



Standards Committee

Notice of a meeting, to be held in the Council Chamber, Civic Centre, Tannery Lane,
Ashford, Kent TN23 1PL on Friday 18th December 2009 at 10.30 a.m.

The Members of this Committee are:-

Mrs C Vant (Chairman)
Cllr. Mrs Hawes (Vice-Chairman)
Cllrs. Mrs Blanford, Honey, Mrs Laughton, Wood

Independent Members:-

Mr J Dowsey, Mr M V T Sharpe

Parish Council Representatives:-

Ms J Adams, Mr R Butcher, Mr D Lyward

Please Note the Starting Time

Note – If any Members wish to stay behind after the meeting to view and discuss a Standards Board Training DVD this can be arranged. This may take between 1-2 hours.

Agenda

- | | Page
Nos. |
|--|--------------|
| 1. Apologies/Substitutes – To receive Notification of Substitutes in accordance with Procedure Rule 1.2(iii) | |
| 2. Declarations of Interest - Declarations of Interest under the Code of Conduct adopted by the Council on the 24 th May 2007 relating to items on this agenda should be made here. The nature as well as the existence of any such interest must also be declared | |
| 3. Minutes – To approve the Minutes of the Meeting of this Committee held on the 29 th June 2009 | |
| 4. Minutes – To approve the Minutes of the Meetings of the Standards Committee Assessment Panel held on the 7 th and 25 th August 2009 | |
| 5. Minutes – To approve the Minutes of the Meeting of the Standards Committee Review Panel held on the 9 th September 2009 | |

Part I – For Decision

6. Review of Procedures
 - (a) Position Paper from Mr Mike Sharpe (Independent Member)
 - (b) Report of Monitoring Officer

Part II – Monitoring/Information Items

None for this meeting

DS/TB
10th December 2009

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Standards Committee

Minutes of a Meeting of the Standards Committee held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **29th June 2009**

Present:

Mrs C Vant (Chairman);
Cllr. Mrs Hawes (Vice-Chairman);
Cllrs. Mrs Blanford, Mrs Laughton, Wood.

Mr D Lyward – Parish Council Representative.
Mr J Dowsey, Mr M Sharpe – Independent Members.

Apologies:

Cllr Honey.

Ms J Adams, Mr R Butcher.

Also present:

Monitoring Officer, Senior Member Services and Scrutiny Support Officer.

87 Election of Chairman

Resolved:

That Mrs C A Vant be elected as Chairman of the Standards Committee for the 2009/10 Municipal Year.

88 Minutes

Resolved:

That the Minutes of the meetings of this Committee held on the 12th and 22nd December 2008 be approved and confirmed as correct records.

89 Annual Report of the Monitoring Officer

The Monitoring Officer introduced his fourth annual report that would be presented to the Council on the 9th July 2009. The report gave an analysis of both Code of Conduct Complaint activity (Paragraphs 13-17) and Ombudsman Complaint activity (Paragraphs 18-23) for 2008/09.

With regard to Code of Conduct Complaints there had been 16 (fourteen related to Parish Councils and two to Borough Councillors). This was a significant number and did compare rather unfavourably with 2007/08 however, of the 16 complaints five

had not been valid at all whilst eight of the remaining 11 related to just two Parish Councillors and one series of events revolving around one controversial planning proposal in the Parish. An appendix to the report gave a further analysis of those complaints. It was worth noting that the cost in terms of Member and Senior Officer time in handling even the current level of complaints locally had been very significant (some 150 hours of Monitoring Officer and Deputy Monitoring Officer time - 50% of the chargeable time for each of them over a two month period). This had given a feel for the resource impact of the new filtering regime and whilst the point had been made to the Standards Board, there was little that could be done to alleviate the situation at present. He would continue to explore the possibilities of agreeing a scheme with Parish Councils for sensible sharing of some of the costs involved, at least where complaints were referred for investigation. However the legal basis for this was not clear and he considered it was more important to attempt to reduce down instances of complaints by continuing to try and undertake training and suchlike with Parish Councils. Whilst there was a significant amount of activity at Parish Council level, he was satisfied that the Borough Council's Code of Conduct (and good practice protocol) were widely understood and observed.

Some Members expressed some concern about the possibility of Parish Councils meeting the cost of investigation of complaints, especially as they did not always come from other Councillors and they had no control over complaints from members of the public. Additionally they did not want people to be put off from complaining because of the potential costs. The Monitoring Officer said he understood the points being made but that at present the proposal was simply that the Council should continue to explore the possibility of agreeing a scheme with Parishes.

With regard to training for Parishes the Monitoring Officer explained that he had already run a session for Biddenden Parish Council and would be running a similar session in Rolvenden the following evening. A session on the Code of Conduct for all Parish Councils had also been held in the Council Chamber shortly after the 2007 Elections. He considered that sessions out in individual Parishes may be the best way forward. Holding events on the Parishes' own patch did seem to ensure a better attendance and allowed people to ask any questions they may have in a more private environment. The event at Biddenden had been well received and all Parish Councillors had attended. Other suggestions for potential training were an event specific to Parish Clerks; an address at the Rural Conference in October; and copies of the Standards Board's plain English summary of the Code of Conduct being made more widely available such as being placed on Parish Council websites.

In relation to the Ombudsman Complaints there had been 21 complaints against Ashford Borough Council this year compared with 16 in the previous year (although the 2007/08 figure did not include Premature Complaints, as the 2008/09 did, which would have also brought it up to 21). No complaints were ruled as maladministration by Ashford Borough Council and three had been determined by the Ombudsman as "Local Settlements". Further analysis was given in the appendix to the report and in the Ombudsman's annual letter.

The Monitoring Officer directed the Committee's attention to a letter from a Mrs Lewis which had been tabled. The Committee were given a few minutes to read it in full. The essence of the letter was that the summary of her complaint on page 9 of

the report was not accurate or fair; that she expected some reflection from the Planning Department on the way they handled applications and that they might seek to learn lessons for the future; and there was no mention in the summary about the fault of the Council or the true nature of the complaint. He commented that Mrs Lewis' complaint was referred to in two places within the report. Page 9 was a summary and a reference to the outcome of the complaint, whereas there was a fuller and more factual summary on page 15 of the report as part of the Ombudsman's letter. He therefore thought it was fair to say that all relevant information was before the Committee when read together. Perhaps in retrospect having two accounts of each complaint in the Annual Report was not particularly helpful and perhaps in future the summary appendix could be omitted altogether, a cross reference could be added or the summary from the Ombudsman's letter could be repeated again in full. In terms of Mrs Lewis' complaint about the handling of a planning application in Wittersham, the Monitoring Officer explained that the Planning Department had made a mistake and were at fault. This had been accepted but it had not been a case of there being fundamental flaws in their procedures. He had spoken to the Development Control Manager and as a result of this case all Officers were now aware of how they had to consider open space assessments in the future. He suggested that adding a "Lessons Learned" column for each complaint would be a good solution.

After discussion it was agreed that Appendix A of the Annual Report should be amended before it went to Council so that the Basis of Complaint and Outcome/Comment columns more fully reflected the wording from the Ombudsman's letter and a Lessons Learned column be added for each complaint.

Resolved:

That subject to the amendments to Appendix A of the report as detailed above, the Annual Report of the Monitoring Officer be received and noted.

Standards Committee – Assessment Panel

Minutes of a Meeting of the Standards Committee – Assessment Panel held in Committee Room No.2 (Bad Münstereifel Room), Civic Centre, Tannery Lane, Ashford on the 7th August 2009

Present:

Mrs C Vant (Chairman);

Cllr. Honey

Ms J Adams – Parish Council Representative

Also Present:

Monitoring Officer, Deputy Monitoring Officer, Senior Member Services and Scrutiny Support Officer.

169 Minutes

Resolved:

That the Minutes of the meeting of this Panel held on the 29th June 2009 be approved and confirmed as a correct record.

170 Exclusion of the Public

Resolved:

That pursuant to Section 100A(4) of the Local Government Act 1972 as amended the public be excluded from the meeting during consideration of the following item, namely Initial Assessment ABC/09/12 and ABC/09/13, as it is likely in view of the nature of the business to be transacted or the nature of the proceedings that if members of the public were present there would be disclosure of exempt information hereinafter specified by reference to Paragraph 7c of Schedule 12A of the Act (as modified in relation to the Local Determination by the Standards Committee).

171 Matter Referred for Initial Assessment – Cases ABC/09/12 and ABC/09/13

The Monitoring Officer gave a brief outline to the report and a summary of the allegations. He explained two complaints had been received against a Borough Council Member on the same issue. The facts were not in dispute and largely in the public domain.

The Monitoring Officer explained that the first central question was whether the Member was acting in his "official capacity" as a Councillor at the time the comments subject of the complaint were made.

After considerable discussion on this matter it was

Resolved:

- (i) That the Assessment Panel concludes that since the Councillor's conduct was undertaken in his private life and not in his official capacity or in performance of his functions as a Councillor, the Council's Code of Conduct has no application to that conduct and the Panel is therefore unable to give further consideration to the matter or take any formal action in relation to it.**

- (ii) However the Panel expressed the view that, regardless of whether the matter came within the remit of the Code of Conduct, the conduct in question and in particular the inappropriate and immoderate comments in some of the Facebook postings fell well below the standards which they consider appropriate for an elected Councillor. The Panel considered it important to seek to ensure that such conduct did not recur and accordingly they further resolved that: -**
 - (a) the Monitoring Officer be requested to arrange training for Borough Council Members on the subject of internet usage, diversity and the Code of Conduct.**

 - (b) the Leader of the Councillor's Political Group be requested to consider re-instating the Councillor to Committees/Groups only after he has undertaken such training and given an assurance as to his intention to avoid making disrespectful or offensive remarks in future dealings.**

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Standards Committee – Assessment Panel

Minutes of a Meeting of the Standards Committee – Assessment Panel held in Committee Room No.1 (Fougères Room), Civic Centre, Tannery Lane, Ashford on the 25th August 2009

Present:

Mr M Sharpe (Chairman);

Cllr. Honey

Mr R Butcher – Parish Council Representative

Also Present:

Deputy Monitoring Officer, Senior Member Services and Scrutiny Support Officer.

176 Minutes

The Chairman said that he did not consider approval of the Minutes of the previous Panel to be competent business of this meeting and therefore he would not sign the Minutes at this meeting. These would be put for approval at the next full meeting of the Standards Committee.

177 Exclusion of the Public

Although the Panel agreed that Section 100A(4) of the Local Government Act 1972 did not apply to this meeting and that technically there was no need to pass the formal resolution to exclude the public under that Act, the Deputy Monitoring Officer explained that the Panel did still have discretion whether to hold the meeting in public or not and therefore had to formally make a decision on the matter.

Resolved:

That the public be excluded from the meeting during consideration of the following item, namely Initial Assessment ABC/09/01, as initial assessment decisions may have to consider potentially unfounded and damaging complaints, which it would not be appropriate to make public.

178 Matter Referred for Initial Assessment – Case ABC/09/01

The Deputy Monitoring Officer had submitted his report which included a summary of the allegations. It explained that the complaint was in relation to two aspects of the Code of Conduct but concerned events at the same public meeting. The Panel

considered the complaint and the evidence before it in the context of the adopted Assessment Criteria.

After considerable discussion on this matter it was

Resolved:

That the Assessment Panel concludes that whilst the conduct complained of may, if it occurred, disclose a possible breach of the Code of Conduct, the Panel decided to take no action in respect of the Complaint as from the information provided by the Complainant it was not considered sufficiently serious to merit a substantive sanction against the Member if proven and, bearing in mind it occurred at a time when both the complaint and the subject Member were both Councillors, it was not sufficiently serious to warrant the cost of a publicly funded investigation.

Standards Committee – Review Panel

Minutes of a Meeting of the Standards Committee – Review Panel held in Committee Room No. 1 (Fougères Room), Civic Centre, Tannery Lane, Ashford on the 9th September 2009

Present:

Mr J Dowsey (Chairman);

Cllr. Mrs Hawes

Mr D Lyward – Parish Council Representative

Also Present:

Monitoring Officer, Deputy Monitoring Officer, Member Services and Scrutiny Manager

202 Exclusion of the Public

Resolved:

That the public be excluded from the meeting during consideration of the following items, namely Review of Initial Assessments for Cases ABC/09/05 and ABC/09/08A.

203 Review of Initial Assessment – Case ABC/09/05 (Minute No. 554/05/09 refers)

Councillor Mrs Hawes advised that she had been present and had voted at the meeting referred to in the complaint but the Monitoring Officer advised this did not constitute a personal interest. The Panel considered a request for a review of the decision taken by the Standards Committee – Assessment Panel held on the 8th May 2009 in respect of Case ABC/09/05.

The Monitoring Officer's report advised that the Review Panel must apply the same criteria used in the initial assessment and a copy of all the papers considered at the Assessment Panel were contained within a folder supplied to each member of the Panel. The report advised that the Review Panel had three options:

- (a) to consider whether to confirm the decision of the Assessment Panel ie: take no action.
- (b) Refer the matter to the Monitoring Officer (for investigation or other action);
- (c) Refer the matter to the Standards Board for England with a request that the Board undertakes an investigation.

The Panel also considered the complainant's letter of the 17th June 2009 which was the only additional relevant material received since the original decision.

The Review Panel

Resolved:

That no action should be taken in respect of the allegation as the complaint did not disclose an apparent breach of the Code of Conduct but noted that the Monitoring Officer intended to report to the Selection and Constitutional Review Committee to clarify the relevant constitutional paragraphs.

**204 Review of Initial Assessment – Case ABC/09/08A –
(Minute No. 556/5/09 refers)**

The Panel considered a request for a review of the decision taken by the Standards Committee – Assessment Panel held on the 8th May 2009 in respect of Case ABC/09/08A.

The Deputy Monitoring Officer's report advised that the Review Panel must apply the same criteria used in the initial assessment and a copy of all the papers considered at the Assessment Panel were contained within a folder supplied to each member of the Panel. The report advised that the Review Panel had three options:

- (a) to consider whether to confirm the decision of the Assessment Panel ie: take no action.
- (b) Refer the matter to the Monitoring Officer (for investigation or other action);
- (c) Refer the matter to the Standards Board for England if the matter was considered sufficiently serious or sensitive to warrant this.

The Deputy Monitoring Officer referred to the decision of the Assessment Panel in respect of Allegation No. 2 (sought to improperly influence a decision of the Council) and advised that the recommended training of the Parish Council in terms of the Code of Conduct had been undertaken by both the Monitoring Officer and the Deputy Monitoring Officer. He clarified that the Review Panel had no locus to reconsider this particular decision.

In respect of Allegation No. 1 (which related to speaking and failing to disclose an interest and withdraw from the meeting during consideration of an item) the Deputy Monitoring Officer advised that the Assessment Panel had concluded that the evidence did not disclose an apparent breach of the Code of Conduct. As part of the papers submitted in respect of the review the Panel considered a further letter from the complainant and a document which showed an extract from the Minutes of the relevant Parish Council meeting considered by the Assessment Panel and an extract of the Minutes of the same meeting of the Parish Council meeting which had subsequently been approved by the relevant Parish Council.

During discussion the Deputy Monitoring Officer clarified that the relevant Parish Council had adopted Paragraph 12 of the Code of Conduct which allowed Members with prejudicial interests to make representations, answer questions or give evidence.

The Review Panel

Resolved:

That in respect of Allegation No. 1 (speaking and failing to disclose an interest and withdraw from the meeting during consideration of an item) no action should be taken in respect of the allegation as the complaint did not disclose an apparent breach of the Code of Conduct but the Panel also resolved that even if there were a breach, in the Councillor not leaving the room during discussion of an item, they would not have taken any further action because any such breach would have been minor and not culpable in the sense that the item was not on the formal agenda and so the Councillor was likely to have been taken by surprise, he did declare an interest when the matter arose unexpectedly, the Chairman instructed that he need not leave as the matter would not be substantively discussed and in any event the Councillor was entitled to make representations by virtue of paragraph 12 of the Code of Conduct even if he had a prejudicial interest in the matter.

KRF/VS/AEH
STD Review Panel 09.09.09

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Position Paper (Final)

- I. Ashford Borough Council (ABC) Standards Committee - how we handle Panels now
- II. Legal Constraints - the 2008 Regulations and Guidance
- III. Suggestions for Future Improvements

Standards Committee Current Procedures

1. ABC Standards Committee members last received formal training in the 'Local Filter' mechanism at a training session entitled '**Handling Standards Complaints**', delivered by Peter Keith-Lucas on 6.2.08.
2. Although most of that day was dedicated to the law and practice of 'hearings', one exercise simulated the 'Local Filter' function. This concentrated on application of the Code of Conduct to various scenarios, rather than the constitutional basis of what have now become 'Assessment Panels'. Those who were there may remember, or may have taken notes.
3. Unfortunately this training was based on consultation documents available up to February 2008. It took no account of the actual Regulations (commencement date 8th May 2008) nor of the Guidance issued by the Standards Board for England (SBE) dated 10th August 2008.
4. There is therefore a need for Standards Committee Members to keep abreast of the current position. This will be particularly apposite if SC Members are serving on an Assessment, Hearing or Review Panel for the first time.
5. The current Monitoring Officer Protocol was tabled before the Standards Committee on 28th July 2008. It envisages Panels meeting monthly to deal with the flow of complaints (no Panel if there are no complaints recently received) The Panels draw their membership from Standards Committee Members of the three categories - Independent, ABC Elected Members, Parish Members.
6. It also denotes the Panels as Sub Committees of the Standards Committee, and to this end appears to fit them within Part 5A of the Local Government Act 1972 (as considerably amended). Under this Protocol the Sub-Committees therefore are supposed to publish notice of meetings and agendas, table reports summarising the business of the Panel, abide by the public access provisions of Part 5A, and produce minutes of proceedings, among other things.
7. Since I chaired an Assessment Panel on Tuesday 25th August 2009, I came up against the vexed question of the legal basis of public access to ABC meetings, and whose decision it rightly is to exclude the public from Assessment Panels.
8. This is partly why I have put down my thoughts and conclusions in writing, to settle such questions for future occasions.

Legal Constraints

- A. The Standards Committees (England) Regulations 2008 is the Statutory Instrument prescribing a comprehensive system of operating Panels and Standards Committees. Some of its paragraphs are carried forward from the earlier 2002 Regulations, but the 'Local Filter' is dealt with fully and, to my mind, exhaustively.
- B. The key point is that Regulation 8(5) disapples the whole of Part 5A of the Local Government Act 1972 from the Assessment Panel procedure.
- C. There are thus explicit reasons for my position of taking Assessment Panels outside the established and familiar framework of ABC Sub-Committees / Committees.
- D. To quote the SBE Guidance:
- a. *"Initial assessment decisions, and any subsequent review of decisions to take no further action on a complaint, must be conducted in closed meetings. These are not subject to the notice and publicity requirements under Part 5 of the Local Government Act 1972.*
 - b. *"Such meetings may have to consider unfounded and potentially damaging complaints about members, which it would not be appropriate to make public. As such, a standards committee undertaking its role in the assessment or review of a complaint is not subject to the following rules: **rules regarding notices of meetings; rules on the circulation of agendas and documents; rules over public access to meetings; rules on the validity of proceedings**"*
- E. These points are amplified by the 'Explanatory Note' at the back of the 2008 Regulations in relation to Regulation 8.

Suggestions for Efficiency

As a Member of the Authority, I can appreciate that running extra Sub-Committees, with agendas, minutes and officer time writing exhaustive reports, has already added to expenditure under the Local Filter machinery.

- i. I suggest that the solution is in the Authority's hands: to service the Panels minimally, so that the 'deliverable' of a short meeting of 5 persons is no more than the 'written summary' of Regulation 8 (5) (c). This 'written summary' takes the place of 'minutes', and is bound by certain procedures as to who should receive it at what stage. It could feasibly be published on the ABC website instead of the current 'minutes'. Likewise the Officer time on 'pre-assessment reports and enquiries' may be strictly limited to the matters specified on page 10 of the Guidance.
- ii. Further efficiency would, I suggest, follow from encouraging all members who are likely to serve on the Panels to acquaint themselves with the training materials and guidance on the Standards for England website. I should like to offer a 45-minute session of group discussion of these training materials at the formal conclusion of this Committee meeting.

END 783 words FINAL

STANDARDS COMMITTEE

18 DECEMBER 2009

REPORT OF MONITORING OFFICER COMMENTING ON "POSITION PAPER" DATED 26 OCTOBER 2009 SUBMITTED BY INDEPENDENT MEMBER MR MIKE SHARPE

Mr Sharpe's paper raises three separate points which I comment on below:

A. Training

1. Although training undertaken in 2008 took place prior to finalisation of Regulations and detailed Guidance, the format and content of the training was and remains relevant to the implemented assessment and review procedures. I agree that members viewing and discussing the purpose-made Standards for England training DVD would be a useful exercise to supplement the earlier training and subject to availability this could be done following the meeting on the 18th or perhaps at some other convenient time when all Standards members can attend.
2. Although Mr Sharpe's paper refers to the original proposal to diarise monthly Panel meetings, on further reflection it was decided that this would be an inefficient and unnecessary step because it would have entailed holding many dates in the diaries of every member when only 3 would be needed (if at all) and then cancelling many of the meetings where no business had arisen. In practice the ad hoc meetings approach has proved perfectly practical and no problems have been experienced in arranging such meetings.

B. Public Access to Assessment and Review Panel Meetings

3. Mr Sharpe's paper correctly refers to the provisions of Regulation 8 of the Standards Committee Regulations 2008 which disapplies the provisions of Part 5A of the Local Government Act 1972. This means, for example, that the provisions of the 1972 Act conferring the public right to attend meetings is removed. It is not however a bar to the public attending these meetings. This is why the SBE Guidance accurately quoted by Mr Sharpe ("assessment decisions and any subsequent review..... must be conducted in closed meetings") is legally incorrect. I have raised the matter with SBE's legal department (over the telephone "helpline") and they confirmed to me that "this was a part of the Guidance we did not need to have regard to" because it was written at a time when the consultation papers assumed that closed meetings would be a requirement. Unfortunately the Guidance was never amended to reflect the final form of the Regulations but I was told this would be done in due course. This was explained to Mr Sharpe by the Deputy Monitoring Officer at the Panel meeting in August.
4. The correct legal position on public access to meetings (in the absence of the statutory provisions in the 1972 Act) is that the Panels retain a discretion to allow public access and therefore must make a formal decision at each meeting. This is because the common-law position (acknowledged as long ago as the Admission of Press to Meetings Act in 1908) is that nothing prohibits a local authority from admitting the public to its meetings. This legal position is properly reflected in the

agenda for each Panel meeting which invites the Panel "to consider whether the public should be excluded from the meeting".

C. "Suggestions for Efficiency"

5. Mr Sharpe suggests that officer reports to Assessment and Review Panels are unnecessarily "exhaustive" and that Panels should be "served minimally". I disagree. I do not intend to produce reports which fail to deal as fully as necessary with all relevant matters. Indeed I recently met with a senior Standards for England director and investigator at Ashford (to discuss general issues on the local filtering arrangements) and they were provided with copies of our assessment reports. They described them as "at the upper end" of what they have seen from Monitoring Officers up and down the country in terms of quality. So it would be most unfortunate if the Committee wished to sacrifice that quality. I have also had the opportunity of letting the former Chair of the Standards Board for England (Patricia Hughes) see and comment on the extent and quality of ABC reports to Panels and she was also extremely complementary.
6. I would also suggest to Members that a serious potential disadvantage of producing "minimal" reports to Panels could result in more cases being referred for investigation as Members would have less information at the first stage. This strategy of "front loading" is undoubtedly more time consuming for the Monitoring Officer, but it does save work at a later stage and could avoid the enormous expense of Investigations and Hearings in some cases.
7. Procedures to produce minutes and summaries of Panel decisions are already in place and consume minimal staff resources. The former are placed on the web, the latter are not and do not need to be. All meetings of Council committees, sub-committees, panels etc have formal minutes, even if their decisions also give rise to the need for notices or other forms of decision. There is no need to combine these outputs and in effect create a different system just for these panels. No material benefit would be derived from doing so in any event.

TERRY MORTIMER
MONITORING OFFICER
DECEMBER 2009