between bodies	1	
Rent Arrears to Housing Benefit Claimants, medium quality, between bodies	1	
Rent Arrears to Housing Rents, medium quality, between bodies	1	
Right to Buy to Housing Benefit Claimants, high quality, within bodies	5	
	<i>sub total</i>	17

Creditors

Duplicate creditors by creditor name	437	
Duplicate creditors by address detail	371	
Duplicate creditors by bank account number	202	
Invalid VAT Registration Number	29	
Creditors with blank addresses	6	
Duplicate records by invoice reference, invoice amount and creditor reference	535	
Duplicate records by invoice amount and creditor reference	5132	
VAT overpaid	149	
Payment date precedes invoice date	62	
Invoice value is less than £1	41	
	<i>sub total</i>	6964

Global

Individuals that appear on more than one report	275	
	<i>sub total</i>	275

Grand total **7768**

- 4.5 As well as checking these reported matches, each data entry on the NFI website had to be updated with the results of the match. In some cases that meant selecting an option from a drop down menu; in others it required inputting free text. Although some of the data matches involved several data items, (e.g. 12 equal monthly payments to a contractor reported as duplicate payments), each data item required updating on the website. In spite of the large number of reported matches in the 2006 exercise, none of Runnymede's entries were found to involve fraudulent activity or error.
- 4.6 A further difficulty arose in allocating the non-Benefit investigations work. This had to be assigned to staff who were closely involved in the creation of the original data because there was no-one else available to undertake an independent check of the output.
- 4.7 There are other cost implications for data matching. Where Officers are not able to export data from their system, software suppliers have to be commissioned to produce an extraction routine. In the case of travel passes, the supplier is quoting £650 for this work. Although this should be a one off fee, it may have to be repeated if the NFI changes the data it requires for future exercises.
- 4.8 Officers are currently considering the budgetary implications of this unforeseen cost. As the Audit Commission gives little notice of new matches (the matches for travel passes and licences were announced in June), there is insufficient warning to incorporate these additional costs into the budget.
- 4.9 The Audit Commission also charges a fee of £2,000 for the data matching exercise. This forms part of the fee that the Council pays for its external audit.

5. Legal Implications
- 5.1 Section 32 of the Serious Crime Act 2007 gives the Audit Commission the power to require a body to provide such data as they may reasonably require for the purpose of data matching. Failure to comply with their request without reasonable excuse is a criminal offence.
- 5.2 Regard must be had to the Code of Data Matching Practice when participating in such data matching exercises. Processing personal data engages Article 8 of the EC on Human Rights, which deals with the right to respect for private and family life and the home. This means that any data processing must be in accordance with the law and proportionate.

(FOR INFORMATION)

Background Papers

Further information can be obtained from the following websites:

www.runnymede.gov.uk/DataMatching
www.audit-commission.gov.uk/nfi
www.audit-commission.gov.uk/nfi/codeofdmp.asp
www.audit-commission.gov.uk/nfi/ftpext.asp

10. RISK MANAGEMENT (DF)
(Ref: Minutes of the Standards and Audit Committee, September 2007, page 304, para. 216)
 1. Purpose of Report
 - 1.1 **The purpose of this report is to advise Members of progress in implementing the Council's Risk Management Strategy and updating the risk register.**
 2. Background Information
 - 2.1 The Risk Management Strategy was last revised and approved by this Committee in September 2005.
 - 2.2 The strategy requires the Council to:-
 - identify the risk of events occurring that will threaten the achievement of desired objectives;
 - put controls in place to prevent these risks occurring or to mitigate the impact of these risks;
 - document and prioritise the residual risks;
 - produce an action plan to address any residual risks that are unacceptable;
 - review the controls that are being operated; and
 - report to Committee at least annually on key risks and the way in which the strategy has been implemented.
 - 2.3 During the past year, the Directors' (Chief Officers') Management Team has co-ordinated the production of a risk management action plan and monitored the steps taken to control the Council's risks.
 - 2.4 The latest annual review of the Council's strategic risks was undertaken in June 2008. This involved a workshop of senior Officers and followed the format adopted in previous years. A report on the outcome of the exercise is reproduced at Appendix 'A'.

3. Report

Annual review of strategic risks

3.1 The April review identified 33 corporate risks compared with the 32 on last year's risk register (4 risks were removed and 5 new risks recorded). Full details are set out in Appendix 'A'. Officers have scored each risk against the matrix adopted by the Council in its Risk Management Strategy. A diagram of the Council's risk profile, illustrating where each of the risks has been plotted on the matrix and their relationship to the Council's risk appetite, is shown on page 6 of Appendix 'A'.

3.2 Chief Officers have compiled an action plan for each of the 18 risks that lie outside the Council's appetite for risk.

Annual review of implementing the risk management strategy

3.3 Chief Officers have reviewed the Risk Management Strategy (reproduced at Appendix 'B') and believe this continues to reflect the Council's business needs. Therefore no amendments are proposed to the strategy this year.

3.4 An acknowledged area for improvement has been the need to embed the risk management approach in its departmental management arrangements. This is one of the action points identified in the Annual Governance Statement. In last year's report it was noted that while Departmental Service Plans incorporate risks that are monitored along with the Council's service targets, these are not ranked and prioritised in a systematic way like the strategic risk register. Since then, each department has compiled a register of departmental risks. The intention is for this to improve the awareness and management of risks and to inform the process of addressing the Council's strategic risks.

Training

3.5 The last time that training in risk management was provided to all Members was in October 2006 when Zurich Municipal Management Services ran a short training session prior to a meeting of full Council. The Committee's views are requested on the need for further training for Members.

3.6 The Safety Advisor (an Officer in the Technical Services Department) organises safety training throughout the year to address operational risks faced by each department. The following courses have been run over the last twelve months:-

- Induction and refresher training for staff.
- Live fire extinguisher training for DSO crews.
- Live fire warden and fire extinguisher training for outreach staff.
- Fire risk assessment training for Housing and Community Services.
- Refresher training for DSO Task Force staff.
- Manual Handling training.
- Carriage of Dangerous Goods training for DSO staff.
- Evacusafe Chair training.
- Safety management training for Halls managers.
- Safety awareness training for civic centre staff.

- to carry out initial assessments of allegations (to decide whether to investigate);
 - to carry out any reviews of initial assessments, on appeal by the complainant.
- 3.3.2 The Committee may appoint one or more sub-committees to consider investigation reports and to conduct the hearing of complaints.
- 3.3.3 Any review of a decision not to act, under the second bullet point in 3.3.1, must be carried out by a differently constituted sub-committee from the one that took the initial decision. However there is no automatic bar on Members sitting both on the initial assessment and the final determination.
- 3.3.4 Standards Board guidance suggests that each Standards Committee should have a minimum of three independent Members, which would allow a different Chairman at each stage of the process and would also provide some reserve in the event of absence. However, in order to comply with the law it should be possible to manage with two independent Members, as is currently the case at Runnymede. Officers suggest that the possible need for a third independent Member be considered in due course in the light of experience.
- 3.3.5 Under the previous regime, the Committee decided to constitute a sub-committee of the whole Committee in order to conduct any hearings against Members. The earlier stages would have been carried out by the Standards Board. There have been no complaints referred for local determination during the history of the Committee. Officers suggest that the requirements of the new regulations can best and most flexibly be met by constituting three sub-committees of the whole Committee:
- An assessment sub-committee.
 - An assessment review sub-committee.
 - A determinations sub-committee (this sub-committee would be responsible for the initial consideration of investigation reports and for hearing and determining cases).

Each sub-committee would have to be chaired by one of the independent Members but it is not necessary to appoint a permanent Chairman of any of them - this could be done occasion by occasion. The system would be that when a matter had to be considered, a minimum of three Members (the legal quorum), including at least one independent Member, would be convened. It is important to note that if more than three Members, or more than one independent Member, sit on an assessment sub-committee, there would be difficulties in constituting any necessary assessment review sub-committee on the same allegation because of the danger of conflict of interest (see 3.3.3 above).

3.3.6 **Action Required:**

To appoint at least two sub-committees, each sub-committee to include at least one independent Member. The Officer recommendation is to appoint three sub-committees comprising all the Members of the Committee in order to give maximum flexibility, with the Chairman of each sub-committee to be appointed for the particular meeting or hearing. A suggested protocol for convening the sub-committees is attached for approval at Appendix 'C'.

3.4 Publicising the Complaints System

3.4.1 The Council is required to publish details of how to make a complaint against a Member. A notice has appeared in the Surrey Herald and details are also available on the Council's website. The requirement is that a complaint should be sent to the Standards and Audit Committee, c/o the Monitoring Officer, at the Civic Centre.

3.4.2 No further action on publicity by the Committee is specifically necessary. However, it would be appropriate for Officers to set up appropriate documents (such as a complaint form) to assist complainants and the Committee in the processing of allegations.

3.5 Pre-assessment Reports and Enquiries

- 3.5.1 Guidance suggests that authorities may instruct the Monitoring Officer, or other appropriate Officer, to prepare a short summary of a complaint for an assessment sub-committee. It is important to note that this can only be a collation of information about the complaint in order to assist the assessment - not an investigation.
- 3.5.2 The Committee needs to decide whether to request such a summary as a matter of routine. Officers suggest that this should be normal procedure.
- 3.6 Assessment Criteria
- 3.6.1 The Standards Board recommend that clear local criteria should be drawn up against which each allegation will be assessed before a decision as to whether to refer it for investigation. The guidance sets out a series of questions which could be used as part of this process.
- 3.7 Initial Assessment Decisions
- 3.7.1 The Standards Board recommends that the assessment sub-committee should complete its initial assessment of allegations within an average of 20 working days. Under the regulations, the sub-committee must reach one of the following decisions:
- to refer the complaint to the Monitoring Officer for investigation or other action;
 - to refer the complaint to the Standards Board for England;
 - to take no action in respect of the complaint.
- 3.7.2 Most complaints which are to be investigated would be referred to the Monitoring Officer. However reference to the Standards Board may be appropriate if there are conflicts of interest, if it is a particularly serious or complex case, or in certain other circumstances. Examples are set out in the Guidance. The Standards Board may, however, still decline to investigate and refer the case back to the Standards Committee which must carry out a further assessment.
- 3.7.3 The assessment sub-committee may, if it has referred a matter to the Monitoring Officer, require action such as arranging Member training, arranging a process of conciliation, or other steps. If it does this it cannot ask for investigation as well. The sub-committee cannot ask for other action where it has decided either to refer the allegation to the Standards Board or that it does not warrant investigation.
- 3.8 Notification Requirements
- 3.8.1 There are various requirements to notify the complainant, the Member who is the subject of the allegation, and potentially other parties, of the decision of the assessment sub-committee. Advice on these will be given as necessary at the appropriate times. The requirements will be implemented by Officers.
- 3.8.2 The Member against whom the complaint is made would normally be entitled to a summary of the complaint. However, if the sub-committee decides that this would be against the public interest or would prejudice a future investigation (e.g. in cases of intimidation), then it can decide not to do so. The sub-committee should take advice from the Monitoring Officer on this point.
- 3.9 Reviews of "no further action" Decisions
- 3.9.1 If the assessment sub-committee decides not to take action, the complainant has a right to request a review. The matter is then referred to the review sub-committee, which must carry out the review within three months of receiving the request. The Standards Board, however, recommends that the review sub-committee aims to complete the review within 20 working days.
- 3.9.2 The review must be independent of the original decision and requires a separate sub-committee. The review sub-committee should apply the same criteria as were used for the initial assessment and has the same decisions available to it.

- 3.9.3 If there is substantial new information or evidence, it is possible that this will change the nature of the subject matter, and in this case the review sub-committee needs to consider whether to refer the matter to the assessment sub-committee as a new complaint rather than overturn the original decision.
- 3.9.4 Following a review, there are again notification requirements to be observed. These will be handled by Officers in consultation where necessary with the relevant Chairman.
- 3.10. Public Access to Meetings and Decisions
- 3.10.1 The initial assessment decision, and any review of that assessment, must be conducted behind closed doors. This is because the sub-committee may have to consider unfounded and potentially damaging complaints.
- 3.10.2 By the same token, such meetings are not subject to the normal rules regarding public notice, circulation of agendas, public access to meetings, etc. The regulations provide for the production of a written summary after the meeting, which must be compiled having regard to the Standards Board's guidance.
- 3.11 Withdrawal of Complaints
- 3.11.1 Once a complaint has been validly made, the assessment sub-committee may carry on and decide whether it is to be investigated even if the complainant asks to withdraw it. It might do this for example, if it felt there was a significant matter to investigate and that the request to withdraw might have been generated by intimidation.
- 3.12 Multiple and Vexatious Complaints
- 3.12.1 Although Members may feel that the system is being abused by a number of complaints or their trivial nature, it is still legally obliged to make a decision on each one. It can consider several complaints of the same nature at the same meeting. As part of a process of managing the relationship with a "vexatious" complainant the authority might place restrictions on an individual's access to the authority, but nevertheless all complaints must be considered.
- 3.12.2 If, however, the same complaint has been considered previously and the Monitoring Officer does not consider that there is new evidence, there is no obligation to make a new decision simply because the original allegation is repeated.
- 3.13 Conflicts of Interest
- 3.13.1 The Standards Board offers advice on both Member and Officer conflicts of interest. Provided that the process is fair, there is nothing to prevent Members participating both in the initial decision to refer a matter for investigation, and in the hearing of that investigation. However, a close association with the complainant or a witness, for example, should result in withdrawal from the matter. (This is one reason why in theory the authority might need more than two independent Members).
- 3.13.2 Where the Monitoring Officer or another Officer has been involved in a matter prior to the assessment process or hearing, they should consider whether their continued involvement might give the appearance of bias. In addition, the Standards Board recommends that the same Officer should not be involved both in the investigation and in the support of the assessment or hearing process. The advice is that the Monitoring Officer should act as the main advisor to the Standards Committee. This would normally mean that the actual investigation would need to be handed over to another Officer or perhaps to an external investigator of some kind.
- 3.14 Hearings following Investigation
- 3.14.1 The procedure is much the same as existing. The Committee must find one of the following:
- No breach of the Code of Conduct.

- Breach of the Code but no action necessary.
- Breach of the Code and the imposition of an appropriate sanction.

3.14.2 The available sanctions are:

- Censure.
- Restriction of access to the authority's premises or resources for a maximum of six months (subject to reasonableness requirements).
- Partial suspension from exercising the functions of a Member for a maximum of six months.
- Full suspension for a maximum of six months.
- A requirement for a written apology.
- A requirement for training.
- Participation in conciliation.
- Certain combinations of the above.

3.15 Appeals

3.15.1 Where the Committee finds that the Member has breached the Code, the Member has a right of appeal to the Adjudication Panel for England.

4. Procedures

4.1 The Council has existing procedures for handling hearings following investigations. Additional processes will, however, be necessary for the pre-assessment and assessment stages as mentioned above. Drafts of proposed new procedures, based on a model already used by Guildford Borough Council, and a revised and updated version of the hearings procedure, are annexed at (Appendix 'D') for Members' approval.

4.2 There will be detailed requirements regarding notice to parties, publicity, and procedure for each meeting and hearing, and the Committee or relevant sub-committee will be advised appropriately in each case.

5. Resource Implications

5.1 Even one investigation and hearing could be very time-consuming. If the Committee were to receive more than a very few allegations, substantial senior/professional staff time would be required for the procedures and hearings. There might in any event be a need to pay another authority or outside firm to conduct investigations.

5.2 Such a scenario would also require significant time commitment from Members of the Committee.

5.3 In such circumstances it might be necessary to seek an increase in budget and/or staff resources. It is not possible to predict annual cost and of course the hope must be that it will be low.

5.4 It might also be necessary to increase the number of Members of the Committee to spread the workload. Some or all of an increase in membership could be achieved by appointing more independent Members if the authority so wished.

6. Training

6.1 Officers will try to arrange training for the Members of the Committee on the local assessment and hearing procedure, either in-house or in partnership with other authorities.

OFFICERS' RECOMMENDATION that:

- i) the number of independent Members be reviewed at a future meeting of the Committee;**
- ii) an assessment sub-committee, a review sub-committee, and a determination sub-committee be constituted for the purposes set out in the above report, in each case comprising the full membership of the Committee; and the protocol for convening an appropriate number of Members of a sub-committee, set out at Appendix 'C', be approved; and**
- iii) the procedures for the pre-assessment, assessment and investigation stages of a complaint, and the updated hearing procedure, all set out at Appendix 'D', be approved.**

(TO RESOLVE)

Background Papers:

Standards Board's Guidance: "Local Assessment of Complaints" dated June 2008.

12. ADJUDICATION PANEL FOR ENGLAND – RECENT CASES (DAL)

(Ref: Minutes of the Standards and Audit Committee, September 2007, page 305, para. 220)

- i) A Member and former Leader of Dartford Borough Council was convicted on 14 charges of making indecent images of children. He had accessed the images on a computer provided to him by the Council for his duties as a Councillor. The Council's guidelines for use of computers prohibited the display of any kind of indecent image, or the archiving, recording, etc of indecent material. They contained a further provision against the use of Council internet and computer facilities to break the law. The guidelines also indicated that it was a violation of Council policy to view or pass on material that was not directly related to the user's job for the Council's business activities. The policy applied both to Members and to Officers. The Councillor argued that he thought the computer no longer belonged to the Council as he was aware that its value was written down by 25% every year and he had used it for more than 4 years.

The Case Tribunal accepted that the Councillor was not acting in his official capacity when he downloaded the images. However it found that the provision of the Code regarding the bringing of the Council or the Member's office into disrepute nevertheless applied because the computer was owned by the Council and was provided for business purposes. It then went on to conclude that the nature of the offence inevitably meant that the Member had brought the Council and his office into disrepute. It took into account the fact that at the time of the offences he had been the Leader of the Council. Bearing in mind the damage to public trust and confidence, the Councillor was disqualified from membership of any authority for 5 years.

- ii) A Member of Elmbridge Borough Council was suspended for one month by that Council's Standards Committee for a breach of the Code of Conduct. He had participated in discussion, and a site visit, in respect of a planning application by a former client for whom he had carried out work earlier on the same project. At the site visit he reminded the client that some fees remained outstanding. When the matter was subsequently considered by the Planning Committee he declared a personal interest but not a prejudicial one and remained in the room. He believed he had mentioned to the meeting that he had undertaken work for the applicant, but this could not be verified. The Councillor appealed to the Adjudication Panel against the decision of the local Standards Committee. He argued that he had been guilty of no more than a minor technical breach and contrasted his penalty with that imposed by the House of Commons on George Galloway MP (18 days), and another Councillor found to have committed a different breach who had had no sanction. The Appeals Tribunal, however, decided that the suspension had been an appropriate sanction and that the breach was not a minor technical matter. The planning applicant had owed the Councillor a relatively large amount of money and in the circumstances he should have declared a prejudicial interest. The Panel observed that Councillors whose worked overlapped with their Council functions should be scrupulously careful in declaring interests, particularly in the

planning context. The Councillor should have been conscious of the sensitivity of his position and at least have sought advice.

- iii) A Councillor of Birmingham City Council was found by the Standards Committee of that authority to have failed to treat others with respect. Having been approached by a ward resident seeking Council funding for a skateboard park and being impressed with the project, the Councillor had raised a number of queries with Officers about the adjoining property, including concerns about unauthorised development and about activity undertaken without having reached an appropriate agreement with the owner of the skateboard land. Following a further approach by the skateboard landowner on two issues, although he informed the complainant that he was unable to assist, he then entered the adjoining land with a video camera and the complainant and recorded a conversation with the adjoining landowner. He identified himself as a Councillor at the beginning of the conversation and during the course of it both he and the skateboarding landowner complained about the state of one of the buildings on the land. He subsequently posted the video on YouTube with a link from his Councillor's webpage.

The Appeals Tribunal determined that the Councillor was acting in his official capacity. It agreed with the local Standards Committee that the trespass onto the adjoining land, the hostile and unfair publication and editing of the video, the failure to correct inaccurate information and the failure to remove it from the website all constituted a failure to treat the adjoining landowner with respect. The local Standards Committee had suspended the Councillor for a period of one month with the option of offering an apology to the adjoining landowner instead. The Appeals Tribunal, determined that the period of suspension was not excessive and varied the sanction to remove the option of an apology, although it still considered that an apology was appropriate.

- iv) A Member of West Somerset District Council was strongly opposed to a proposal to centralise the Council's Offices in Minehead. With other Members of the Council, he received a briefing on the possibility of acquiring a site comprising a number of holiday flats adjacent to the Council's existing offices in Minehead. Before the information became public, the Councillor had purchased the property. In due course he obtained planning permission to convert it to apartments. Subsequently he obtained a further planning permission for the construction of a three storey detached dwelling.

Despite the use of information which had been made available to him as a Member of the Council in order to acquire the property, the Panel noted that his primary motivation was to act in what he saw as the public interest by frustrating a misguided attempt to centralise the Council Offices. The information which he had acquired in his capacity as a Member was made public within days and he would still have been able to achieve his objective as an ordinary member of the public. Accordingly the Tribunal decided that he had not improperly used his position to gain an advantage. However, the circumstances in which he took action, including the use of information given to him in his official capacity, and his buying the property secretly (through nominees) conveyed a lack of openness and transparency which 'would undoubtedly diminish public confidence in his ability to discharge his office as a Councillor'. Accordingly the Tribunal found that he had broken the Code of Conduct by bringing his office or authority into disrepute. Taking the Councillor's motivations and all the circumstances into account, the Tribunal disqualified him from serving as a Councillor for six months.

- v) A Councillor of Tewkesbury Borough Council dishonestly completed claim forms for childcare expenses (alleged to have been incurred to enable him to perform his official duties) by forging the signature of the carer and including details of care his child had not received. He was subsequently convicted of four counts of fraud. The Case Tribunal applied not only the terms of the Code of Conduct but also had regard to the general statutory principles of Member conduct. It took the view that he seriously brought his office into disrepute and disqualified him for four years.

13. COMPLAINTS MADE AGAINST MEMBERS (DAL)
(Ref: Minutes of the Standards and Audit Committee, February 2008, page 765, para. 525)

There have been no complaints to the Standards Board or to this Committee about the conduct of Members of Runnymede Borough Council since the last meeting.

As this Committee is now responsible for receiving and assessing complaints against Members in the first instance, the Committee will be aware of any issues which have arisen and Officers will cease to make this a regular matter of report.

(FOR INFORMATION)

Background Papers:

None.

14. LOCAL GOVERNMENT OMBUDSMAN ANNUAL LETTER
(Ref: Minutes of the Standards and Audit Committee, September 2007, page 305, para. 218)

1. Purpose of Report

1.1 The purpose of this report is to outline the content of the Local Government Ombudsman's annual letter to the Council.

2. Background Information

2.1 Every year the Local Government Ombudsman writes to each authority to give a summary of complaints about the authority that the Ombudsman's office has dealt with over the past year, from which may be drawn lessons regarding the authority's performance and complaint handling arrangements.

3. Report

3.1 Members who were on the Committee last year may recall that 30 complaints were made against the Council in 2006/7, which was almost double the previous year's total. In 2007/08 the Ombudsman received only 13 complaints against Runnymede, lower than the number in 2005/6. There is no obvious reason for the changes.

3.2 As is common for District Councils, the largest number of complaints (6) were about planning applications or planning enforcement. Two complaints each were received about Council Tax, Benefits and housing allocations. One was about parking.

3.3 In seven of the cases, there was no evidence that the Council was at fault. Two complaints were outside the jurisdiction of the Ombudsman, and in one case he used his discretion not to investigate further. Three were referred back to the Council, as the complainant had not given the Council an adequate opportunity to consider and respond to the matter.

3.4 No response by the Council to the Ombudsman took longer than 22 days, well within the Ombudsman's requested limit of 28 calendar days.

4. Conclusion

4.1 The reduction in the level of complaint is welcome, despite the fact that no obvious reason can be seen for the high number in the previous year. Members will be aware from the regular report presented to this Committee that it is difficult to discern a particular service area or point of organisational weakness causing the various complaints, but every complaint, particularly when received through the Ombudsman, results in careful examination of what the Council has done and whether any lessons can be learned.

4.2 The experience with Ombudsman complaints will continue to be monitored.

(FOR INFORMATION)

Background Papers:

Annual letter from Ombudsman's office to Chief Executive Officer dated 18 June 2008.

15. LOCAL GOVERNMENT OMBUDSMAN INVESTIGATIONS (DAL)
(Ref: Minutes of Standards and Audit Committee, February 2008, page 765, para. 524)

The following matters have progressed with the Commissioner for Local Administration since the last meeting of this Committee.

<u>Matter</u>	<u>Date Notified</u>	<u>Outcome</u>
Inadequate handling of planning breaches at Padd Farm, Hurst Lane, Egham	5 September 2007	At the last meeting an outcome was awaited. There are two separate complainants. The Ombudsman has declined to pursue either complaint at present but may review the case once the position on enforcement is clearer following appeal outcomes and/or court action.
Alleged failure to prevent neighbour harassment in property at Englefield Green	February 2007	This is one of two complaints, each lodged by one of the neighbours at loggerheads with each other. The Ombudsman decided during 2007 not to pursue the other complaint. After prolonged correspondence on the second complaint, the Council was notified of an initial proposal to find maladministration. However following further correspondence and explanation the Ombudsman has now decided to discontinue the investigation. One of the households involved has now been moved.
Alleged improper granting of planning permission for premises at Woodham	28 March 2008	Reply sent and decision awaited.
Delay in moving tenant to larger accommodation resulting in overcrowding	19 May 2008	Not pursued - no evidence of administrative fault.
Alleged improper handling of complaint against landlord relating to provision of costs information	28 May 2008	Not pursued - no evidence of administrative fault.

(FOR INFORMATION)

Background Papers:

Relevant papers on the Director of Administration and Leisure's files 61.21.004, 009, 011, 012, 014.

16. MEMBER TRAINING (DAL)
(Ref: Minutes of the Standards and Audit Committee, February 2008, page 766, para. 526)

The Committee will be aware that Officers were awaiting the introduction of the new regime for handling complaints, and also to learn whether a further revision of the Member Code of Conduct was to be promulgated as had been suggested towards the end of last year.

The new regime for receiving complaints is now in place and it does not appear there is to be any further revision of the Code of Conduct for the time being. Accordingly, a briefing session for all Members on the Code of Conduct and the Ethical Framework will be scheduled before Christmas. Officers are also on the lookout for more specialised training for Members of Standards Committees in handling complaints, which are often effective and relatively economical if undertaken in partnership with other authorities. There is also a variety of training material becoming available from the Standards Board for England which could be used for some in-house familiarisation.

An overview of the Code of Conduct, concentrating on key provisions, was provided for newly elected Members in June this year.

(FOR INFORMATION)

Background Papers:

None.

17. EXCLUSION OF PRESS AND PUBLIC

If the Committee is minded to consider any of the foregoing items in private, it is the

OFFICERS' RECOMMENDATION that –

the press and public be excluded from the meeting during discussion of the following reports under Section 100A(4) of the Local Government Act 1972 on the grounds that the reports in question would be likely to involve disclosure of exempt information of the description specified in paragraphs 1, 3 and 7 of Part 1 of Schedule 12A of the Act.

(TO RESOLVE)

Matters involving Exempt or Confidential Information in respect of which reports have not been made available for public inspection.

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|----|--|---------------|
| a) | <u>Exempt Items</u> | Paras. |
| | Exempt Appendices 'A' and 'B' to Item 8 'Internal Audit – Review of Service Performance' | 1, 3 and 7 |
| b) | <u>Confidential Items</u> | |
| | (No items to be considered under this heading). | |