

## **STANDARDS COMMITTEE**

**MINUTES** of a **MEETING** of the **STANDARDS COMMITTEE** held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **25<sup>TH</sup> JUNE 2002**

**PRESENT:** Cllr. Winslade (Chairman);  
Cllr. Lawrie (Vice-Chairman);  
Cllrs. Bartlett, Gray, Maltby

Mr J M G Clarke – Parish Council Representative  
Mr D Lyward – Substitute Parish Council Representative  
Mr B N Lowry and Mrs C A Vant – Independent Members

**APOLOGIES:** Mr J Holborow, Mrs K McNichol

**ALSO PRESENT:** Monitoring Officer, Head of Democratic Services, Member Services Officer

### 54 **MINUTES**

**Resolved:**

**That the Minutes of the meeting of this Committee held on the 2<sup>nd</sup> April 2002 be approved and confirmed as a correct record.**

### 55 **GOVERNMENT CONSULTATION PAPER - LOCAL INVESTIGATION AND DETERMINATION OF MISCONDUCT ALLEGATIONS**

The Monitoring Officer reported that the Government had issued a consultation paper regarding the Conduct of Councillors – Local Investigation and Determination of Misconduct Allegations which sought the views of consultees by the 1<sup>st</sup> July 2002 and had been attached as an appendix to the report. The Monitoring Officer's report set out a number of recommended responses and sought the Committee's views. The Committee considered each page of the report which comprised:-

Background;  
Consultation Paper – Section 1 – Proposed Framework.

- Step 1: There may be reason to believe a Councillor has breached the Code of Conduct.
- Step 2: After a formal allegation of a Code of Conduct breach has been made.
- Step 3: Investigation.
- Step 4: Determination of the allegation.
- Step 5: Appeals.

Section 2 – Roles and Responsibilities and Regulations

The Committee discussed the proposed response to Step 1 and the Monitoring Officer confirmed that he had not included Section 3 in the Appendices because he considered that all matters had been included within his proposed responses. The Monitoring Officer advised that the responses to Steps 1-3 had been fully considered by the various National Associations because it was their belief that sensible relations had not been established between the Ethical Standards Officers, Standards Committees and the Monitoring Officers. Hence, the proposed response because of the perceived need to acknowledge the reality of Monitoring Officers receiving and seeking to resolve complaints locally in certain circumstances. The responses elaborated what had been discussed at the National Association of

Secretaries and Solicitors and explained that if the Monitoring Officer received a complaint (under the proposed arrangements) he would have to forward this directly to the Standards Board via the Standards Committee.

A Member suggested that whilst this proposal might work for Ashford, National Government wished to check complaints received by Local Government and there was a duty to report nationally such local complaints and without a national mechanism some Local Authorities might not report every complaint. The Monitoring Officer explained that under his suggested response complainants would receive information that a complaint could be dealt with locally or there was an option to report the complaint fully to the Standards Board. It would only be with the agreement of the complainant that a matter would be dealt with locally and this information would be provided from the outset. A further disadvantage to the proposal might be that there was not consistency of approach with similar penalties being applied by different Local Authorities. In response to a further question, the Monitoring Officer advised that no guidance had been provided by Government as to what comprised a less serious case, which under the proposals was more likely to be referred back for local determination. The Monitoring Officer in response to a suggestion that a system be set up similar to the powers of the Secretary of State to "call in" a planning application said that such a convention might develop but the legislation was clear in that currently the Standards Board had to deal with all complaints and the suggested response to Step 1 proposed a procedure for what a complainant might do, if they did not wish to complain direct to the Standards Board. The Monitoring Officer confirmed there was no provision in the legislation at present for informal referrals. It was further suggested that the Monitoring Officer should report to the Standards Committee the circumstances of those complaints which had been resolved locally if this was to be permitted under the final proposals. It was further suggested that "would" be replaced by "may be" in the second sentence of Response (i) after which this response was agreed.

The Response to Step 2: After a Formal Allegation of a Code Breach Has Been Made, was agreed.

The Monitoring Officer regarding Step 3: Investigation, advised that Monitoring Officers had not been given the same powers as Ethical Standards Officers to investigate, so if a complaint was referred back to the Monitoring Officer there would be no powers to compel witnesses to provide information. He further advised regarding Response (vii) that if the Monitoring Officer investigated a complaint and then presented this to the Standards Committee he could not assume the role of advising the Standards Committee at the same time and under present legislation the Deputy Monitoring Officer could only advise the Standards Committee if the Monitoring Officer were ill or absent. The Kent Monitoring Officers were proposing a protocol on providing advice to Standards Committees in such instances. Alternatively another in-house or external Solicitor might be employed to undertake the investigation of the complaint.

The Committee debated Step 4: Determination of the Allegation, as to the proposed size and composition of panel which might hear a complaint or an Ethical Standards Officer's report to the Standards Committee. The consultation document proposed a panel of five; the Chairman being independent and other four members being chosen by the Independent Chairman. The Monitoring Officer considered that this was too prescriptive and suggested that there be a maximum of six members of the panel and that the composition of the panel should be for local determination. The selection of members to the panel was discussed because it might be that some Borough Council Members of the Committee were also Parish Councillors. The Monitoring Officer advised that when the regulations were published the Committee would have to consider the way in which people were selected to the panel and various scenarios were discussed. The Committee agreed that the Panel Chairman should be an independent member of the Standards Committee and that Response (ix) sentence three, should finish after the word "realistic".

In response to a question, the Monitoring Officer advised regarding Step 5: Appeals would be made to an Adjudication Panel, which was not part of the Standards Board. The Monitoring Officer drew attention to Section 2 – Roles and Responsibilities and Regulations - Response (xvi) as there had been no reference in the Regulations to costs for a Councillor, or indeed a Parish Councillor, who wished

to be represented regarding a complaint and where no grounds for the complaint were subsequently found. The legal position on a Council providing an indemnity (to cover its Members) was unclear but the Monitoring Officer did not believe that the Parish Councils, being smaller, would be able to do so. In response to a question as to whether costs could be covered through the Civil Courts (for vexatious complaints) the Monitoring Officer advised that one would need to show malice but in any event where cases were referred back the Standards Board would have verified that a complaint was not vexatious. Alternatively, it might be an honest complaint which was found to be groundless and a Councillor or Parish Councillor might have had to defend themselves at a cost. Was it right that the Councillor paid the fees; right that the Local Authority indemnified the fees; or should there be some national mechanism for the award of costs? The Monitoring Officer said it did not appear that Government had addressed these issues and agreed to add a sentence to Response (xvii) regarding the position of Parish Councillors.

**Resolved:**

- That (i) subject to the amendments above, the Standards Committee endorses Responses (i) – (xvii) to the Consultation Paper as set out in the body of the report and the Monitoring Officer respond to the consultation by the 1<sup>st</sup> July 2002.**
- (ii) the Monitoring Officer be authorised to respond to any further consultation, including draft regulations, so far as consistent with the Committee’s responses.**
- (iii) a further report be presented to the Standards Committee when the final Section 66 Regulations are issued.**
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