

READING BOROUGH COUNCIL

REPORT BY MONITORING OFFICER

TO:	STANDARDS COMMITTEE		
DATE:	7 FEBRUARY 2008	AGENDA ITEM:	
TITLE:	STANDARDS COMMITTEE - LOCAL INVESTIGATIONS		
SERVICE:	STRANDARDS	WARDS:	BOROUGHWIDE
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1. PURPOSE AND SUMMARY OF REPORT

- 1.1 To brief the Committee on the arrangements for implementing the new framework for local investigations which will come into effect in April 2008, following the expected issue, by the Government, of Regulations implementing Part 10 of the Local Government and Public Involvement in Health Act 2007.
- 1.2 To consider a response to the Committee the Government's Consultation Paper on *Orders and Regulations Relating to the Conduct of Local Authority Members in England*, which was received from the Department of Communities and Local Government (DCLG) on 18 January 2008, with a closing date for comments of 15 February 2008. This was circulated to Committee members on 24 January 2008.
- 1.3 To consider a checklist for implementing the locally-managed standards framework, as issued by the Standards Board for England, and attached at **Appendix A**. This has also been circulated separately to Committee Members.

2. RECOMMENDED ACTION

- 2.1 That the Committee consider the contents of the DCLG Consultation Paper, as summarised at para. 5, and identify any comments that it might wish to make directly to the Government in response;
- 2.2 That the Committee consider the Standards Board checklist, as attached at Appendix A and summarised in para. 6 below, and in particular my comments on the checklist, including my proposal that under the new local assessment framework, all new allegations about Members should be received and logged by the Monitoring Officer.

3. POLICY CONTEXT

- 3.1 Standards and conduct are a key theme in the Modernisation agenda for local government, and are specifically addressed by Part III of the Local Government Act 2000. At the heart of the standards regime is the National Code of Conduct for Members, which the Council adopted in April 2002; and again in October 2007 following the issue of the revised National Code.
- 3.2 Responsibility for enforcing compliance with the code currently is split between, at the national level, the Standards Board for England and the Ethical Standards Officers (ESOs) appointed by it to investigate all allegations made to it, and the National Adjudication Board, which hears those allegations where the Standards Board believes there is a case to answer; and at the local level the Standards Committees and Monitoring Officers (MOs) of individual authorities.
- 3.3 In 2003, the Government introduced Regulations which extended to Standards Committees the ability to adjudicate on certain allegations investigated by Ethical Standards Officers. As a result the Committee, on 10 February 2004, considered and agreed a new procedure for local hearings, under the provisions of the Local Authorities Code of Conduct (Local Determination) Regulation 2003/4.
- 3.4 In 2004 the Government (ODPM) introduced new Regulations which allow the ESO to hand over the investigation of minor breaches of the Code of Conduct to the Council's Monitoring Officer (MO). The ODPM saw this as completing the standards regime in England. During 2005 the Committee considered and endorsed a procedure for the local investigation of such referred complaints, subject to amendments, which was adopted by full Council at the Annual Meeting on 18 May 2005.
- 3.5 In December 2005 the Government issued a Discussion Paper, *Standards of Conduct in English Local Government: the Future*, regarding the reform of the standards regime in local government. The Local Government White Paper, *Strong and Prosperous Communities*, issued in October 2006, outlined the Government's proposals to introduce a more proportionate and locally-based decision-making regime for the investigation and determination of all but the most serious misconduct allegations against members of local authorities. Under this new regime the principal responsibility for receiving and investigating allegations about Members will transfer to the Standards Committee of the local authority concerned. The role of the national Standards Board will be revised to that of taking a strategic overview and providing supervision, support and guidance, but with residual responsibilities to take on more serious allegations, where the penalty could result in a decision to disqualify.

3.6 The new regime is being implemented under Part 10 of the Local Government and Public Involvement in Health Act 2007, and Regulations to be issued under it. The current Government Consultation Paper has been circulated in advance of the issue of these Regulations. Part 10 has amended the Local Government Act 2000 to provide for a revised ethical conduct regime for local government, based on the principle of proportionate decision-making on conduct issued by individual local authorities.

4. THE PROPOSAL

4.1 The Committee has already adopted local procedures for both local investigations and local determination. These procedures were attached to my report to the Committee at its meeting on 17 July 2007. In investigating and determining cases, the test that must be applied by the Committee, the Standards Board and the National Adjudication Panel, is whether there has been a breach of the Code of Conduct for Members.

4.2 Under the new arrangements, allegations made about Members will no longer be made directly to the Standards Board. Instead they will be made to the local authority concerned. At present the Standards Board undertakes an initial assessment of all complaints received, which act as a filter: between 1 April and 31 October 2007, this initial assessment resulted in 14% of complaints received being referred for investigation. To put this another way, 86% of all complaints received by the Standards Board were filtered out and no further action taken.

4.3 Under the new arrangements, this initial assessment role will fall to local Standards Committees to undertake. The Consultation Paper makes three basic points about the exercise:

- The initial assessment of allegations by local Standards Committees will not be a public process
- If the Committee considers the allegation indicates a *prima facie* breach of the Code of Conduct, it may refer the allegation to the Monitoring Officer to investigate under the investigatory procedure
- If the Committee decides to take no further action (ie not to refer the allegation for investigation), the person making the allegation will have a right of complaint to the Committee about the decision.

4.4 The consequence of the above is that the Committee, in considering any allegation made to it, may potentially be involved in an allegation at four different stages:

- At the initial assessment
- If the initial assessment is not to take any further action, and a complaint is received

- If the initial assessment is to refer for investigation, to receive the results of the investigation and to consider whether a hearing is necessary - and if so:
 - To hear the allegation
- 4.5 This gives rise to concerns about Committee Members not prejudicing their own position with regard to the different stages, and a consequent view that the Committee should be large enough to allow the formation of separate sub-committees to deal with different stages of the allegation, with specific separations being made between the following processes:
- Initial investigation
 - Complaints arising from initial investigation
 - Investigation and hearing
- 4.6 The Committee has a membership of 10, of whom seven are Councillors, and three are independent Members (non-Councillors). In addition, there are four named substitute Councillor members. The minimum legal requirement is that the Committee should have three Members, but if the Committee is larger than this, at least a quarter should be independent Members. It is understood that from April 2008, the Government Regulations will require the Committee, and all of its Sub-Committees, to be chaired by an independent Member.
- 4.7 To provide a local context, since May 2005 the Standards Board has received 15 complaints about Reading Councillors, although 10 of these were by the same complainant and related to the same incident, so that in practice it received six separate complaints. It has referred only one for local investigation (in 2005): the remaining 14 (or 5) were filtered out.

5. CONSULTATION PAPER

- 5.1 The Government's Consultation Paper makes proposals and poses questions which I summarise below, using the headings in the Consultation Paper.
- 1) New Standards Committee powers to make initial assessment of misconduct allegations, composition of committees and access to information
 - a) Standards Committee Members and initial assessment
 - Members involved in the initial assessment should not be involved in any subsequent review of a decision to take no action
 - But such members may take part in any subsequent determination hearing
 - b) Members of more than one authority - parallel complaints procedures
 - Not relevant to Reading

- c) Publicising the new initial assessment procedure
 - Each Standards Committee should publish a notice explaining where future misconduct allegations should be sent, and should continue to promote this information
- d) Guidance of timescales for making initial assessment decisions
 - Standards Board to set out guidance - 20 working days suggested
 - Guidance rather than statutory requirement
- e) Requirement for a Committee to provide a written summary of an allegation to the subject of the allegation
 - Circumstances identified where this duty may not apply, eg where real possibility of intimidation, or of destruction of evidence
- f) Requirement for a Committee to give notice of decisions under Sections 57A and 50 of 2000 Act
 - Including where decision is to take no further action
 - Standards Board to set out guidance - different circumstances specified
- g) Reference to Monitoring Officers under Section 75(2)(a) of 2000 Act
 - May specify that an allegation may be dealt with other than by investigation
- h) Reference to Monitoring Officers - procedure for referring allegations back to a Standards Committee
 - Circumstances identified where this might happen - to be accompanied by written notification
- i) Referral of matters from a Standards Committee to the Adjudication Panel for England for determination
 - Following the receipt of the MO's report, and where the Standards Committee considers the breach of code merits a sanction greater than that available to the Committee
 - To avoid possibility of allegations being heard twice
 - Adjudication Panel may refuse to accept referral under certain circumstances
- j) Increase in the maximum sanction available to Standards Committees
 - From 3 months to 6 months suspension / partial suspension
- k) Composition of a Standards Committee and its sub-committees
 - No change to basic rules, but a different Independent Member should chair each of the following stages:
 - Initial assessment

- Review of decision to take no action
- Hearing

- l) Public access to information on decisions on initial assessments of allegations under S57A and reviews under S57B
- Initial assessment meetings and any subsequent review of a decision to take no action should not be subject to Access to Information legislation, should be conducted in closed meetings, and should not be subject to the notice and publicity requirements under Part 5A of Local Government Act 1972

2) Standards Board's new monitoring function

- a) Circumstances where Board may suspend a Standards Committee's function of undertaking the initial assessment of misconduct allegations
- Under S57D of 2000 Act - decision to be made on case-by-case basis, informed by performance information
 - 6 specific triggers for action specified
 - Power to be used as last resort - and following strenuous attempts to improve performance
- b) Circumstances where the initial assessment may be undertaken by another standards committee
- Under S57D(2) of 2000 Act - Where Standards Board and receiving committee agree this is appropriate
- c) Possibility of providing for the Standards Board or standards committees to charge for undertaking functions on behalf of a suspended Standards Committee
- Views invited - no express legal provision at present
- d) Proposed procedures for the suspension of initial assessment functions, and their re-instatement
- Process proposed - including sending written notice to Chief Executive; and written direction to CE, copied to MO and Chair
 - Communication between Standards Board and MO / Chair during suspension
 - Requirement on authority to demonstrate improvement, through evidence, in its abilities to discharge its functions under the Act
 - Obligation to cooperate with Standards Board and to have regard to its guidance
- e) Joint working

- All functions to be available for joint working
 - Each Standards Committee to decide which ethical regime will apply
 - Standards Board will issue guidance
- 3) Adjudications by case tribunals of the Adjudication Panel
- To extend the range of sanctions available to a case tribunal, to include those already available to Standards Committees
 - Withdrawing references to the Adjudication Panel - circumstances specified
 - Decision notices of case tribunals - to have direct effect without the need for application by local Standards Committee
- 4) Issuing dispensations to all Councillors to participate in meetings so as to preserve political balance
- Amend Regulations to allow Standards Committees to grant dispensations to apply to Members having the right to vote, to avoid a political group losing its majority or gaining a majority which it wouldn't otherwise have
 - To apply to full Council or at Committees
- 5) Granting and supervision of exemptions of certain local authority posts from political restrictions
- Not relevant to Reading - relate to authorities not required to have a Standards Committee
- 6) Maximum pay for local authority political assistants
- Propose increasing maximum pay from spinal column point 41 (top of grade PO2) to spinal column point 49 (top of grade PO5)

6. STANDARDS BOARD CHECKLIST

6.1 This is attached at Appendix A. It was published by the Standards Board in December 2007, as part of its bi-monthly Bulletin. In it, the Standards Board raises a number of operational issues for local Standards Committees to consider, and alongside these suggests good practice, which I summarise below, together with my comments as Monitoring Officer:

1) Size of Standards Committees

- Minimum of 6 Members - including 3 independent Members
- Consider whether more Members are required to cover conflicts of interest, holidays, sickness

Comments:

- Retain current size (10 Members - including 3 Independent Members) for 2008/09 Municipal Year

2) Structure of Standards Committees

- Members who carry out local assessments should not review their decisions
- Members who carry out local assessments may be members of sub-committee that hears and determines the allegation
- EITHER have a structure of formal sub-committees OR use Committee as pool of Members
- Any Sub-Committee should be chaired by an independent Member

Comments:

- Operate Committee as pool of Members, to draw off for different activities, as convenient.
- Each occasion a group of Members is called to meet to be called a Sub-Committee, and to be chaired by an independent Member
- Local assessments to be undertaken by a minimum of 3 Members, including 1 Independent Member (as Chair)

3) Training

- All Committee Members to be fully trained on Code of Conduct
- Committee Members also to be offered training in conducting a hearing
- Independent Members to be trained in chairing meetings
- All new Members to receive induction training on role of Committee

Comments:

- Training in the new Code of Conduct is essential. Last autumn, I ran three training sessions for Councillors on the new Code. All Committee Members must attend a training session on the Council's new Code if they have not already done so.
- I propose to run an induction session each year for all new Members appointed to the Committee (which will include the new Code of Conduct)

4) Local Assessment Criteria

- The Standards Board will issue guidance nationally on developing criteria and the types of issues to consider when assessing allegations
- Standards Committees should develop local criteria which are simple, clear, open, and ensure fairness
- Where a complainant submits an appeal about a decision to take no further action, Standards Committees should be able to invite the complainant to submit further information at the appeal stage

Comments:

- The Committee should consider local criteria in the light of the national guidance from the Standards Board, when issued
- The Committee may also wish to consider clarifying what sort of additional information it may be appropriate for a complainant to submit to support an appeal

5) Role of Monitoring Officer (MO) in new Local Assessment Framework

- The MO should hold a pre-meeting with the independent chair [of the Sub-Committee doing the local assessment]
- The MO should prepare a summary of the allegation, and highlight the potential breaches of the Code of Conduct
- Sufficient case reading time should be allowed for both the MO and the Sub-Committee

Comments:

- Agreed - although I would substitute "pre-briefing" for "pre-meeting".

6) Completing Outstanding Investigations

- These should be got out of the way before the new framework comes into effect

Comments:

- There are no outstanding investigations at present

7) Local Assessments and the Corporate Process

- Standards Committees should consider:
 - How will the public be informed of the new arrangements?
 - Who will receive and log allegations?
 - The production of a local assessment information leaflet - possibly combined with the corporate complaints process

Comments:

- I recommend that I should receive and log all allegations on behalf of the Committee.
- The Council's Complaints Procedure was updated in 2007, and there are no immediate plans (or need) to re-print it
- I will work with the Communications Unit on:
 - a local leaflet on local assessments, to accompany the Council's Complaints Procedure, for issue to potential complainant, and for public display / access at reception points and at public libraries;
 - incorporating local assessment into the Complaints page of the Council's website

- NB - this should be done in the light of guidance to be issued by the Standards Board

6. CONTRIBUTION TO STRATEGIC AIMS

- 6.1 To support the participation of Reading people in local democracy.

7. COMMUNITY ENGAGEMENT AND INFORMATION

- 7.1 See comments about Local Assessments and the Complaints Process under 6.1(7) above.

8. LEGAL IMPLICATIONS

- 8.1 Part III of the Local Government Act 2000 sets out the legal framework for conduct of local government Members and officers. The Government has implemented this framework through the issue of Regulations under Section 66 of the Act, including the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004, which it (then) saw as completing the standards regime for Council Members.
- 8.2 The standards regime applies to voting Members of Council and Cabinet Committees, including both Councillors and non-elected Members (such as the independent Members of this Committee).
- 8.3 Part 10 of the Local Government and Public Involvement in Health Act 2007 has updated the ethical framework in the ways described in this report. In particular, Section 185 has substituted for Section 58 of the 2000 Act a new requirement that written allegations made about Members of a local authority must now be made to that authority's Standards Committee.

9. FINANCIAL IMPLICATIONS

- 9.1 Subject of course to the number of allegations made against Members of the authority, local investigation and determination have generated and will generate additional work for the Monitoring Officer and any other officer who undertakes an investigation. In addition, the Standards Committee will be required to set up hearings to hear the individual allegations (if the MO believes that there is a case to answer), which will have associated costs of administrative support. Under the Council's scheme of Member Allowances the independent Members of the Panel may claim a daily allowance to attend these sub-committees, at a level to be determined by the MO (£31.30 a day).

10. BACKGROUND PAPERS

DCLG Consultation Paper on "Orders and Regulations Relating to the Conduct of Local Authority Members in England" (January 2008)
Standards Board Bulletin 36 (December 2007)