

Committee: STANDARDS COMMITTEE
Date: 21 JANUARY 2003
Agenda Item No: 5
Title: OPERATION OF THE STANDARDS BOARD AND PROPOSED REGULATIONS
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Summary

- 1 This report deals with the operation of the Standards Board during the first 6 months of it becoming functional. It also sets out the likely responsibilities of this Committee and the Monitoring Officer in the near future

Background

- 2 The Standards Board for England (the Board) became operative on 5 May 2002. Since that date all Councillors from County Councillors to Parish Councillors have been bound by their authority's code of conduct or by the Model Code if none had been adopted (the Code). All complaints of alleged breaches of the Code of Conduct occurring after that date must be made to the Standards Board.
- 3 In the first 6 months of its operation the Board received 1920 complaints of alleged breaches of the Code. This corresponds with the forecast of 4000 per annum although the Board admits that it did not anticipate reaching this level of complaints so early.
- 4 Not all complaints are investigated. The Board considers each complaint made and determines which complaints merit investigation. Petty issues are rejected without investigation. The average rejection rate for the first 6 months was 60% leaving only 40% to be investigated. However for November 2002 69% were rejected leaving only 31% to be investigated reflecting the increasingly rigorous approach that the Board is taking with complaints.
- 5 The most common complaints received are allegations of:-
 - a. Bringing the Council into disrepute.
 - b. Lack of respect for other members, officers or members of the public.
 - c. Misuse of resources.
 - d. Bullying of officers by Councillors.
 - e. Failing to declare an interest.
- 6 56% of complaints received have been in relation to alleged breaches by Parish Councillors. 50% of all complaints received have been made by one

member against another member of the same authority, perhaps reflecting that part of the Code which requires members to report conduct which he or she reasonably believes to be a breach of the Code to the Board, although the Board does report a high instance of "tit for tat" allegations.

- 7 If the Board decides that a complaint requires investigation the case is referred to an Ethical Standards Officer (ESO). After carrying out an investigation the ESO may:-
- a. Find that there is no evidence of any failure to comply with the code of conduct.
 - b. Decide that no action needs to be taken in respect of the matters which were the subject of the investigation.
 - c. Determine that the matters which are the subject of the investigation should be referred to the monitoring officer
 - d. Refer the matter to the president of the Adjudication Panel for England for adjudication by a tribunal
- 8 With regard to 7 c. above the Local Government Act 2000 contains power for the Secretary of State (now the Office of the Deputy Prime Minister) to make regulations (s.66 Regulations) dealing with investigations by monitoring officers and the powers of Standards Committees to deal with the outcome of such investigations. Members will recall being requested to comment on the consultation paper regarding the proposed regulations last year. As yet no such regulations have been made. Until regulations are in force it is not the intention of the Board that any matters should be referred to monitoring officers.
- 9 The Board is now publishing the results of investigations into allegations of breaches of the Code on its website. Unfortunately these are unhelpful in determining how the Standards Committee should deal with cases referred by an ESO to the monitoring officer for two reasons. Firstly to date no action has been taken with regard to any of the allegations reported on the website. Secondly in a large number of cases the reason that no action has been taken is that the allegation is stated to be a matter which would normally be referred to the monitoring officer but there are no s. 66 Regulations in place to deal with such a referral.
- 10 The Adjudication Panel for England is now in place and the Board has indicated that it will be dealing with its first cases early in 2003.

Progress with regard to the s.66 Regulations

- 11 It was the government's intention to introduce these before the end of 2002. However difficulties have arisen as a result of the consultation process. Firstly a large number of consultees wished there to be a mechanism whereby if a complaint was addressed to the authority the monitoring officer could investigate it immediately and deal with it via the Standards Committee subject to a notification procedure (effectively permitting a call in by the Board). More importantly however many consultees believed that the whole

process of local determination was flawed, a view also held by the Chairman of the Board. This is because the authority is required to effectively act as investigator, prosecutor and adjudicator in each case contrary to natural justice and the Human Rights Act. Although the Act anticipates that the s.66 Regulations will contain provisions for an appeal this does not appear to have satisfied the consultees who objected to the procedure or indeed the Chairman of the Board.

- 12 It must be anticipated however that regulations will be introduced. The Board consider that these are likely to be loosely worded giving the monitoring officer a wide discretion as to how to conduct an investigation and Standards Committees freedom to control their own procedures in dealing with reports. Detailed consideration as to how this Committee will wish to handle such matters must await the publication of the s.66 regulations. However it may be appropriate for the Committee to give some preliminary consideration to issues which are almost bound to arise.
- 13 The Act permits reference of allegations to the monitoring officer who will then have a duty to investigate. It would be improper however for the monitoring officer to investigate the allegation, report on it to the Standards Committee and then advise the Committee in its deliberations.
- 14 The Local Government and Housing Act 1989 (which created the role of monitoring officer) does not permit the monitoring officer to delegate his or her statutory duties. The Board have requested that s.66 Regulations should permit delegation of the investigating function. However there is no guarantee that such a power will be included.
- 15 In the event that delegation is permitted Members will need to consider whether the monitoring officer should:-
 - a. Conduct the investigation
 - b. Present the case to the Committee
 - c. Advise the Committee

Members would also need to consider who would fulfil the functions not being carried out by the monitoring officer.

- 16 In the event that delegation is not permitted the monitoring officer will be obliged to carry out the investigation personally. Advising the Standards Committee is a usual function of the monitoring officer but it is not a statutory function. The role of advisor to the Standards Committee can therefore be delegated. In such circumstances Members would need to consider whether it would prefer to be advised by another officer of the Council, a monitoring officer from another local authority (if one can be found who is prepared to undertake the task) or by a third party (e.g. a lawyer in private practice with local authority experience or from another local authority).

- 17 Members will need to consider whether it would be unobjectionable for the officer who conducts the investigation to present the case to the Committee or whether another person should carry out this function.
- 18 The conduct of the meeting of the Standards Committee dealing with allegations of misconduct is likely to be in the discretion of the Committee. So far as the regulations may allow Members will need to consider the procedures that they will wish to adopt and in particular:-
- a. Whether the complainant will be invited to attend
 - b. Whether the complainant and the Member subject to investigation will be permitted to introduce:-
 - i. Documentary evidence
 - ii. Witness statements
 - iii. Live evidence
 - c. Whether the complainant and the Member subject to investigation will be permitted to cross examine any witnesses called
 - d. Whether the meeting will be conducted in an inquisitorial (as at present) or adversarial basis
 - e. Whether the officer presenting the case should merely report or act as prosecutor
 - f. Whether the Committee will give reasons for its decisions (as at present) and if so whether this will be done orally at the meeting or in writing afterwards. The current procedure includes both methods of announcing the Committee's decision.

RECOMMENDED that Members note this report and give preliminary consideration to the issues raised in paragraphs 15 to 18.

Background Papers: Notes from the Standard Board for England's Road Show on 3 December 2002
Standards Board for England's monthly bulletins
Standards Board for England's website