

STANDARDS COMMITTEE
LOCAL FILTERING OF CODE OF CONDUCT COMPLAINTS
LOCAL GOVERNMENT ETC ACT 2007
REPORT OF THE MONITORING OFFICER

Background

1. In my Annual report to the Council in July, I informed members of the provisions of the Local Government and Public Involvement in Health Bill which proposed substantial changes to the current system of handling code of conduct complaints against councillors. The Bill has now received Royal Assent.
2. The 6th Annual Assembly of the Standards Board for England held recently in Birmingham focused largely on the need for the Board and local authorities to prepare for the new regime of complaint handling. A number of useful presentations were given, even though the continuing absence of government regulations and guidance hampered the event considerably.
3. The purpose of this report is to update members on the current position regarding the proposed new system and make some initial recommendations about the structure and composition of the Standards Committee.

Capacity to implement of the new complaints handling regime

4. As members will know, all complaints are currently made centrally to the Standards Board for England who filter them to decide whether or not there is a matter of substance to be referred either to an Ethical Standards Officer or to a Monitoring Officer for investigation. As from 1 April 2008 this local filter will be carried out by Standards Committees against an expectation that the great majority of subsequent investigations and hearings will also be carried out locally. The needs of natural justice require that to some extent the tasks of carrying out the initial assessment and exercise of the local filter, any appeal from that decision and the substantive hearing into the case should be carried out by different members. The initial view of the Board that three entirely separate sets of members had to be available to carry out each of those tasks now seems to have been modified. The advice now is that the same group of members could carry out the local filter decision and the substantive hearing in many cases but a separate panel would still be needed to deal with any appeal against the filter decision. The minimum size of a panel (or sub-committee) to carry out any one of these tasks is three with an independent member essential and a parish member essential if the Panel is dealing with a parish matter.
5. There is clearly a need to build increased capacity within the existing Standards Committee structure in order to accommodate this increased and diverse workload. One of the ways to increase capacity is some form of joint working. The options range from a joint committee between two or more authorities to carry out the local filter up to a joint committee between a number of authorities carrying out all standards functions. However in the

absence of even drafts of the proposed legislation the scope of what may or may not be permitted or indeed sensible is not yet clear. Some authorities have already taken the view that joint working on such a sensitive topic is not for them and have therefore looked to the size of their Standards Committees. As can be seen above, the bare minimum size for a Standards Committee for these new functions alone would be six i.e. two district councillors, two parish members and two independent members, remembering also that a minimum of 25% of members of a Standards Committee must be independent. However clearly this minimum size would provide no resilience or spare capacity and as it is unlikely that joint working could be satisfactorily adopted at the outset then the size and composition of the Standards Committee should be reviewed now to ensure it is capable of fulfilling its new role.

6. The Monitoring Officer of Newark and Sherwood District Council who is a past president of the Association of Council Secretaries and Solicitors has increased the size of her Standards Committee to 15 being four independents, four parish members and seven district councillors to make absolutely sure that illness and other absence does not undermine the ability of the Committee to fulfil its functions with panels of five members rather than three. In my view whilst final decisions on individual panel sizes and functions can be taken later making the minimum likely adjustment to the composition of Ashford's Standards Committee is prudent now in order to ensure it is properly resourced to deliver well in advance of the April deadline even though it is possible that we may need to revisit the matter before April, depending on the content and timing of new guidance and regulations.
7. The current composition of the Standards Committee is 5 borough councillors, 3 independent members (one of whom is Chairman) and one parish council representative, with one parish "substitute." I recommend that the parish council representation should increase to three in order to provide resilience in all three areas of representation. I make this recommendation now in order to ensure training can be given in advance of the new regime and irrespective of whether some form of joint working with neighbouring Councils eventually proves to be feasible. It would, however, enable the Committee to function on its own in the meantime. I intend to report further on the detailed arrangements for complaint handling once the regulations and guidance have been produced by government and the Board. It may be sensible for example, to establish different panels of three for filtering/appeal decisions but perhaps larger panels of five to deal with investigation/determination hearings.
8. 38 pilot authorities have carried out exercises on how the local filter might work in practice. Interestingly they all showed that considerably more cases would be referred for investigation by local Committees than by the Standards Board for England's own referral unit. The Standards Board referral unit has grown increasingly robust over the years on which cases to refer for investigation and which not to refer. However it is hoped that the regulatory regime will allow Standards Committees to impose directions rather than necessarily referring a matter for investigation eg: requiring a member to apologise or to receive training and only if the member fails to comply with the direction would the matter than be referred for investigation. This may assist in ensuring a proportionate input of resources.

9. These pilots demonstrated that the unfamiliarity with the process and the nuances of the Code meant that Standards Committees tended to err on the side of caution and refer matters for investigation. One exercise in Hampshire however showed that after a third round of training exercises, the increasingly proficient members were referring rather less matters for hypothetical investigation, being much more confident in their judgements.
10. Therefore I recommend that in the coming months all members of the Committee and relevant officers undergo some training in the operation of the local filter and generally on familiarity with the Code. I will seek to ensure that wherever practical training is carried out jointly with neighbouring authorities to spread the cost and benefit. This is likely to be an externally facilitated daytime, all-day event in order to ensure coverage of all the required issues. Subject to availability, it is likely to be held in early February at Ashford or perhaps at a neighbouring authority.

Resources

11. A consistent theme at the recent Annual Conference was concern amongst local authorities about resources to carry out the new functions of filtering and increased local investigation and determination. Indeed Kent Secretaries has been pressing hard at national level for recognition of the additional burden by way of additional grant. Regrettably, it seems unlikely that any significant additional resource will be forthcoming at this stage. The Parliamentary Under Secretary of State spoke at the Conference and his position was that ethical standards should be at the forefront of how local authorities operate and they should recognise and plan for that.

Ethical Standards and Governance

12. At a joint presentation at the conference between the Centre for Public Scrutiny, BMG Research (for the Standards Board) and the Audit Commission the wider role of standards as part of ethical governance was promoted. It is now clear that the Audit Commission are revising the assessment system of local authorities and under what are described as the “key lines of enquiry” ethical standards will now feature much more strongly. The intention is that local authorities should be able to demonstrate that they have high ethical standards and a proactive Standards Committee which promotes ethical standards and ensures these standards are championed at the highest political and officer level. To this end I have arranged for meetings between the Leader, Chief Executive, the Chairman of Standards Committee and myself to take place at least on a regular 6 monthly basis to discuss relevant ethical framework issues.

Recommendations

I recommend that:-

- A. Members note the current position regarding the proposed introduction of local complaints handling and ask the Monitoring Officer to report further when regulations and guidance become available.

- B. The Committee recommends to the Council that its composition be revised to include three parish council representatives and that the KAPC be invited to nominate one additional representative alongside the two existing nominations.
- C. The Monitoring Officer arrange further training for relevant officers and members including all members of the Standards Committee such training to be undertaken in early 2008 jointly with neighbouring authorities if practicable.