

STANDARDS COMMITTEE, MID SUSSEX DC

Paper for meeting on 20 January 2009

Chairman's Report on South Area Independent Members' Forum, 23 October 2008

1. David Brown and I attended this gathering, which was hosted by Fareham Borough Council and attracted a total attendance of around 40. Proceedings occupied the morning, followed by a sandwich lunch. The main purpose of this paper is to draw attention to a few points which arose in the course of proceedings which perhaps deserve discussion by our committee.

Presentation by the Isle of Wight

2. The main presentation was given by the Monitoring Officer of the Isle of Wight Council, which at that time had received 17 complaints since the changeover to local monitoring in May 2008. Despite this large number the IoW committee had not called on outside resources, not even to conduct investigations. The Monitoring Officer's approach was that bringing in outsiders tends to create as much work as it saves, because the outsiders need so much briefing and support. It would appear that, in our area at least, cross-border cooperation, about which there was much talk in the run-up to the changeover, has not yet got off the ground, and may never do so.
3. The presentation highlighted a few differences between practice in the IoW and ours.
4. We notify the member complained of immediately the complaint is received. After initial experience, IoW defers notification until after the assessment sub-committee has met.
Do we nevertheless think it preferable to stick to our previously agreed procedure?
5. IoW has separate sub-committees to undertake the initial consideration of an investigating officer's report and to conduct any subsequent hearing, with no overlap of membership between them. Our procedures, which are in accordance with Standards Board guidance, envisage the same sub-committee performing both functions. **Can I assume that we are content to continue with this arrangement?**
6. IoW has agreed a protocol with the local media that nothing will be published about a complaint until the assessment sub-committee has decided that the complaint has substance. **Does our experience so far indicate that such a protocol may be necessary in Mid Sussex?**

Ethical governance

7. There was a short discussion of this topic, led by Jane Stirkazer Evans, the very proactive chair of the Worthing Standards Committee. Her approach struck David and me as dangerously close to getting the Standards Committee involved in policy issues, which should not be our role. But the discussion did at least serve to draw our attention to the ethical governance agenda being

promoted by the Audit Commission and the Improvement and Development Agency. Details of this can be found via www.idea.gov.uk, and include an “ethical governance toolkit”. At first glance this and the associated documentation do not appear to add much to the Code of Conduct and the guidance available from the Standards Board. It was suggested that all councils now have to produce an annual ethical governance statement. **Does MSDC produce one, and if so, should we see it?**

8. It was also suggested that Standards Committees should extend their oversight to local partnerships. **What is the committee’s view of this suggestion?**

Next meeting

9. The Forum’s next meeting will be on Wed. 18 March 2009 at the offices of Woking BC.

ROGER SANDS

8 JANUARY 2009

6. STANDARDS COMMITTEE HEARINGS PURSUANT TO THE STANDARDS COMMITTEE (ENGLAND) REGULATIONS 2008

REPORT OF: Tom Clark, Monitoring Officer
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Wards Affected: All
Key Decision No

Purpose Of Report

1. For Members to consider what is required at a hearing of a matter in which a report has been prepared either by an Ethical Standards Officer of the Standards Board for England or on behalf of the Monitoring Officer and been referred to a hearings sub-committee for determination.

Summary

2. The hearing must be in accordance with the Standards Committee (England) Regulations 2008 which require a preliminary hearing of the matter before the Hearings Panel to decide the following:-
 - (a) If the report suggests that there has been no breach of the Code of Conduct to decide whether the Hearings Panel agree with that view and if not whether they think the matter should be heard by themselves at full hearing or should be referred to the Standards Board for England for consideration.
 - (b) If the report suggests there has been a breach of the Code of Conduct then the Hearings Panel have to decide whether or not they hear the matter themselves or whether they send it to the Adjudication Panel for England.

Recommendations

3. **To note the requirements of the Standards Committee (England) Regulations 2008 and to apply them in the workshop exercise.**

Background

- 4.1 On the 8th May 2008 new regulations came into force under Statutory Instrument The Standards Committee (England) Regulations 2008 No.1085. These provided for the Local District Standards Committee to be the filter for complaints about District and Parish Council members. Such complaints had to be made in writing to the District Council Monitoring Officer. Previously this filtration of complaints was carried out by the Standards Board for England. There was also a mechanism for the initial decision of the Assessment sub-committee to be reviewed by a separate Review sub-committee. The changes also provided for these sub-committees and the Standards Committee itself to be chaired at all times by a Independent Member.
- 4.2 From 8th May 2008 the Council dealt with 3 such complaints, 2 of which also went to a review hearing. None of the complaints were sent for investigation. The Council therefore has not had a hearing under the new procedures.

- 4.3 An Assessment sub-committee or the Review sub-committee can send the matter to the Monitoring Officer requesting that it is investigated and a report prepared or, in more serious cases and in accordance with the regulations and guidelines provided by the Adjudication Panel for England, it can be referred to an Ethical Standards Officer at the Standards Board, in particular when the complaint cannot be easily investigated locally given the position of the Member in receipt of the complaint, or the matter is potentially so serious that it is likely to result in a decision that the Member is suspended for a long period or disqualified. The maximum penalty available to a hearings sub-committee is 6 months suspension.
- 4.4. The person appointed by the Monitoring Officer to carry out a local investigation prepares a draft report. This is shared with the Member in receipt of the complaint who is invited to make comments. Normally the Ethical Standards Officer will also share their draft report with the Member subject to the complaint. In light of the views of the Member in receipt of the complaint a final report is prepared and this is considered at a preliminary hearing by the Hearings sub-committee made up of 3 Members chaired by an Independent Member. Under the Mid Sussex arrangements if the complaint involved a Parish Councillor the composition of the Hearings Panel will be 1 independent Member, 1 District Member and 1 Parish Member. If the complaint is about the District Member the Panel will be 1 independent Member and 2 District Council Members.
- 4.5 If the report is recommending no further action the initial hearing has to decide whether or not it agrees with this recommendation. If it does so, that is the conclusion of the matter. There would only be publicity of this if the member in receipt of the complaint requested such advertisement to be made. Otherwise it is only the parties involved in the complaint and the Standards Board for England and any relevant Parish Council that are informed of the outcome. If however the report is recommending that there has been a breach of the Code of Conduct the Hearings sub-committee must hold a hearing but can decide if they think the matter is sufficiently serious to refer it to the Standards Board for England in accordance with the guidelines provided.
- 4.6 The hearing should take place within 3 months of the Monitoring Officer receiving the Ethical Standards Officer's report or within 3 months of the Monitoring Officer receiving a locally investigated report. This hearing cannot however be held less than 14 days after the Member who is the subject of the complaint received a copy of the report. That Member must also be given an opportunity to present any evidence as representations at the hearing. The Member may be represented by counsel, a solicitor or any other person on their behalf. Hearings can go ahead in the absence of the Member in receipt of the complaint. The Hearing sub-committee can adjourn the hearing at any time to gain further information.
- 4.7 The hearing should be in accordance with the procedure shown at Appendix 1.
- 4.8 The Standards Committee can make one of the following findings:-
- a) that the Member who was the subject of the hearing has not failed to comply with the Code of Conduct of the authority concerned
 - b) that the Member who was the subject of the hearing has failed to comply with the Code of Conduct concerned but no further action needs to be taken in respect of the matters which were considered at the hearing or

- c) that the Member who was the subject of the hearing had failed to comply with the Code of Conduct and that a sanction should be imposed. If the Member is no longer a member of the authority then the only sanction is censure. If the Member remains a member of the authority the following sanctions are available :
- a) censure of the Member
 - b) restriction for a period not exceeding 6 months of the Members access to the authority.
 - c) a partial suspension of the Member for a period of up to 6 months.
 - d) suspension of the Member for a period of up to 6 months.
 - e) that the Member submits a written apology in the form specified by the Standards Committee.
 - f) that the Member undertakes such training as the Standards Committee specifies.
 - g) that the Member participates in such conciliation as the Standards Committee specifies
 - h) partial suspension of a Member for a period not exceeding 6 months or until such time as the Member submits a written apology in the form specified by the Standards Committee.
 - i) partial suspension of the Member for a period not exceeding 6 months or until such time as the Member has undertaken such training or has participated in such conciliation as the Standards Committee specifies.
 - j) suspension of the Member for a period not exceeding 6 months or until such time as the Member has submitted a written apology in the form specified by the Standards Committee.
 - k) suspension of the Member for a period not exceeding 6 months or until such time as the Member has undertaken such training or has participated in such conciliation as the Standards Board specifies.

It is possible for the above sanctions to be suspended by up to 6 months before it takes effect although normally it would take effect immediately.

4.9 A written notice of the Hearings Committee shall be given to the following :-

- 1. The Member subject to the complaint.
- 2. The Standards Board.
- 3. The Standards Committee of any other authority concerned.
- 4. Any Parish Council concerned
- 5. The person who made the allegation.
- 6. The decision shall be published in at least one local newspaper circulating in the area and consideration should be given to putting the decision on the website of the authority concerned. Where a member is not found to be in breach of the Code of Conduct that member can agree that there should be no such public notice if they wish.

4.10. The decision notice shall include notification that the Member who is the subject matter of the appeal may appeal in writing to the President of the Adjudication Panel for England.

Financial Implications

There is a considerable amount of work involved in conducting a full investigation and presenting it to a Hearings sub-committee. There is an annual budget of £10,000 which could be spent on one investigation.

Schedule 1

Procedure for Hearings:

- 1) Chairman to introduce the sub-committee members and ask others present to introduce themselves.
- 2) Chairman to explain the format for the hearing.
- 3) The Investigating Officer to introduce the report to the sub-committee and to answer questions from the Member subject to the complaint, his/ her representative and from the members of the hearings sub-committee.
- 4) The Member or his/her representative to make submissions to the Hearings sub-committee.
- 5) The Investigating Officer be invited to ask questions of the Member who is subject of the complaint or his or her representative.
- 6) The Hearings sub-committee be invited to ask questions of the Member in receipt of the complaint or his or her representative.
- 7) The Investigating Officer be invited to make any final submissions.
- 8) The Member complained about or his/ her representative to make final submissions.
- 9) The Hearings Panel to withdraw to consider their findings.
- 10) The Hearings Panel to return to present their findings. If there is a finding that there has been a breach of the Code of Conduct the Investigating Officer followed by the Member in receipt of the complaint be invited to make submissions on the possible penalty.
- 11) The Hearings Panel withdraw to consider the appropriate penalty.
- 12) The Hearings Panel return to explain their decision on penalty.