

NORTHAMPTON BOROUGH COUNCIL

STANDARDS COMMITTEE

Your attendance is requested at a meeting to be held at the The Jeffrey Room, St. Giles Square, Northampton, NN1 1DE. on Monday, 7 March 2011 at 5:00 pm.

D. Kennedy
Chief Executive

AGENDA

1. APOLOGIES
2. MINUTES
Copy herewith
3. DEPUTATIONS / PUBLIC ADDRESSES
4. DECLARATIONS OF INTEREST
5. MATTERS OF URGENCY WHICH BY REASON OF SPECIAL CIRCUMSTANCES THE CHAIR IS OF THE OPINION SHOULD BE CONSIDERED
6. UPDATE ON RESPONSE TO CORRESPONDENCE SENT TO COMMUNITIES SECRETARY.
Oral update from the Chair
7. APPOINTMENT OF INDEPENDENT MEMBER
Copy herewith
8. SCRUTINY CONSULTATION - MAINTAINING HIGH ETHICAL STANDARDS IN LOCAL GOVERNMENT
Copy herewith
9. MONITORING REPORT - LOCAL FILTER STATISTICS
Copy herewith
10. EXCLUSION OF PUBLIC AND PRESS
THE CHAIR TO MOVE:
"THAT THE PUBLIC AND PRESS BE EXCLUDED FROM THE REMAINDER OF THE MEETING ON THE GROUNDS THAT THERE IS LIKELY TO BE DISCLOSURE TO THEM OF SUCH CATEGORIES OF EXEMPT INFORMATION AS DEFINED BY SECTION 100(1) OF THE LOCAL GOVERNMENT ACT 1972 AS LISTED AGAINST SUCH ITEMS OF BUSINESS BY REFERENCE TO THE APPROPRIATE PARAGRAPH OF SCHEDULE 12A TO SUCH ACT."

Public Participation

Members of the public may address the Committee on any non-procedural matter listed on this agenda. Addresses shall not last longer than three minutes. Committee members may then ask questions of the speaker. No prior notice is required prior to the commencement of the meeting of a request to address the Committee.

SUPPLEMENTARY AGENDA

**Exempted Under Schedule
12A of L.Govt Act 1972
Para No:-**

<TRAILER_SECTION>
A6490

Public Participation

Members of the public may address the Committee on any non-procedural matter listed on this agenda. Addresses shall not last longer than three minutes. Committee members may then ask questions of the speaker. No prior notice is required prior to the commencement of the meeting of a request to address the Committee.

STANDARDS COMMITTEE

Monday, 13 December 2010

PRESENT: I Harley (Chair); T Morris (Deputy Chair); Mrs Moss, D Hughes, Z Turner and Councillors J Hollis and Scott

1. APOLOGIES

Apologies were received from Councillors Flavell and Matthews.

2. MINUTES

The Minutes of the meeting held on the 18th October 2010 were signed as a true record subject to the following amendments; that under 'Apologies, The Chair welcomed Wendy Lovell – *Northampton County Council*' be changed to '*Northamptonshire County Council*' and that Item 7, penultimate paragraph, last line reads, submission of quarterly **or** annual returns, rather than submission of quarterly **of** annual returns.

3. DEPUTATIONS / PUBLIC ADDRESSES

None

4. DECLARATIONS OF INTEREST

None

5. MATTERS OF URGENCY WHICH BY REASON OF SPECIAL CIRCUMSTANCES THE CHAIR IS OF THE OPINION SHOULD BE CONSIDERED

None

6. LETTER TO THE GOVERNMENT

A report submitted on behalf on behalf of the Borough Solicitor, which informed members of the Standards Committee on a letter drafted by the Chair of the Committee about the Coalition Government's proposal to abolish the Standards Board Regime. The Chair requested feedback and welcomed comments on the contents of the draft letter.

The Borough Solicitor outlined the Governments intention to abolish the Standards Regime including the Model Code of Conduct with the intention that Local Authorities would be able to maintain a Standards Committee. He reported that this would have vastly reduced powers, which would not be statutory, but primary legislation was still needed and the committee were minded to consider this when making any recommendation.

Mr Hughes stated that the abolition of the Standards Regime was a retrograde step, and therefore he would be happy for the letter to be delivered to the relevant people and voiced his approval of the contents.

Councillors Hollis and Scott argued that the abolition of the Standards Regime would send out the wrong message to Members, future Members and the general public and that whilst aspects of Localism were positive it was considered that this would be a step too far.

The proposed letter penned by the Chair was unanimously supported and it was agreed that it should be sent to a variety of parties in both central and local government for comment.

It was noted that all party leaders at Northampton Borough Council had demonstrated their support in maintaining the Standards Regime and the Chair thanked committee members for their support.

Resolved: -

That the letter be circulated to the Association of Local Councillors, Association of Parish Councillors, MP's Andrea Leason, Brian Binley, Michael Ellis, Erik Pickles and the Leaders of Northampton Borough Council.

7. APPOINTMENT OF INDEPENDENT MEMBER

The Monitoring Officer submitted a report, which informed the Standards Committee about the progress of the recruitment of a new Independent member, who would replace a retiring Independent Member. It was reported that there had been a high number of applicant's nearly all of whom had been of a high calibre. The Monitoring Officer explained that a percent of members of the Standards Committee had to be Independent in order to make it quorate.

The new independent left the room while the discussion took place.

The Monitoring Officer explained that the recruitment process to the Standards Committee had previously been top down, but as it had matured, the Committee had become more level and the recruitment of new members would be more influenced by the Chair and other members of the Committee rather than external influences.

The Chair reported that Zillah Turner had been recruited as she had demonstrated the greatest enthusiasm to undertake meaningful public voluntary service. It was noted that she would not have any problems attending the meetings and that she was very levelheaded, intelligent and independent in thinking.

Resolved: -

That they recommend to Full Council in January 2011 the appointment of Zillah Turner to the Standards Committee to fill the vacancy left by a retiring member.

8. MEMBER DEVELOPMENT TRAINING

The Borough Solicitor outlined the report, which sought to ascertain from Members of the Standards Committee their training needs on Standards issues. It was reported that whilst the Standards Board Regime would be abolished, members should not make assumption about what would happen and that as of yet, it had not been superseded. The Borough Solicitor explained that the Standards Committee would still be valid and would continue to carry out necessary training.

Councillor Hollis explained that the Member Development Group was already in discussions with regards to training new Councillors – which would follow the Local Government elections, expected to take place in May 2011. The members agreed that Chairs should receive training on what they were intended to do and that all newly elected Members should be made fully aware of the Code of Conduct. Councillor Scott suggested

that it would be important for newly elected Members to remain grounded but that longer serving Councillors should not become complacent with their positions.

Councillor Hollis further suggested that part of their duty was to protect public sector employees from being bullied and that it may be a good idea to invite employees to attend Standards training to ensure that they know how to complain if they feel a Member is bullying them. The Chair reported that it would be of interest to see if the trade unions supported the Standards Committee in addressing accusations of bullying.

The Borough Solicitor stated that the committee still had a statutory responsibility, which should be used when necessary and that when the Standards Board Regime was abolished transitional provisions would be put in place.

Resolved: -

- 1. That newly elected Members be given extensive training on the Code of Conduct**
- 2. That Chairs be fully trained on what they are intended to do**
- 3. That members would publicize the fact that the Standards Board Regime had not yet been abolished and statutory responsibilities were still maintained.**

9. EXCLUSION OF PUBLIC AND PRESS

The Chair moved that the Public and Press be excluded from the remainder of the meeting on the grounds that there was likely to be disclosure to them of such categories of exempt information as defined by Section 100(1) of the Local Government Act 1972 as listed against such items of business by reference to the appropriate paragraph of Schedule 12A to such Act.

The Motion was Carried.

The meeting concluded at 6.41pm

Standards Committee

AGENDA STATUS: PUBLIC

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| Report Title | STANDARDS COMMITTEE – INDEPENDENT MEMBER RECRUITMENT |
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| Date of Meeting: | 18 October 2010 |
| Directorate: | Chief Executive |
| Ward(s) | All |

1. Summary

1.1 To inform the Standards Committee about the passing of a resolution at Full Council on 17 January 2011 confirming that, with immediate effect, Zillah Turner be appointed as the new Independent Member on the Standards Committee to replace the retiring Independent member.

2. Recommendations

2.1 That Members note the passing of the resolution.

3. Report Background

3.1 The recruitment of an Independent Member.

3.2 Towards the end of last year the Council undertook a recruitment exercise to appoint a new independent member in view of the pending retirement of an independent member.

3.3 Until the new legislation abolishing the Standards regime is in place, the local standards framework still exists and standards committees and monitoring officers have an obligation to keep the system operating.

3.4 The meeting of Full Council on 17 January 2011 received a report confirming that the Chair of Standards Committee and the Borough Solicitor considered that, for the reasons stated in the report, Zillah Turner was the most suitable of all the candidates. Accordingly Full Council resolved that, with immediate effect, Zillah Turner be appointed as the new Independent Member on this council's Standards Committee.

3.5 In view of the Local government and Public Involvement in Health Act 2007 all the unsuccessful candidates thought suitable but not actually appointed have been kept in a 'pool' for future consideration.

4.Implications (including financial implications)

4.1 Resources and Risk

This report has been compiled after consideration of implications in respect of finance and those using the service and where such implications are material they have been described in the body of this report.

4.2 Legal

None other than those mentioned in the body of the report. Standards Committee is the appropriate body to consider the matters set out in this report.

4.3 Other Implications

- 4.3.1 This report has been compiled after consideration of implications in respect of equal opportunities, personnel, crime and disorder and those using the service and where such implications are material; they have been described in the text of the report.
- 4.3.2 As one third of the membership of Standards Committee must, under the Council's constitution, be Independent Members the difficulty in recruiting to the role presents a significant risk to Standards Committee and the Council to the extent that the committee might be unable to function effectively due to insufficient Independent Membership. This risk can be mitigated by a focused campaign amongst underrepresented groups.
- 4.3.3 Continued vacancies amongst Independent Members may reduce public confidence in Standards Committee.

5. Background Papers

Advert and applications records held by the Borough Solicitor.

Report Author and Title: Nikolas Jacob, solicitor on behalf of Francis Fernandes,
Borough Solicitor and Monitoring Officer Northampton Borough
Council

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Standards Committee

AGENDA STATUS: PUBLIC

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| Report Title | SCRUTINY CONSULTATION - MAINTAINING HIGH ETHICAL STANDARDS IN LOCAL GOVERNMENT |
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|-------------------------|---|
| Date of Meeting: | 07 March 2011 |
| Directorate: | Borough Solicitor & Monitoring Officer |
| Ward(s) | All |

1. Summary

- 1.1** This report informs members about the content of correspondence from the Chief Executive of the Local Government Association concerning the changes proposed in the Localism Bill following the forthcoming abolition of the Standards Regime and in particular Standards for England (formally the Standards Board for England) ceasing to operate, Councils no longer being required to have a local standards committee, the national code of conduct for elected members being dispensed with and Councils being allowed to adopt voluntary codes of conduct.
- 1.2** Attached at Appendix 1 is the email correspondence from the Chief Executive of the Local Government Association dated 16 February to the Chief Executive of this Authority.
- 1.3** Attached at Appendix 2 is the paper produced jointly by the Local Government Group and the Association of Council Secretaries and Solicitors (ACSeS) entitled 'Maintaining High Ethical Standards in Local Government' and which covers the following:
- The position of the Nolan Principles
 - Registering interests
 - Fiduciary duty of Councillors
 - Criminal and civil law including discrimination and electoral offences
 - Local Government Ombudsman
 - Audit Commission powers
 - The common law position of bias, predisposition and predetermination

2. Recommendations

The Committee is asked to note this report.

3. Report Background

3.1 Main changes proposed in the Bill

- The principles set out in The Relevant Authorities (General Principles) Order 2001 which govern the conduct of members and the Model Code of Conduct itself to be revoked (however local authorities will be free to adopt their own, voluntary code of conduct should they so wish).
- Standards for England and the requirement for local authorities to have standards committees to be abolished.
- Elected members will be required to continue to register and declare personal interests and will not be allowed to use their position improperly for personal gain. The Government intends for failure to comply with these requirements to constitute a criminal offence.

3.2 The Criminal law

3.2.1 A Councillor using their position to support or influence a planning application or a project or venture that they have a financial interest in or otherwise using their position for self financial gain would be committing an offence under the **Fraud Act 2006**. Conviction under this Act carries a maximum penalty of 10 years imprisonment or an unlimited fine or both

3.2.2 The **Bribery Act 2010** provides a legal framework to combat bribery in the public (or private) sectors. It replaces the fragmented and complex offences at common law and those previously contained in the relevant legislation. The new Act creates two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage in a public office. Again, the maximum penalty for individuals is 10 years' imprisonment or a fine, or both. The Crown Prosecution Service, rather than Councils, would decide whether there was sufficient evidence to prosecute for criminal offences.

3.3 Bias, Predisposition and Predetermination

This is a complex area of common law that has implications for Councillors individually and Councils. The Localism Bill aims to clarify the rules on pre-determination and bias and the Committee is asked to note the content of the paper.

4. Implications (including financial implications)

4.1 Resources and Risk

None, other than appear in this report

4.2 Legal

None, other than appear in this report

4.3 Other Implications

None, other than appear in this report

5. Background Papers

Correspondence from Chief Executive of Local Government Association and the Paper produced jointly by the Local Government Group and the Association of Council Secretaries and Solicitors (ACSeS) which form the appendices to this report. Legal Services papers.

Report Author and Title: Nikolas Jacob, solicitor on behalf of Francis Fernandes, Borough Solicitor and Monitoring Officer

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Dear Chief Executive,

Local Government Standards

The Localism Bill published on 13th December formalises the government's proposals for the abolition of significant elements of the current local government standards regime. Among the proposals are the abolition of Standards for England, the national Code of Conduct for elected members being dispensed with and councils no longer being required to have a Standards Committee.

My many discussions on this issue in recent months have served to highlight that local government is generally supportive of the abolition of the current regime, seeing it as over-bureaucratic, burdensome and too prescriptive. When the LGA Leadership Board met in October and considered the emerging proposals, it agreed that the sector should not seek to establish a replacement framework within which councillors should operate. It did, however, emphasise the importance of maintaining high ethical standards and accountability within the sector. Standards of conduct and behaviour within local government are generally very high, with serious failures being in a tiny minority, and compare favourably with most, if not all, other sectors.

The Leadership Board agreed that the Local Government Group should continue actively to support authorities who are experiencing difficulties with their corporate governance and we will ensure we do so. The Board also agreed to communicate to all councils the legal and other provisions already in place or emerging which the government feels can be used for dealing with serious failures of conduct and behaviour within local government. In line with this, please find **attached** a paper produced jointly by the Local Government Group and the Association of Council Secretaries and Solicitors (ACSeS) entitled 'Maintaining High Ethical Standards in Local Government' and which covers the following:

- The position of the Nolan Principles
- Registering interests
- Fiduciary duty of councillors
- Criminal and civil law including discrimination and electoral offences
- Local Government Ombudsman
- Audit Commission powers
- The common law position of bias, predisposition and predetermination

I am confident that local government will successfully adapt to the forthcoming changes to the standards regime, benefit from the reduced bureaucracy and prescription and continue to demonstrate the highest of ethical standards – with the latter being integral to promoting citizens' trust in local councils and the democratic process.

A handwritten signature in black ink, appearing to read 'John Ransford', written in a cursive style.

John Ransford
Chief Executive
Local Government Association

If you no longer wish to receive information from the Local Government Association please email info@local.gov.uk with the word Cancel in the subject line of your email. This will not cancel other subscriptions you may have with the LG Group.



MAINTAINING HIGH ETHICAL STANDARDS IN LOCAL GOVERNMENT

The Localism Bill published on 13th December contains proposals to abolish the Standards for England regime. Whilst subject to Parliament approving the necessary legislation, the changes can be summarised as Standards for England (formally the Standards Board for England) ceasing to operate, councils no longer being required to have a local standards committee, the national code of conduct for elected members being dispensed with and council's being allowed to adopt voluntary codes of conduct.

Following the abolition of the standards regime, councils will no longer have a single body of law to refer to for dealing with elected member conduct but will, instead, be able to call upon a range of remedies, including existing criminal and civil law provisions and those provisions contained in the Localism Bill. This paper seeks to summarise the proposals contained within the Bill and outline those provisions available to authorities to call upon. The paper covers the following:

- Summary of changes proposed in the Bill
- The position of the Nolan Principles
- Registering interests
- Fiduciary duty of councillors
- Criminal and civil law including discrimination and electoral offences
- Local Government Ombudsman
- Audit Commission powers
- The common law position of bias, predisposition and predetermination

The Local Government Group acknowledges the valuable contributions of the senior members of the Association of Council Secretaries and Solicitors (ACSeS) in helping to produce this paper.

SUMMARY OF CHANGES PROPOSED IN THE BILL

The proposals outlined in the Bill are as follows:

- The Relevant Authorities (General Principles) Order 2001, which sets out the principles which govern the conduct of members and co-opted members of relevant authorities in England and police authorities in Wales, will be revoked
- The Local Authorities (Model Code of Conduct) Order 2007 (S.I 2007/1159) which prescribes the model code of conduct to apply to members of relevant authorities will be revoked
- The requirement for local authorities to have standards committees will be abolished
- Standards for England will be abolished. Established by the Local Government Act 2000 and the regulator for local authority standards committees, the Standards Board requires primary legislation to abolish it and its legislative functions. None of the Standards Boards functions will be transferred to other bodies.
- The First-tier Tribunal (Local Government Standards in England), the independent judicial tribunal established as a disciplinary body to hear and determine references and appeals concerning the conduct of local authority councillors, will lose its jurisdiction over the conduct of local authority members
- Elected members will be required to continue to register and declare personal interests and will not be allowed to use their position improperly for personal gain. The government intends that wilful failure to comply with these requirements will constitute a criminal offence.
- The requirement for local authorities to adopt a model code of conduct and for local authority members to abide by that code will be abolished. However, local authorities will be free to adopt their own, voluntary code of conduct should they so wish.
- The requirement for councils to maintain a standards committee will be abolished. However, local authorities will be free, should they choose, to establish voluntary standards committees to consider complaints about the conduct of elected and co-opted members. Such committees will, according to councils' local constitutions, be able to censure but will not be able to suspend or disqualify members from council membership.

It is anticipated that the Bill will receive Royal Assent in late 2011. The present conduct regime (a model code governing local authority members' conduct and enforced through local authority standards committees, regulated in turn by the Standards for England), will continue to function in a normal manner, considering, investigating and determining allegations of misconduct, until a fixed date ("the appointed day"), probably two months after the Bill receives Royal Assent.

This means that until the appointed day, an allegation of misconduct can be made but that after the appointed day no further allegations of misconduct can be made under the Standards for England regime. It also means that at the appointed day, allegations will be in the process of investigation and, further, that appeals against sanctions will be pending. Transitional measures are to be put in place to address this and the way in which they will operate is detailed in the following paragraphs:

- Any cases in the system at the appointed day will make their way through a transitional regime. This would meet the expectation of those who had made allegations that these would be properly dealt with. It also provides an elected member who has had an allegation made against them with the opportunity to clear their name.
- The government proposes that any investigations being undertaken by Standards for England transfer, on the appointed day, to the local authority that referred the investigation. It will be for that local authority to arrange for the conclusion of the investigation. The local authority's standards committee will remain established until the last complaint it is considering, referred either internally or from Standards for England, has been dealt with.
- Any cases with which the First-tier Tribunal (Local Government Standards in England) is dealing on the appointed day will be concluded by that tribunal. It will not receive any appeals against standards committee rulings after that date. The right of appeal will not exist for those cases standards committees deal with as they work their way through the transitional system. The government considers that the risk of protracted proceedings justifies this approach. The sanctions available to standards committees are significantly less severe than the sanctions available to the First-tier Tribunal (Local Government Standards in England).
- The government proposes that the suspension sanction is removed from standards committees for the transitional period. Hence the most a standards committee could do, for instance, is to issue a councillor with a censure or a request that they undergo training.

THE NOLAN PRINCIPLES

The **Committee on Standards in Public Life** is an advisory non-departmental public body established in 1994. The Committee's landmark First Report published in 1995 established ***The Seven Principles of Public Life*** often described as the Nolan Principles.

The Seven Principles of Public Life are:-

- **Selflessness** – Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- **Integrity** – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

- **Objectivity** – In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- **Accountability** – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- **Openness** – Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- **Honesty** – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership** - Holders of public office should promote and support these principles by leadership and example.

Whilst it is anticipated that the statutory principles will be repealed, they have the potential to continue to be utilised more informally by people looking to develop their understanding of the standards expected of those in public office.

FIDUCIARY DUTY OF COUNCILLORS

A councillor is treated as a trustee of council assets, with a fiduciary duty to apply those assets in the public interest. Where a councillor abuses that trust, for example by disposing of those assets for personal gain, he/she can be held liable for the resulting loss - as with the House of Lords landmark ruling against Dame Shirley Porter in her capacity as Leader of Westminster City Council.

REGISTERING INTERESTS

The Local Government Act 2000 requires each councillor to make a declaration of his or her interests and to ensure that any addition or amendment to that declaration is made within 28 days of any change occurring in relation to his or her interests. The Bill intends to strengthen this by making it a criminal offence for a councillor to fail to register a relevant interest or withdraw for a personal interest, although the scope of this offence awaits Regulations.

CIVIL LAW

As councillors do not enjoy legal privilege they are subject to the same laws of **libel and slander** as the rest of the population. However, a council cannot itself be libelled so this remedy would only be available for the individual claiming they have been libelled or defamed rather than the authority itself.

Misfeasance in public office is a cause of action in the civil courts. It is an action against the holder of a public office, alleging in essence that the office-holder has misused or abused his power. There are two types of misfeasance in public office. One, known as 'targeted malice', occurs when a public office holder intentionally abuses his or her position with the motive of inflicting damage upon the claimant. The second is termed 'untargeted malice' and is committed by a public office holder who acts knowing that he/she has no power to undertake the act complained of.

EQUALITIES AND DISCRIMINATION LAW

Other civil law remedies would be available to individuals, but not councils, in the area of **equalities and discrimination law** for unlawful discrimination.

Discrimination law governs the right of individuals not be treated less favourably than others on grounds that include sex, race, religion, sexual orientation, age and disability. It also deals with the duty of public bodies to promote equality although the coalition government have announced that they are to repeal the social-economic duty on council's enacted in the Equalities Act 2010.

Councillors may, of course, be specifically named as a party to proceedings by claimants in discrimination proceedings.

CRIMINAL LAW

A councillor sentenced to a term of imprisonment of not less than 3 months is disqualified from office by virtue of **Section 80 of the Local Government Act 1972**.

A councillor using their position to support or influence a planning application for a project or venture that they have a financial interest in or otherwise using their position for self financial gain would be committing an offence under the **Fraud Act 2006**. Conviction under this Act carries a maximum penalty of 10 years imprisonment or an unlimited fine or both

The **Bribery Act 2010** provides a legal framework to combat bribery in the public (or private) sectors. It replaces the fragmented and complex offences at common law and those previously contained in the Prevention of Corruption Acts 1889-1916

The new Act creates two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage in a public office. Again, the maximum penalty for individuals is 10 years' imprisonment or a fine, or both

The Crown Prosecution Service, rather than councils, would decide whether there was sufficient evidence to prosecute for criminal offences.

ELECTORAL OFFENCES

The relevant legislation relating to electoral offences can be found in the:

- The Representation of the People Act 1983 (the Act)
- The Representation of the People Act 1985
- The Political Parties, Elections and Referendums Act 2000
- The Electoral Administration Act 2006 ("EAA")

There are a number of electoral offences specified in the Representation of the People Act 1983 and 1985, with the key ones being:

Undue influence: Where an individual, directly or indirectly, makes use of or threatens to make use of force, violence or restraint; or inflicts or threatens to inflict injury, damage or harm in order to induce or compel any voter to vote or refrain from voting. This offence has been modified by the Electoral Administration Act to extend the effect of it to include intention and not just where an act has taken place. A

person may be guilty of undue influence if they impede or prevent, or intend to impede or prevent, the free exercise of the franchise of an elector.

Bribery: Where any individual, directly or indirectly, gives any money to any voter, in order to induce any voter to vote or not to vote for a particular candidate, or to vote or refrain from voting.

Treating: Where either before, during or after an election, any person, directly or indirectly, gives or provides (or pays wholly or in part the expense of giving or providing) any food, drink, entertainment or provision in order to influence corruptly any voter to vote or refrain from voting.

Personation: Where any individual votes as someone else (whether that other person is living or dead or is a fictitious person), either by post or in person at a polling station as an elector or proxy. Further, the individual voting can be deemed guilty of personation if they vote on behalf of a person they have reasonable grounds for supposing is dead or fictitious, or where they have reasonable grounds for supposing the proxy appointment is no longer in force.

Postal and proxy voting: Where an individual applies for a postal or proxy vote as some other person, otherwise makes a false statement in connection with an application for a postal or proxy vote, requests an Electoral Registration Officer or a Returning Officer to send a postal vote or associated communication to an address which has not been agreed by the person entitled to vote, or causes a postal or proxy voting communication not to be delivered to the intended recipient.

False information in nomination papers: Where a person gives false information in a nomination paper or in their consent to nomination, they are guilty of a corrupt practice.

False information in relation to registration: Where an individual, for any purpose in connection with the registration of electors, provides false information to the Electoral Registration Officer in connection with the registration of electors, that person is guilty of offence.

The Electoral Administration Act 2006 created two new offences which are:

Supplying false information to the Electoral Registration Officer, and

Making fraudulent application for a postal vote

The majority of electoral offences carry a maximum penalty of 1 or 2 years imprisonment or an unlimited fine.

AUDIT COMMISSION FOR LOCAL AUTHORITIES

Whilst powers of surcharge were abolished under the **Local Government Act 2000** an auditor appointed by the Audit Commission under the **Audit Commission Act 1998** will continue to play their role in investigating financial impropriety in local government and can recover financial losses from individuals councillors on the basis that he or she is responsible for the authority incurring unlawful expenditure. It is yet to be seen whether this power will be transferred to another body given the government's announced abolition of the Audit Commission.

LOCAL GOVERNMENT OMBUDSMAN

The Local Government Ombudsman was set up to investigate maladministration causing injustice. The law does not define maladministration but the Local Government Ombudsman currently defines its' mandate as follows:

“We can consider complaints about things that have gone wrong in the way a service has been given or the way a decision has been made, if this has caused problems for you”

Individual or collective actions or failings of councillors may amount to maladministration.

The government has announced that it intends to give the Local Government Ombudsman, the established body for investigating public complaints over the way they have been treated by their council, greater influence. For the first time local authorities will be legally compelled to implement the Ombudsman's findings.

BIAS, PREDISPOSITION AND PREDETERMINATION

This is a complex area of common law (i.e. judge-made law) that has implications for councillors individually and councils. It is wrong, therefore, to associate such matters exclusively as having been caused by Standards for England or as a direct result of the introduction of the standards regime under the Local Government Act 2000.

The long established legal position is that a councillor may not be party to decisions in relation to which he/she either is actually biased (in the sense that he/she has a closed mind and has pre-determined the outcome of the matter to be decided irrespective of the merits of any representations or arguments which may be put to him/her) or gives an appearance of being biased, as judged by a reasonable observer.

A finding of bias and/or predetermination can make a decision unlawful with costs and reputational implications for councils and the First-tier Tribunal (Local Government Standards, England (formerly the Adjudication Panel for England) has held that such a finding could be a breach of Paragraph 5 of the current code of conduct which could lead to the disqualification of a councillor.

The Localism Bill aims to clarify the rules on pre-determination and bias: the Bill provides that an indication by a councillor that he takes a particular view on a matter is not to be taken as evidence of a closed mind. The intention is that the normal activities of a councillor, such as campaigning, talking with constituents, expressing views on local matters and seeking to gain support for those views, should not lead to an unjust accusation of having a closed mind on an issue that can lead to a legal challenge. The government claims that that this will give councillors the assurance that they can campaign, discuss and vote on issues with confidence and so encourage more people to stand in local elections. In practice, the Court of Appeal has already asserted that such activities will not preclude participation in decision-making, unless the councillor is so committed that they are not even prepared to listen to the evidence, but courts may fret that, where a councillor says that he has a closed mind on a matter, the court cannot take this assertion into evidence;

The government previously announced that a power of electoral recall of councillors is also being proposed to allow for the removal of councillors mid term for cases of 'serious misconduct'; although this has also not been included in the Localism Bill.

MISCELLANEOUS

It will remain open to councils to agree local arrangements whereby councillors could be censured for breaching local codes of conduct and other local protocols; including other activity regarded as inappropriate and to remove councillors from committees, outside bodies and other appointments, when appropriate. Whilst there will be a need for local authorities to reflect constitutional changes as a result of abolition of the current standards regime, other local protocols covering, for example, member/officer relations and guidelines regarding use of council resources, will continue to have effect and be subject to any local sanctions adopted by individual councils, though there will be no statutory sanctions against an offending member and therefore no powers to suspend or disqualify councillors.

FURTHER CONTACT

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Standards Committee

AGENDA STATUS: PUBLIC

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| Report Title | Monitoring Report - Local Filter Statistics |
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|-------------------------|--|
| Date of Meeting: | 07 March 2011 |
| Directorate: | Borough Solicitor & Monitoring Officer |
| Ward(s) | All |

1. Summary

This report informs members about the statistical analysis of the data compiled by the Monitoring Officer relating to the complaints made to Standards Committee about Councillors.

In recent years data has been submitted to Standards for England through quarterly and annual returns. The quarterly return related to case activity and the profile of Standards Committees. The annual return related to Standards Committees' activities and the Committee's arrangements for supporting ethical governance.

Please note however that in view of the impending abolition of the Standards regime Standards for England have ceased collecting the data through quarterly and annual returns. Therefore although there is no requirement to collect the data for Standards For England, this authority still collects the data but for now, only for its own internal ethical and governance monitoring.

2. Recommendations

The Committee is asked to note the report.

3. Report Background

3.1 Complaints about Councillors

During 2010/11 the Northampton Borough Council Standards Committee determined complaints about Councillors as follows:

- Total number of complaints ***open**** during April 1 2010 to 28 February 2011 = 11
- Total number of new complaints ***made*** during April 1 2010 to 28 February 2011 = 4
- Total number of assessment hearings during April 1 2010 to 28 February 2011 = 3
- Number of review hearings = 0
- Number of Councillors complained about in total within the complaints = 7
- Multiple complaints = 0

- Total number of complaint/investigations/reviews held on behalf of another authority = 5
- Total number of matters opened during April 1 2010 to 28 February 2011 but which have not proceeded to complaint at the time of compiling this report but which have required input from Monitoring Officer/officer time = 6

3.2 Outcomes

- No further action = 3
- No reviews were requested.
- Referred to the Monitoring Officer for other action = 1
- Referred to Standards for England for investigation = 0
- Did not proceed to complaint at the time of compiling this report = 6

Historically, Standards for England provided statistical evidence regarding the average number of complaints received by Councils per quarter on a “cases per Council” calculation. Now that the abolition of the Standards regime has been announced Standards for England’s statistical analysis of this data is no longer available so it is not possible to assess accurately whether during the most recent twelve month period of local assessment Northampton Borough Council’s Standards Committee received more or less than the average number of complaints.

3.3 Complaints Handling Subject matter/ Relevant paragraph(s) of the Code of Conduct

3.3.1 In one of the 4 new complaints registered this year, the Monitoring Officer met with a Subject Member Parish Councillor following the recommendation by the sub-committee that he do so to resolve a complaint (by some other action) in relation to an allegation that the Subject Member may have breached the following paragraphs of the Code of Conduct:

- Disclosing confidential information
- Bringing an office or authority into disrepute
- Using your position as a member improperly to confer or secure an advantage or disadvantage
- Not using the resources of the authority in accordance with their requirements

The purpose of the meeting with the Subject Member was to ascertain his understanding of his obligations and responsibilities under the Model Code of Conduct to ensure he was aware of what these obligations and responsibilities were. The Monitoring Officer was satisfied that he was so aware and, in carrying out this other action, no investigation was necessary and therefore no breach of the code had been committed by the Subject Member.

3.3.2 In another case a Subject Member Councillor was alleged to have failed to comply with the authorities Code of Conduct in relation to her conduct in a committee meeting. The Chair of the relevant Initial Assessment sub-committee in confirming the sub-committee’s recommendation that no further action be taken in relation to the complaint reported that he felt it necessary that a message be sent which explained why the complaint in this case would not be upheld and investigated further. The threat made by the complainant was itself scurrilous and the Chair of the sub-committee recommended

that the Chair at the relevant committee meeting should have intervened prior to this point. The Chair also reported that such complaints could detract potential candidates from standing as Members in future and that it should be known that the Standards Board protected Members and the public. Please note however that in this case a decision has yet to be sent to the parties recording the decision of the sub-committee and therefore it is still possible that the complainant may apply for a review of the sub-committee's decision.

3.3.3 In a third case, the initial assessment has yet to take place so it is not appropriate for a discussion of the case in this meeting.

3.3.4 In the fourth case, the complaint has been filed against a councillor who is also a councillor in a neighbouring authority and the complaint is in relation to his/her conduct as a councillor of that authority. Therefore the complaint is subject to that authority's filter process and the Monitoring Officer of this authority expects to be informed of progress by that authority's Councillor complaints handling officers as the complaint proceeds through the filter process.

4. Implications (including financial implications)

4.1 Resources and Risk

None, other than appear in this report

4.2 Legal

None, other than appear in this report

4.3 Other Implications

None, other than appear in this report

5. Background Papers

Quarterly and Annual Return and associated documents

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