

5. THE STANDARDS REGIME UNDER THE LOCALISM ACT 2011 – ONE YEAR ON.

REPORT OF: SOLICITOR TO THE COUNCIL
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Wards Affected: All
Key Decision: N/A
Report to: Standards Committee on 9th October 2013

Purpose of Report

1. To update Members on the current position with the Standards regime and invite debate on changes we might consider.

Summary

2. The report sets out the legal background to the Localism Act 2011 and draws Members' attention the Annual Report of the Committee on Standards in Public Life and invites a debate about how matters are conducted at Mid Sussex District Council. To suggest the adoption of some assessment criteria in the light of recent complaints.

Recommendations

3. **The Standards Committee are recommended to:**
 - (i) **note the report; and**
 - (ii) **discuss ways the regime might be changed and agree the adoption of the assessment criteria at Appendix B (circulated separately).**
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Background

4. The Localism Act 2011 abolished the previous Standards regime created by the Local Government Act 2000, including the independent national body known as Standards for England.
 - 4.1 The new regime requires every council to adopt a Members' Code of Conduct consistent with the Seven Principles of Public life (Nolan principles) set out at page 1 of the Annual Report on the Committee on Standards in Public Life at Appendix A (circulated separately).
 - 4.2 Mid Sussex District Council adopted a new code in similar form to the earlier code on the 27th June 2012, ahead of the new regime starting on 2nd July 2012. Members were requested to complete a declaration of interest form to reflect the Code of Conduct and legal requirements and these appear on the District Council's web site as required by the legislation.
 - 4.3 All Town and Parish Councils have adopted their own Code of Conduct with most having similar Codes of Conduct to the District Council. Their Members have also completed declaration of interest forms, which appear on the relevant Town and Parish Council web sites with links from the District Council web site.

- 4.4 The Standards Committee at District Level is responsible for the enforcement of the Code of Conducts at both District and Town/Parish level but there are no sanctions available to a Hearings Sub-Committee save for the publication of their findings. Under the old regime, Standards for England were able to suspend a Member or disqualify a Member, which gave teeth to the regime.
- 4.5 The legislation did however create disclosable pecuniary interests which are detailed in a statutory instrument, "The Relevant Authorities (Disclosable Pecuniary Interest) Regulations 2012 (SI 2012/1464) of June 2012 and further set out in the second appendix to the District Councils Code of Conduct. A failure to properly declare these interests on the declaration of interest form on election or at a relevant meeting can lead to a criminal prosecution where the maximum fine on conviction is £5000 and a period of up to five years disqualification can be imposed. Such prosecutions can only be brought with the consent of the Director of Public Prosecutions and none have been brought to date.

Where Are We After A Year?

5. We have seen a rapid increase in the number of complaints from certain Parish Councils where the complaint is secondary to a bigger issue such as an unpopular planning application or a neighbourhood plan dispute. The complaints have been hung on a failure of respect (paragraph 3) or bringing the Council or one's office into disrepute (paragraph 5) and we could look at amending the Code of Conduct, although these provisions remain in most Council's Members Codes of Conduct.
 - 5.1 Some complainants have not found our system transparent with its private assessment and review sub-committees. Our complaint system however is similar to that adopted by the South Downs National Park Authority.
 - 5.2 None of the complaints have merited investigation since July 2012. It is suggested that we adopt the assessment criteria at Appendix B, which are those used by the South Downs National Park Authority and do reflect some of the issues in the complaints we have received.
 - 5.3 We have information for potential complainants on the web site. This is looked at by a minority of complainants. We try to make clear that the Standards Committee only deals with potential breaches of the Members' Code of Conduct and not complaints in general about Councillors. The wording could be improved but is unlikely to dissuade those intent on complaining about a Member in general.

Other Options Considered

6. Other authorities have left the filtering of complaints to the Monitoring Officer in consultation with one of the Independent Persons. This makes the initial process less bureaucratic but does not offer an appeal mechanism, which makes it more likely to be challenged and does not provide Members with any knowledge of the complaints being made. An appeal could be offered to an Appeals Sub-Committee which would need to be overseen by the Deputy Monitoring Officer.
 - 6.1 The Monitoring Officer may need to take a more cautious approach to whether there is a justification for investigating a potential breach of the Code of Conduct and therefore there may be the expense of more investigations and more Hearings Sub-Committees but this would give the complainant a public hearing.

- 6.2 Adur District Council allows oral representations at their filtering committees but the procedure is complicated. This might be something for the Committee to wish to look into further.

Financial Implications

7. The cost of dealing with Code of Conduct complaints is the responsibility of the District Council with no provision for reimbursement by any of the Town /Parish Councils. Our present approach is more expensive than that described in paragraph 6.

Risk Management Implications

8. The District Council is required to have a committee to deal with Code of Conduct complaints and this work is subject to possible judicial review. A judicial review has recently been accepted by the High Court in which the present statutory provisions are described as irrational, a breach of freedom of expression, not a fair and independent process. If this judicial review is successful, the legislation will need to be changed to provide for an appeal body from the decision of any local Standards Committee.
- 8.1 Members will also see at page 14 and 15 that the Committee on Standards in Public Life also raise concerns about the new locally based regime with a reduced role for independent persons.

Equality and Customer Service Implications

9. Whatever process for dealing with complaints the Council adopts, it must be applied to all complainants making allowances where necessary for disability e.g. for a complainant that needs assistance with putting their complaint into writing.

Other Material Implications

10. Any changes to the Members' Code of Conduct would need to be approved by Council and some Town/Parish Councils may feel they also need to make changes. It might be better to await the outcome of the judicial review application above because this may result in other statutory changes that will need to be considered in any event.

Background Papers

None.