

7. THE STANDARDS COMMITTEE TODAY AND THE LOCALISM BILL 2010

REPORT OF: Tom Clark, Solicitor to the Council and Monitoring Officer
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Wards Affected: all
Key Decision Yes/No

1. Purpose Of Report

- 1.1 To re-affirm the current work of the Standards Committee under the Local Government Act 2000 and relevant Statutory Instruments and Guidance and to highlight the changes being proposed in the Localism Bill (subject to amendments) which are likely to come into force within the next 6 to 12 months.

2. Summary

- 2.1 The Local Government Act 2000 introduced the Standards Board for England (now known as Standards for England) and a Member Code of Conduct relating to Councillors at County, District and Town/Parish levels. The District Council was responsible for enforcing these provisions locally in respect of its own Councillors and those in its town/parishes. The Localism Bill will remove the responsibility of the District Council for town/parish matters but it currently remains uncertain whether there will still be a requirement to have a Member Code of Conduct and a means of enforcing such Code of Conduct locally. It appears to be certain that Standards for England will be abolished as the overseeing body.

3. Recommendations

- 3.1 **To note the probable changes in the next 6 to 12 months but to further note that the existing regime in accordance with the Local Government Act 2000 remains fully in force and is likely to do so until at least the end of the calendar year.**
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4. Background

- 4.1 The Local Government Act 2000 introduced the system of Cabinet administration in all County, Unitary and most District Councils. Alongside this was introduced a Member Code of Conduct regime requiring elected members at District and Town/Parish level to abide by that Code. Member conduct was overseen by the Standards Board for England who had powers to disqualify and suspend Councillors. Powers at local level were more limited.
- 4.2 The Local Government Act 2000 has been subject to amendment over the past 11 years and statutory instruments have been introduced to give further guidance on the implementation of the legislation. These include a model Code of Conduct from 2007 and the Standards Committee regulations 2008. In addition the Standards Board has issued its own guidance entitled Local Standards Framework and there are now a substantial body of decided cases.
- 4.3 Prior to May 2008 all potential complaints about the conduct of members were referred to Standards Board for England who acted as the filter for these complaints. This means that the District Council only received complaints ready for investigation.

4.4 From the 8th May 2008 all complaints are made directly me as the Monitoring Officer at the relevant District Council. Standard Committee members form a three member panel, chaired by an independent member, now act as the filter for the complaints. The system of dealing with complaints is set out in the attached schedule. This is the regime currently required to be applied at Mid Sussex District Council. So far in 2011 3 complaints have been dealt with by Assessment panels and the first two complaints were also reviewed by a Review panel. This means that so far this year there have been 5 meetings of Standards Committee Panels. The conclusion reached by all panels has been that, while there was a possibility of a breach of the Members Code of Conduct, none of the complaints merited a full investigation at the public expense.

5. The Localism Bill.

5.1 Clauses 14 to 20 inclusive of the Localism Bill and Schedule 4 of the Bill require the District Council to promote high standards of conduct by elected members but make the Member Code of Conduct itself a voluntary matter. It also takes away the responsibility of the District Council for behaviour in Parish and Town Councils in its administrative area. However the Act includes provisions for prosecutions should a member fail to properly disclose a financial or other interest under the registration of Members' interests regime..

5.2 The Bill has now reached the House of Lords and amendments have been introduced to require Councils to maintain a Members Code of Conduct and to have a local system of enforcement. The argument made (which already has been made at your Committee) is that it is not appropriate to have a system where there is either a prosecution or no enforcement at all. There should be some intermediate means of enforcement outside the sanctions of the Criminal Courts. It is likely these amendments will be carried in the House of Lords but the Bill will then return to the Commons where it will be further debated. The Bill covers a huge area of Local Government Work and is unlikely to become an Act before the Autumn with its provisions coming into force over the following 12 months. It is however probable that Standards for England will be abolished as part of this legislation. We may therefore be back to where we were prior to the Local Government Act 2000 when the Council had its own local Standards Committee operating. As originally drafted this will be a voluntary requirement but if the amendments reach the Act then it will remain compulsory for Mid Sussex District Council to have a Standards Committee and local enforcement of a Members Code of Conduct.

5.3 Members will note that the position is uncertain and it will not be possible to recommend to Council proposals for Standards in 2012 onwards until the Bill becomes an Act. In the meantime the Council is legally required to carry on with the existing system outlined in Schedule 1 to this Report.

6. Financial Implications

There are costs involved in establishing and holding a Standards Committee and investigating any complaints received.

Background Papers

Local Government Act 2000

The Local Authorities (Model Code of Conduct) Order 2007 No.1159.
The Standards Committee (England) Regulations 2008 No.1085
Local Standards Framework – Guide for Local Authorities 2008 as updated.

Schedule 1

1. Any person can report a District Member or Town/Parish Member in the Mid Sussex administrative area to the Mid Sussex District Council's Monitoring Officer alleging a breach of a particular provision of the Code of Conduct 2007. Such complaint must be in writing either in letter or by e-mail.
2. Assuming the written complaint does relate to the Code of Conduct the Monitoring Officer will set up a panel of Members from the Standards Committee always chaired by one of the 4 independent Members.
3. The complainant will be advised of the panel sitting as an Assessment Panel and the basics of the procedure, and the Member in receipt of the complaint will also be advised of the complaint, the name of the complainant and some basic facts of the complaint.
4. The Panel will meet having received briefing papers to discuss the complaint. Initially the panel must be convinced that the Member was acting as a Member at the time of the complaint for the Code of Conduct to apply. The Panel must then decide on the facts before them whether those facts amount to a possible breach of the complaint. Assuming that both those questions are decided affirmatively the panel will then decide what if any further action should be taken. The panel can decide if the matter can be investigated either locally or in certain circumstances by the Standards for England, that the Monitoring Officer should be asked to take local action, e.g. further training, or that the matter does not require any further action.
5. The complainant is advised of the outcome of the Assessment Committee's deliberations and if those deliberations suggest no further action the complainant does have a right to request a review of that decision by a separate panel of Members headed by an independent Member who look at the whole matter afresh. Such request must be received within 20 working days of the decision of the first Assessment Panel being advised. A copy of the decision of the Assessment Panel is given to the Member in receipt of the complaint and therefore the facts of the summary do become known to the Member in receipt of the complaint.
6. If the matter is referred for local investigation it will be investigated by one of the two Deputy Monitoring Officers who prepare a report. This draft report will be shown to both the complainant and the member in receipt of this complaint for comment before it is finalised. The final report comes to a panel of members headed by an independent member if it suggests that there have been no breach of the Code of Conduct. If this recommendation is accepted by that panel the matter is advised to both the complainant and the member in receipt of the complaint.
7. If however there is a possible breach of the Code of Conduct the hearing panel is set up composed of three members chaired by an independent Member. At the hearing the report is introduced by the investigating officer and there can be questions both from the member in receipt of the complaint or his or her representative and from the panel itself. The member in receipt of the complaint can then put their case as to why there has not been a breach of the Code of Conduct and call a limited number of witnesses. The panel then hears concluding statements from both the investigating officer and the member in receipt of the complaint and withdraw to consider their decision.
8. If they conclude there has been no breach of the Code of Conduct that is the end of the matter, if however they conclude that there is a breach of the Code of Conduct they return to announce this result and ask for mitigation statements from both the investigating officer and the member in receipt of the complaint.
9. The Panel then withdraw again from the room to consider what penalty if any should be imposed. The sanctions available to a Standards Panel are as follows:-
 - a) Censure the Member.
 - b) Restrict ,for a period not exceeding 6 months, the Member's use of facilities at the Council.
 - c) A partial suspension of the Member for up to 6 months.
 - d) A full suspension of the Member for up to 6 months.

- e) A requirement that the Member submits a written apology within a specified time and in a specified format.
 - f) That the Member undertakes further training.
 - g) That the Member takes part in conciliation work.
10. If the Standards Committee Panel do not believe their sanctions are sufficient given all the facts of the case, they can refer the matter to the Standards for England who have the power to impose up to 5 years disqualification.
11. There are some cases which at assessment level can be referred to Standards for England. These will be cases involving senior members of the Council where it will be difficult to carry out a local investigation, allegations that on the face of it are serious and are likely to result in disqualification or matters that are complicated and have wider implications for the Standards regime. In the Council 2007/2011 we had one such matter involving a decision at a Planning Committee that asked the question whether a chairman of a committee is in a different position from an ordinary member in that committee given that the chairman has a casting vote. Given that the whole regime is to give the public confidence in the system is the chairman is expected to have higher standards than ordinary members of the committee? The matter was investigated and the Member was found not to be in breach of the Code of Conduct (having appropriately declared a personal interest only) and the implication from the decision was that the chairman is in no different position from any other member of the committee as far as the Member Code of Conduct is concerned.
12. Each case and the facts of each case must be looked at closely to establish whether or not there is a potential breach of the Code of Conduct, including reviewing of the guidance and earlier case decisions. This is also the case when considering any possible sanction following a hearing. Based on the numbers since 2009 we are likely to get a further 3 complaints in the rest of this calendar year but these are unlikely to come from town/parish councils. If they do come from town/parish councils it is a requirement that a town or parish councillor must be on the panel looking at that complaint at both the Assessment and Review level.