

## **STANDARDS COMMITTEE**

### **Minutes of a meeting of the Standards Committee held on 4<sup>th</sup> March 2008 commencing at 7 p.m.**

Present: Mr. A. Riddell (Chairman)  
Mr. P. Hobbs (Vice-Chairman)  
District Cllrs. Dibsdall, Mrs. Dyball, Loney, Mrs. Morris, Mrs. Parkin and Ryan.  
Independent Member: Mr. A. Smith  
Town/Parish Representatives: Mr. J. London, Mr. D. Taylor and Mrs. M. Wallach

An apology for absence was received from Mrs. S. Schofield.

#### **622. MINUTES OF THE LAST MEETING**

The Chairman welcomed Mrs. Wallach to her first meeting that he had chaired.

Resolved: That the minutes of the meeting of the Committee held on 1<sup>st</sup> November 2007 be agreed and signed by the Chairman as a correct record.

#### **623. DECLARATIONS OF INTEREST**

There were no declarations of interest in respect of any matter discussed or voted on during the meeting.

#### **624. LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007 (AGENDA ITEM NO. 3 – 04.03.08)**

The report advised that the Local Government and Public Involvement in Health Act 2007 (the Act) received Royal Assent on the 30<sup>th</sup> October 2007 and it was expected that the provisions relating to the conduct of Members would come into force in April 2008. Regulations were due to be published by the Government which would set out the detailed arrangements, and these would be supplemented by detailed guidance from the Standards Board for England (the Board). Under the legislation and guidance, the Board's role would become strategic in nature. It would produce strategy and guidance for local authorities and seek to ensure that there were adequate arrangements in place at a local level for handling misconduct complaints. Only sensitive or complex individual complaints would be handled at a national level and the Board had estimated that these may be only 10% of complaints. The report also set out the main provisions of the Act.

The Monitoring Officer advised that the filtering process was intended to come into force in April 2008. However, she had attended a training course on this subject that day and had been advised that the introduction of this process would be delayed. There was much that needed to be achieved before the introduction of the new process and the report set out some suggestions. Members were informed that the

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Government had not yet produced the long awaited regulations that would provide the detail and depth to the new processes.

The Committee made the following comments:

- A concern was raised on what information with regard to complaints would appear on the Council's website. The Standards Board for England website applied time limits to the information on their website depending on the nature of the complaints and the findings of the investigation. It was agreed that this issue should be thoroughly investigated. However, it was noted that the regulations should provide a great deal of this information.
- Some concern was expressed about the possibility of members of the first sift hearing panel and the second appeals panel being able to be members of the determination hearing panel as this was against the rules of natural justice and would also place an immense burden on those taking part. The Board's view, at the moment, was that members who sat on the first two hearing panels were permitted to be a member of the determination hearing panel.
- Hearing panel's were favoured rather than set sub-committees. The hearing panels would comprise three members on a rotational basis with the appeal panel having different members to the initial filter panel.
- The need for an increase in members of the Standards Committee was mooted especially in relation to the possible increase in the number of hearings and hearings panels but also with regard to Parish and Town Council representatives. This was because most complaints were in relation to Parish and Town Councillors. Members noted that at least 25% of the members of the Committee had to be Independent members. The Monitoring Officer advised that Council approval was not required for an increase in members of the Committee as the Constitution stated a "minimum" membership. However it was agreed that the opinion of the Leader of the Council should be sought with regard to the number of District Councillors on the Committee in relation to a possible increase in Independent and Town/Parish Council representatives. The Portfolio Holder for Safe Community would seek the views of the Leader of the Council to increase the number of independent members by one and increase the number of Parish/Town Council members by two.
- The geographical spread of Parish/Town Council representatives was mentioned and a preference for an equitable spread was expressed. The Monitoring Officer was asked if she would specifically invite expressions of interest from Edenbridge Town Council. The Monitoring Officers stated that she had, in the past, sent the appropriate information to all Parish and Town Councils.
- The possibility of the need for additional meetings of the Committee to conduct interviews was noted.
- The Committee noted that a Parish/Town Council representative was not disbarred from being a member of a hearing panel to consider a complaint

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against a Councillor from the same Parish/Town Council. However, it might be preferable so as to avoid a potential conflict of interests.

- In relation to joint working arrangements with other local authorities, the Committee noted that the awaited guidance would give more detail about what arrangements would be permitted. A preference for the Appeal hearing panel to be undertaken by another authority was mentioned. There was also an argument against too many parts of the process being undertaken elsewhere as this would undermine the local responsibility objective. However, an advantage to partnership working was that there would be less conflict of interest. The Monitoring Officer was requested to investigate the possibility of working with other local authorities.
- The Chairman summed up the partnership working debate as follows:
  - The Monitoring Officer to undertake a cautious exploration of the issue.
  - The main determination hearing to be undertaken by the District Council.
  - Possibility of the Appeals hearings being undertaken elsewhere.
  - The Initial Sift hearing to be undertaken by the District Council unless no members were available to be part of the hearing panel within the 20 working day deadline. In this case the Initial Sift hearing could be undertaken elsewhere. This was considered to be a last resort.
- Following a question about the membership of hearing panels, the Monitoring Officer drew Members' attention to how the existing Determination Panel was constituted as set out in Appendix T of the Constitution. This was approach was favoured.
- With regard to the number of members required for a hearing panel to be quorate (three) it was suggested that a panel be made up of four members to allow for unavoidable absenteeism and consequent cancellation of the hearing.
- In response to a question, the Monitoring Officer advised that 10 complaints had been received in 2007, 15 in 2006 and she reported that this number may increase once the process goes local.
- The Chairman commented that he hoped the Code of Conduct training would continue to help in the reduction of complaints made. He commented that he felt that Parish/Town Councillors and Parish/Town Clerks should attend training sessions when they had arranged to do so.
- In relation to recommendation (e) it was suggested that provisional dates should be booked in advance to assist the Council in meeting Government deadlines in processing reports. For example, the initial sifting process had to take place within 20 working days of receipt of the complaint. Cllr. Loney advised that the Council's Committee Services Team used a monthly date matrix for Licensing hearings which was sent out to members of the Licensing

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Committee to enable them to indicate their availability. The Chairman asked that the Committee Services Team develop a similar system for Standards Committee hearings.

- The Committee noted the high level of quoted costs at £8,000 for an investigation into the most straight forward of complaints.
- In relation to the information leaflet for the public, it was generally agreed that it should be kept simple and should include how to complain to the Council, who to complain to (the Standards Committee), contact details and a short explanation of the process involved. The Monitoring Officer offered to circulate the draft leaflet to the Committee for their comments. It was also agreed that some basic information would appear on the Council's website before publication of the leaflet.

The Committee was advised that Mrs. Schofield would soon be working closer to home and would be able to attend meetings of the Committee in the near future.

- ACTION 1: Cllr. Loney to seek the views of the Leader of the Council with regard to the number of District Councillors on the Committee in relation to a increasing Independent members by one and Town/Parish Council representatives by two.
- ACTION 2: The Monitoring Officer to look into the advertisement process for new Independent members and Parish/Town Council representatives and investigate the shortlist of previous recent interviewees.
- ACTION 3: The Committee Services Team to develop a provisional date booking system and monthly member availability matrix similar to that used for the Council's Licensing Hearings for the hearings in relation to the Standards Committee.
- ACTION 4: The Monitoring Officer to investigate the possibilities of working with local authorities in relation to all aspects of the complaints investigation process except for determination hearings.
- ACTION 5: The Monitoring Officer to produce a public information leaflet containing basic information on the process to be followed following receipt of a complaint and the appropriate contact details. The draft leaflet to be circulated to the Committee for their comments.
- ACTION 6: The Monitoring Officer to arrange for information regarding the new complaints process to be published onto the Council's website ahead of the publication of the public information leaflet.

Resolved: (a) That the Committee note the contents of this report and the effect of the Local Government & Public Involvement in Health Act 2007; and

that subject to awaited Regulations:

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- (b) That a hearing panel chosen from a pool of members (the Standards Committee) be established to deal with this new role (the sifting process);
- (c) That a further hearing panel chosen from a pool of members (the Standards Committee) be established to deal with this additional new role (the appeal process);
- (d) That the Monitoring Officer be instructed to develop procedures for the handling of complaints which will include standard documentation;
- (e) That the Committee Services Team develop a provisional date booking system and monthly member availability matrix similar to that used for the Council's Licensing Hearings for the hearings in relation to the Standards Committee to enable hearing dates to be booked in advance;
- (f) That the membership of the Committee be increased by one Independent member and two Parish/Town Council Members;
- (g) That the Monitoring Officer be authorised to enter into discussions with neighbouring Councils on joint working and the establishment of one or more joint standards committees or sub-committee to deal with all elements of the process except determination hearings; and
- (h) That the Monitoring Officer be authorised to prepare an information leaflet on the local assessment process and organise ways in which the public can be informed of the new arrangements.

Resolved: That Council be recommended that the Committee widen its current terms of reference as set out in Part 3, paragraph 7 of the Constitution to enable the Standards Committee to have the additional role and functions under any relevant provision of, or regulation made under the Local Government and Public Involvement in Health Act 2007.

### **625. CONSULTATION – ORDERS AND REGULATIONS RELATING TO THE CONDUCT OF LOCAL AUTHORITY MEMBERS IN ENGLAND (AGENDA ITEM NO. 4 – 04.03.08)**

The report informed Members of the consultation process that recently took place regarding the detailed arrangements for providing the revised ethical regime and the comments that had been received and forwarded to the Department for Communities and Local Government Local Democracy and Empowerment Directorate. The consultation paper had been circulated to the Committee, to all District Councillors, all Parish and Town Council Clerks and to the Edenbridge, Sevenoaks and Swanley Town Forums and comments had been invited. The Monitoring Officer advised that comments received had been set out in the report and she had also received a response from Edenbridge Town Council and the Kent Fire and Rescue Service.

A member of the Committee commented on the necessity or otherwise of summarising a complaint before sending it to the subject of the complaint. It was considered that using the entirety of a complaint would be more accurate than a summary. It was noted by the Committee that, depending on the severity of the

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complaint or there was a risk of evidence being disposed of or if the safety of the complainant was possibly at risk, the subject of a complaint might not be informed of the receipt of a complaint. However, this type of action would be an exception to the rule. It was also noted that the Ombudsman had not summarised complaints for some time.

The Chairman stated that the regulations would clarify this issue and that the summarisation issue would be kept in mind. A judgement would need to be made if the complaint needed to be withheld for any reason.

The circulation of members' comments on a virtual meeting basis, to meet the deadline of the consultation process, had worked well.

Resolved: That the report be noted.

### **626. LOCAL ASSESSMENT CRITERIA (AGENDA ITEM NO. 5 – 04.03.08)**

The Committee noted that it was the intention that ethical standards should be handled locally. When the current ethical standards regime and mandatory code of conduct had been introduced all complaints were made to the Standards Board for England (the Board). The Board had carried out all investigations and those that required a hearing went to the Adjudication Panel for England (the Panel). Following this, local determination had been introduced so that hearings of many cases went to local standards committees. After this local investigations had been introduced so that now a large percentage of cases were investigated locally. The local filter was the last part of the jigsaw, returning the management of complaints to the local authority. The Monitoring Officer highlighted how important it was to have a criteria to evaluate cases. Each decision must be justified as each decision could be appealed against and could be the subject of a judicial review. Once again government guidance was awaited.

The Chairman drew Members' attention to paragraphs 11 and 12 of the report which set out the Board's Assessment Criteria and Local Assessment Criteria.

A question was raised regarding the use of mediation and/or training as alternative action to an investigation. It was noted that trained mediators were expensive and mediation could prove as expensive as an investigation. Mediation was a skilled process. However, the use of mediation could be investigated by the Committee.

It was suggested that the Assessment Criteria be put on the Council's website rather than put forward for adoption by full Council. Adoption by full Council could take place at a later date once further guidance had been received.

**ACTION 7:** The Monitoring Officer to arrange for the Assessment Criteria to be included on the Council's website.

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Resolved: That the criteria for assessing Member complaints contained in an appendix to these minutes be approved and placed on the Council website for use by the Committee.

### **627. TRAINING AND DEVELOPMENT (AGENDA ITEM NO. 6 – 04.03.08)**

The Committee was advised of the training that had been taking place by way of the training workshops and the training that was envisaged for the future. Members were requested to consider taking part in a three hour training exercise developed by the Standards Board for England to help them develop their ability to carry out the new assessment process.

The Monitoring Officer thanked those members of the Committee who had helped at workshops. Completed assessment forms regarding the training were also attached to the report and all were very positive. A new schedule of dates for the workshops was being produced and this would be circulated to Parish and Town Councils. On the whole the workshops had been well attended.

Some concern was expressed that there was no national calibration exercise of determination hearing decisions and filtering decisions. It was felt however, that the local conditions and culture would prevail in most cases.

It was noted that only 22 out of 54 District Councillors had attended the Code of Conduct training. It was considered important that all District Councillors undertake training on the new Code. Evening training sessions were suggested as they might be more convenient for new Councillors. The Monitoring Officer explained that the figures were up to the 18<sup>th</sup> February 2008 and numbers were increasing on a weekly basis.

It was also mentioned that a sanction handed down by a determination hearing might be more severe if it was found that the subject of a complaint had not attended the training.

The Monitoring Officer advised that most complaints were in relation to Parish and Town Councillors. The Committee requested that Parish and Town Council training attendance statistics be broken down into Councillors and Clerks against the number of Councillors each Council had.

The Monitoring Officer was congratulated on the Code of Conduct training.

A meeting room at the Sevenoaks Town Council offices was offered for the Standards Board for England training session on the new local assessment process.

**ACTION 9:** The Monitoring Officer to provide Parish and Town Council training attendance statistics broken down into the number of clerks and Members attending from particular Parish and Town Councils as against the total number of Members on such Parish/Town Councils.

Resolved: That Members agree to take part in a two hour Standards Board for England training session on the new local assessment process. Dates to be circulated.

628. MEMBERS' COMPLAINTS – VERBAL UPDATE

The Monitoring Officer reported that since the last Monitoring Officer's report in November 2007, five allegations had been forwarded to the Standards Board. These had not been referred for investigation.

The Council had also been served with a Direction from the Standards Board for England in relation to the new Swanley Town Council and the new Hextable Parish Council.

The Direction stated:

1. I direct that following the separation of the existing Swanley Town Council into a new Swanley Town Council and Hextable Town Council on 1<sup>st</sup> April 2008, you meet with members of both Councils to discuss ways to optimise the effective functioning of each.
2. I direct that you provide training for Members of Swanley Town Council and Hextable Town Council on the Code of Conduct.
3. An interim report should be provided to me within three months of the date of this Direction.

The Chairman was congratulated on being elected Chairman of the Kent and Medway Independent Members' Group.

Resolved: That the verbal report be noted.

THE MEETING WAS CONCLUDED AT 8.58 P.M.

Chairman



### **The Board's Assessment Criteria**

- 1 The Board does not refer cases if:
  - It is malicious, relatively minor or tit for tat.
  - The same, or substantially similar, complaint has already been the subject of an investigation or inquiry and there is nothing further to be gained by seeking the sanctions available to the Panel or the local Standards Committees.
  - The complaint concerns acts carried out in the Member's private life, when they are not carrying out the work of the authority or have not misused their position as a Member.
  - It appears that the complaint is really about dissatisfaction with a council decision.
  - There is not enough information currently available to justify a decision to refer the matter for investigation.

### **Local Assessment Criteria**

- 2 If an allegation discloses a potential breach of the Code of Conduct then this Committee would have to decide whether to do anything about it. When deciding this it could adopt the Board's present criteria as set out above plus the following additional criteria:
  - Is there prima facie evidence of a breach of the Code?
  - Is it serious enough to warrant a sanction?
  - Is this part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the authority and are there no other avenues left to deal with it except investigation.
  - In considering the case the Committee will take into account the time that has passed since the alleged conduct occurred.
  - Would an investigation serve a useful purpose?
  - Is the case suitable for local investigation?
  - Is this a case where alternative action such as training or mediation would be more appropriate?
  - Would an apology be appropriate?

### Possible Referral to the Board:

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- Complaints concerning the Leadership of the Council or in some cases the opposition.
- Complaints from the Chief Executive and Monitoring Officer
- Instances where a large number of key people are conflicted out and there is a risk of successful judicial review.
- Instances where there has been national attention, or where the Standards Committee feels that the matter turns on an important point of interpretation of the Code (a test case).