

Committee: STANDARDS

Agenda Item

Date: November 12, 2007

5

Title: SIXTH ANNUAL ASSEMBLY OF STANDARDS COMMITTEES

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Item for decision

Summary

1. This report is to inform members of issues raised at the Annual Assembly of Standards Committees held on 15 & 16 October at the ICC, Birmingham and to seek members views as to how they wish to respond to proposed changes in legislation.

Recommendations

2. Members determine how they wish to approach the local filter.
3. Members determine how the new complaints mechanism should be communicated to the public.
4. Members consider at what level cases ought to be referred for investigation.
5. Members consider how they wish to approach the review process in the event this is permitted by legislation.
6. Members consider whether they wish to seek to engage in joint working/benchmarking.

Background Papers

7. The following papers were referred to by the authors in the preparation of this report and are available for inspection from the Assistant Chief Executive.
 - Delegates pack and literature distributed at the Assembly.

Impact

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| Communication/Consultation | When the new legislation is in place it will be necessary for the council to publish the appropriate method for complaining of breaches of the Code of Conduct. |
| Community Safety | None |
| Equalities | None |

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| Finance | There will undoubtedly be resource implications but these cannot be gauged at the present time. |
| Human Rights | Article 6 of the European Convention on Human Rights requires there to be a fair hearing by an independent tribunal. Members will need to consider whether this principle will be infringed if the same members deal with the hearing as dealt with the filtering process. |
| Legal implications | Any member aggrieved at a decision of the Standards Committee may appeal to the Adjudication Panel with the permission of the President of the Panel. Complainants who are dissatisfied with a decision of the Standards Committee may seek judicial review. |
| Sustainability | None. |
| Ward-specific impacts | None. |
| Workforce/Workplace | It is anticipated that the whole of the Legal team will need to be more closely involved in the work of this Committee. |

Situation

9. The Standards Board for England run an annual Assembly of Standards Committees. This year the conference was attended by the Chairman of the Standards Committee, Sean Brady and the Council's Monitoring Officer, Michael Perry. There was a fairly full programme over the 2 days of the conference. The first morning was for all delegates. There was a welcome from Sir Anthony Holland, the Chair of the Standards Board for England. The meeting was then addressed by Parmjit Dhanda MP, the Parliamentary Under Secretary of State for Local Government. The Chief Executive of the Standards Board, David Prince, gave an address on devolving standards and the Deputy Chair of the Standards Board, Patricia Hewitt, spoke with regard to the Local Filter which the Government aims to introduce in April 2008.
10. Whilst these sessions were of interest their usefulness was limited by virtue of the fact that much of the detail will be contained not in the primary legislation but in statutory instruments. There is a very real fear that whilst the primary legislation may well be effective in April 2008, the subordinate legislation will not. It is also very hard to plan in detail without knowing what the subordinate legislation will say.

11. One thing was clear however and that is that there will be a greater workload for the Standards Committee and hence officers in supporting the Committee arising from the proposal that rather than complaints being vetted in the first instance by the Standards Board for England, they should be referred in the first instance to Standards Committees who will determine whether allegations should be investigated. This vetting procedure will involve a two stage process determining firstly whether if the facts as alleged were made out there would have been a breach of the Code and secondly if so, whether the allegation is sufficiently serious to warrant an investigation. Notwithstanding this it was fairly clear from Mr Dhanda's address that the Government has no intention of making additional funds available to local authorities to assist them in dealing with this issue. Mr Dhanda confirmed that the Government was intending to consult on the draft regulations in good time.
12. In following sessions delegates were informed that in the last year there had been 3459 complaints of which 634 were referred to Ethical Standards Officers for investigation. 55% of such cases were referred to the Monitoring Officer for local investigation. This resulted in 135 local hearings. There were also 9 hearings before the Adjudication Panel for England. A number of delegates expressed doubt as to the accuracy of these figures. Certainly an examination of the Adjudication Panel's website reveals over 40 hearings for 2006 excluding appeals from local decisions.
13. Delegates were urged to consider joint working with a view to reducing costs. We were also told that a number of Standards Board members are retiring and a new board would be appointed which may include a representative of Independent Persons.
14. Consideration will need to be given as to how authorities should publish the Code and the procedure for complaints. There needs to be a local procedure for notifying Members of complaints against them. Members of the Standards Committee also need to set criteria against which they judge whether a complaint should be investigated. However the referral process should be conducted in private, not public.
15. After the plenary session the delegates split into groups to examine the local filter in more detail. The groups were either Monitoring Officer focussed, Standards Committee focussed or mixed. Delegates were provided with a flowchart for dealing with complaints and summaries of local filter pilot case studies for consideration. It is suggested that members use these for training purposes in the near future.
16. The remainder of the day and the whole of the second morning were devoted to break-out sessions where delegates had the opportunity of attending one of a number of working groups. Michael Perry attended Complex Cases, Managing the Filter, Practical Mediation and Towns and Parishes.
17. The Complex Cases sessions dealt with two scenarios although time only permitted detailed discussion of one. The sessions centred on the investigating process although one was fatally flawed as it overlooked the

fact that at present complaints can only be made through the Standards Board for England. Nevertheless the approach to investigations was helpful and this information will be shared with solicitors in the Legal team.

18. Managing the Filter looked at the issue of resources and suggested a number of possible scenarios. There was much discussion at the Assembly of the possibility of an appeal process in the event that a complainant is dissatisfied with a decision not to refer a case for investigation. Clearly we do not know at this stage whether the regulations will contain provision for a review of a decision. However, if such a review is possible under the regulations when laid, this can only occur if either the filter process is undertaken by a sub-committee with a review being carried out by a different sub committee or if there are reciprocal arrangements with other authorities for their Standards Committees or sub-committees thereof to either carry out the initial filter or deal with a review of the decision. Further difficulties would arise if the initial decision was not to refer a complaint for investigation and the review decision was to make such a reference. In those circumstances, delegates were suggesting that a differently constituted committee or sub-committee would need to be formed to consider the report of the investigating officer once the investigation had been concluded. With this scenario it would be necessary to give consideration to increasing the number of town/parish council representatives from the current two to three members as when dealing with parish matters each sub-committee would need to have an independent member and a town/parish member in order to be quorate. Four different officers may also need to be involved, one to service each of the sub-committee meetings and one to carry out the investigation. Michael Perry sees no difficulty however in one solicitor servicing all three sub-committees with another carrying out the investigation.
19. It is anticipated the legislation will include provision for Joint Standards Committees. Joint working arrangements would therefore be along the lines for four models. The first would be informal joint working some of which has been carried out to date with Michael Perry carrying out an investigation on behalf of Braintree District Council. A second option would be with a Joint Committee to carry out the local filter option. With this scenario local Standards Committees are retained but Joint Committees deal with the filtering process. The third proposed Model was for Joint Committees to deal with the local filter and hearings. The local Standards Committee would remain to deal with policy issues but the Joint Committee would deal with the functions arising from the Code of Conduct. Finally there could be Joint Standards Committees with full powers of Standards Committees for all the authorities involved.
20. The mediation session was interesting and demonstrated how trained mediators could work in situations to resolve difficulties without the need for an investigation or a hearing. Whilst this appears to have great merit it was stressed that it was not the function of the Standards Committee or its members or indeed the Monitoring Officer to carry out mediation. This should be done by trained mediators only. This gives rise to an immediate resource issue as the Standards Committee does not have a budget from which to provide mediation for members.

21. The town and parish session was of interest in seeing how town and parish councils have worked with the Code but of little practical import.
22. Other lessons learnt were that there is a poor level of local government press reporting. Now that local filtering will take place, the process and the standards should be advertised locally. Authorities experience difficulties in recruiting/retaining Independent Persons. The payment of allowances may be the subject of guidance from the Standards Board but, in principle, is acceptable provided that the Council so decides.
23. The Standards Board will monitor the operation of Standards Committees and watch for established pattern changes. It may not be possible to provide exact guidance but different Standards Committees' results will be published. A national standard is desirable but the probability of local differences is recognised. The Standards Board criteria are on the website. Delegates expressed concern at the proposed frequency which was suggested for reporting data (quarterly). Fewer staff will be needed to operate the Standard Board's new strategic role. However if local resources are inadequate to deal with complaints the Standards Board may take-over. It would be improper not to investigate solely on the grounds of cost.
24. The Standards Board recommend that there should be an equal number of Independent and elected Members on Standards Committees.
25. It is important to deal with cases in a timely fashion. Provided correct notice has been given and procedures followed, a Standards Committee should proceed with a hearing even if the Councillor does not attend. Hearings should be:-
 - Fair, just and robust enough to stand on appeal.
 - Facts to be decided on the balance of probabilities.
 - Sanctions will commence, even if there is an appeal.
 - Genuine mistakes should not be identified nor empathy shown until the first two stages have been correctly completed.
 - Any departure from the Standard Board guidelines must be fully justified.
 - A laptop and printer are needed to publish the decisions.
 - There should be a pre-hearing meeting usually between the Chairman, the Monitoring Officer and a clerical assistant
26. In terms of public relations Standards Committees need to explain its practices and usage more widely. The public trust politicians less than journalists. Some comments which were made were:-
 - Ethical governance is the only way to greater local responsibility.
 - Standards Committee must become more proactive.
 - Scrutiny is well absorbed into Council activities, Standards Committee should be also.

- Ethics & Standards should be in the mainstream of the Council's activities and the work done by the Standards Committee should be included in the work of the Council.
- Formal review of ethical management and annual review should include public participation. There is an opportunity for the Standards Committee to make a real impact to enhance the Council's reputation. The measure of success is the Council's status in the community.

27. In one session delegates were asked how they would like to be judged. Responses were:-

- Consistency.
- Good PR for individual work.
- Independently; by Audit Commission or outside body.
- By the work done for the community, not for the Council.
- Increased local confidence in local government and standards of behaviours.
- By peers on own and other Standards Committees with the Standards Committee being judged by the community.
- Would like to see better standards at central government first.
- Work without any impact on council taxes.
- Standards Committee as part of the whole Council.
- Quality of guidance issued/followed.
- Better turnout at local elections.
- Deliver good government.

28. Finally it was recommended that all Independent Members should have a role description, particularly regarding their involvement with one or more stages of the Local Filter. The three stages, Initial, Hearing, Review, should be progressed by panels. Members can sit on one or both of the first two but not either of them and the Review Panel.

Risk Analysis

| Risk | Likelihood | Impact | Mitigating actions |
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| Members are ill prepared to deal with the changes in legislation when they become effective. | 2 - The legislation may be delayed and the subordinate legislation is almost certainly to be late in being issued. | 3 - If inappropriate cases are to be referred for investigation there will be significant resource issues for both officers and members of the Committee. | Members identify at this stage the training they feel they require to enable them to effectively deal with the local filter. |