

Committee: STANDARDS

Agenda Item

Date: 21 June 2010

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**Title: POSSIBLE CHANGES TO THE STANDARDS
REGIME**

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Item for information

Summary

1. This report is to inform members of the government's stance with regard to the continued existence of Standards for England.

Recommendations

2. That members note this report.

Background Papers

3. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.
 - HM Government 'The Coalition – our programme for government' available at www.cabinetoffice.gov.uk
 - The Queen's Speech available from Hansard

Impact

- 4.

Communication/Consultation	It appears that the Government does not intend consulting on its proposals to abolish Standards for England.
Community Safety	None.
Equalities	None.
Finance	As in the body of this report
Health and Safety	None.
Human Rights/Legal Implications	None at this stage.
Sustainability	None.
Ward-specific impacts	None.

Workforce/Workplace	None.
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Situation

5. The Standards Framework has been established since 2001. The Local Government Act 2000 requires all principal councils (that is councils above the town/parish council tier) to appoint a Standards Committee which initially had to include one independent member with independent members forming 25% of the membership of the committee. In addition, councils with responsibilities for parishes were also required to have a town or parish representative when considering town or parish matters.
6. Initially all complaints of breaches of the Code of Conduct had to be directed to the Standards Board (now Standards for England). The Board decided which complaints warranted investigation and those were passed for investigation to an Ethical Standards Officer. Initially where an Ethical Standards Officer found there had been a breach of the Code of Conduct and that a sanction was required the matter had to be referred to the Adjudication Panel for England.
7. As part of the move towards localism, amendments to the framework were introduced which permitted Ethical Standards Officers to refer cases to Standards Committees for local determination. Thereafter the Ethical Standards Officers were able to refer cases to monitoring officers for local investigation and determination. As members are aware complaints are no longer received by Standards for England. They are made to the council which determines whether or not complaints warrant investigation, receive reports from investigating officers and may determine sanctions.
8. As part of its election manifesto the Conservative party made it clear it intended to abolish the Standards regime. In the government's published policy document it states that it intends to abolish the 'Standards Board Regime' and this is stated to be a main element of the proposed Decentralisation and Localism bill. Apparently the government is not aware of the change of title of the Standards Board to Standards for England.
9. At present there is no indication as to how far these reforms may go. There are in my view a number of options which are open to the government some of which I consider below.
10. The government could merely abolish Standards for England. This body has already been substantially slimmed down since the duty to determine whether or not investigate complaints has been delegated to Standards Committees. It now has a strategic function in monitoring the function of standards committees and providing guidance. It also investigates allegations referred to it by Standards Committees in circumstances where the committee decides that a local investigation is not appropriate and Standards for England agree to undertake the investigation on the Committee's behalf. However, as the number of investigations required has reduced so has the number of Ethical Standards Officers employed by Standards for England.

11. If this were to happen there would be an immediate saving for the government as the cost of running the Standards for England operation would cease to be incurred. Given the government statement and the contents of the Queen's Speech it can be assumed that whatever other reforms are introduced Standards for England will go, probably sooner rather than later. Standards for England have sent a letter to all monitoring officers confirming that until the government intention is clear it will be a case of business as usual.
12. The consequence of the abolition of Standards for England is that local authorities will no longer have the ability to refer cases to the Standards for England for investigation. Circumstances where complaints may have been referred for investigation include:
 - i) Where there are issues or public interest considerations which make it difficult for the council to deal with the matter fairly and speedily.
 - ii) The status of the member who is the subject of the complaint or the status of the complainant would make it difficult for the council to deal with the complaint.
 - iii) Too many members of the Standards Committee have conflicts of interest.
 - iv) The monitoring officer or other relevant officers have conflicts of interest and suitable alternative arrangements cannot be found.
 - v) The case is so serious, complex or involves so many members that it cannot be handled locally.
 - vi) The investigation requires substantial evidence not readily available to the council.
 - vii) There is substantial governance dysfunction within the council or the Standards Committee.
 - viii) The complaint is in respect of long term or systematic bullying which could be more effectively investigated by an outsider.
 - ix) The complaint raises significant or unresolved legal issues on which a national ruling would be helpful.
 - x) The public may perceive that the council has a vested interest in the outcome of the investigation.
 - xi) There are exceptional circumstances which make it unreasonable for local provision to be made for an investigation.
13. Some (but not all) of these issues can be addressed in other ways. For example it is possible to have joint Standards Committees which can avoid conflicts of interest. It is also possible to engage somebody from outside the authority to carry out investigations. However, this comes at a cost. There are already arrangements within the Essex Legal Services Partnership for officers

to carry out investigations on behalf of their colleagues in other local authorities. The current charging rate for these investigations is £75 per hour but even at that rate substantial bills can accrue. Where matters are exceedingly complex or the investigation will take a long period of time it is probable that other local council officers will not have the capacity to assist with the investigation which would mean employing an outside agency at significantly greater costs.

14. There may also be a difficulty with regard to evidence gathering. Under the Local Government Act 2000 it is an offence to fail to cooperate with an Ethical Standards Officer. There is no such offence with regard to local investigations. Unless there were to be such an offence investigations could be hampered.
15. In stating that it will abolish the Standard Board the government has as yet made no mention of its intentions with regard to the First Tier Tribunal Standards in England. This tribunal, which is the successor to the Adjudication Panel, currently deals with references from Ethical Standards Officers following investigation at the behest of Standards for England, references from Standards Committees where the committees do not consider their powers of sanction sufficient and appeals against decisions of Standards Committees.
16. Abolition of Standards for England would mean that the first of those functions would no longer arise. It would be open to the government to decide that a disqualification for a breach of the Code of Conduct is a draconian sentence and should no longer apply. If the maximum sanction was suspension the government could decide that either the current powers of sanction of the Standards Committee are sufficient or increase those powers by providing for longer suspensions. The existing power of disqualification can (but need not) extend to membership of all relevant authorities. It would be surprising in the extreme if a Standards Committee were to be given power to impose that sanction but the government may empower Standards Committees to disqualify members from membership of that authority. It is possible therefore that the second function could also be made redundant.
17. Were the government to decide to remove the First Tier Tribunal from the Standards framework in its entirety there would be no route to appeal against decisions of Standards Committees. The only possible method of challenge would be in the High Court by way of judicial review on the grounds that the Standards Committee took into account irrelevant matters, failed to take into account relevant matters or came to a decision that no reasonably advised Standards Committee could possibly have reached. Judicial review proceedings significantly exceed anticipated costs for the First Tier Tribunal. There is also a presumption that the winner in such proceedings would recover the costs from the loser. Whilst members will recall from an earlier report that the First Tier Tribunal does have power to award costs in certain circumstances such awards are likely to be rare.
18. Clearly the First Tier Tribunal is an expense for the government. However, my instinct is that most if not all of the legally qualified judges are part time sitting

on a fee paid basis for the days they sit only. Lay members of the tribunal are only entitled to reimbursement of expenses. The administrative team is likely to be small and not a vast drain on resources. At present, hearings tend to be held in hotels but I can see no reason why these could not be scheduled to be held in court buildings to avoid this expense. I consider that if the standards regime remains councillors of all political persuasions would be unwilling for there to be no appeals procedure beyond the Standards Committee and pressure is likely to be brought upon the government to retain the appeal function of the First Tier Tribunal if nothing else.

19. Finally it is possible that the government could repeal the whole of part 3 of the Local Government Act 2000. This would remove the Code of Conduct, remove the need for Standards Committees and abolish Standards for England in one fell swoop. I consider this to be the least likely of the options. Before the statutory Code of Conduct there was a National Code of Conduct. Whilst this was voluntary, compliance was expected and members who failed to observe the Code exposed their authorities to risk of judicial review proceedings and also themselves to the risk of a surcharge by the district auditor. It is inconceivable to me that the government would not wish to retain some Code to control the behaviour of members of local authorities.

Risk Analysis

20.

Risk	Likelihood	Impact	Mitigating actions
The government repeal part 3 Local Government Act 2000.	1, for the reasons set out in paragraph 19 above.	4, there would be a lack of transparency causing a loss of confidence of the public in local government.	Within the Decentralisation and Localism bill the government is also committed to giving local authorities a general power of competence. In the event that part 3 of the Local Government Act 2000 is repealed consideration be given as to whether this council could introduce its own Code of Conduct either within the general power of

			wellbeing under section 2 Local Government Act 2000 or under the Power of General Competence promised to local authorities.
The government abolishes the first tier tribunal.	1, it is anticipated that most councillors will wish there to be a right of appeal against decisions of Standards Committees and that the government will yield to such pressure.	3, the council may face more proceedings for judicial review which will be an expense for the council.	The Standards Committee would need to ensure that its decision letters are sufficiently robust to be able to resist applications for judicial review.
The first tier tribunal is restructured in such a way as to deal with appeals from Standards Committees only.	3, the government will make greater savings by requiring Standards Committees to deal with all allegations of misconduct and such a stance is consistent with the government's proclaimed desire for greater localism.	3, unless the Standards Committee is given greater powers of sanction to include a power of disqualification serious breaches of the code may be insufficiently punished thereby reducing public confidence in this system.	Although the government is not inviting consultation at this stage, members could if they wish ask officers to write to the government on behalf of the committee suggesting this as an option.
The government abolishes Standards for England.	4, this is stated government policy.	3, whilst the monitoring regime is time consuming and appears unnecessary Standards for England is a valuable source of guidance and	None within the council's control.

		the inability to refer appropriate cases to Standards for England for investigation rather than sub-contracting out may have adverse financial consequences for the council.	
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- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.