

STANDARDS COMMITTEE – 2 DECEMBER 2010

SELF-REGULATION FOLLOWING ABOLITION OF THE STANDARDS REGIME

Report of the:	Monitoring Officer
Status:	For Consideration and Comment
Key Decision:	No
Portfolio Holder	Cllr. Elaine Bracken – Portfolio Holder for Safe Community
Head of Service	Head of Legal and Democratic Services – Mrs. Christine Nuttall

Recommendation: It be RESOLVED that the report be noted.

Introduction

- 1 The Government announced in the recent Queen’s Speech that the proposed Decentralisation and Localism Bill will include proposals to ‘abolish the Standards Board regime’. Beyond this statement Standards for England are saying that they do not have information on the scope or implications of this proposal. The changes will be included in the planned Decentralisation and Localism Bill which is due to be presented in late 2010, with Royal Assent anticipated between July and October 2011. This is likely to lead to final closure of Standards for England sometime between 31st December 2011 and 31st March 2012.
- 2 This report sets out what powers may be available to local authorities once the present Standards Regime is abolished.

Background

- 3 The power of a local authority to take action in order to regulate itself and enable it to carry out its functions was confirmed by the Court of Appeal in R v Broadland District Council ex p. Lashley (2001). That power survives the implementation of the Local Government Act 2000 and should survive the abolition of the Standards Regime.
- 4 In the Broadland’s case the court decided that it was intra vires for a council, acting by a duly authorised Standards Committee, to investigate the propriety of a councillor’s conduct and to report that her conduct had fallen below the expected standards. There was found to be no procedural unfairness in the investigation leading to the report.

5 Kennedy LJ stated:

'...if a local government officer complains to his senior officer about the way in which he has been treated by a Councillor, the complaint has to be investigated. Ordinary principles of good management so require, and such an investigation is plainly a function which a local authority is entitled to carry out pursuant to its statutory powers as set out in the 1972 Act. In reality, it makes sense for the investigating officer to report to a Committee, such as the Standards Committee which can then consider what action to take. So far as the Councillor is concerned the Committee's powers are restricted, but they are not non-existent. In extreme cases it can report matters to the Police or Auditors. In less extreme cases it may recommend to the Council removal of the Councillor from a Committee, or simply state its findings and perhaps offer advice. On the other side of the equation, the Committee can dismiss the complaint or, for example, suggest changes to working practices to prevent such problems arising in the future.'

The Extent and the Power of Self Regulation

- 6 The power of self regulation is not a power to punish a Councillor for misconduct, but rather a power to take such administrative action as may be required to protect the interests of the authority and of the people it serves. Such action cannot override the democratic election of a Councillor, and cannot prevent him/her from exercising his/her basic rights as a Councillor. However, in relation to an Independent Member an authority can remove an Independent Member at any time, except in the case of Parish and Town Council Members who are appointed to the authority by the District Council.
- 7 Self regulation should be designed in order to address a defined problem, but the following are examples of the actions which an authority might take, either on its own or through a Committee such as the Standards Committee:

Censure

- 8 Where a Councillor has committed misconduct it may be necessary for the authority to make a public statement of disapproval of the Councillor's actions, dissociating the authority from those actions.
- 9 Preventing access to particular facilities otherwise provided by the authority. By way of illustration, if a Councillor had misused e-mail or internet facilities provided by the authority, the authority might wish to prevent the further use of those facilities, by instructing that he/she no longer use them, by withdrawing any computer equipment which the authority had provided for his/her home use, by introducing password access to the facilities, or by closing down the Councillor's website, if that website were hosted on an authority controlled server. If the Councillor had abused his access to network printers to print off party political material, the authority might bar access from his/her computer to any network computers. Again, if the abuse was about offices provided by the

authority being used for private or party political purposes, the authority could bar the Councillor from such offices.

Exclusion from Council Offices

- 10 If the problem was that the Councillor was accused or was suspected of tampering with official documents or of theft from the offices, it might be appropriate to bar the Councillor from any offices of the authority, so that they only had access to the Members' facilities and meeting rooms.

Limiting Access to Officers

- 11 If the problem was that the Councillor was accused of bullying officers of the authority, or making unreasonable demands from them, it might be appropriate to provide that the Councillor direct his/her requests for information and advice to one or more named officers, who would deal with his/her enquiries in order of receipt. This would also be a means of containing the amount of authority resource which the Councillor used up.

Removal from Outside Bodies

- 12 Where a Councillor has, or is suspected of having committed serious misconduct the authority may wish to distance itself from him/her, and so may no longer wish to be represented on outside bodies by him/her, at least until the matter is resolved. Such appointments are normally made by full Council, so it is likely that any such removal will have to be effected by a decision of full Council.

Removal from Positions of Responsibility within the Authority

- 13 Where a Councillor has, or is suspected of having, committed serious misconduct the authority may wish to remove him/her from all or particular positions of responsibility within the authority, either in order to prevent a recurrence of such misconduct or publicly to dissociate the authority from the Councillor's conduct.
- 14 In extreme cases, such as a conviction for fraud or other dishonesty against the authority, or other conduct which is incompatible with continued membership of the authority, the authority may wish to isolate a Councillor until such time as a criminal conviction resulting in a custodial sentence of three months or more disqualifies the Member from membership of the authority. Whilst the authority cannot cause the Councillor to cease to be a Councillor, it can remove him/her from any positions of responsibility, from any Committees or Sub-Committees and from any outside appointments for so long as the Councillor continues in office. Although, a Standards Committee may recommend such a course of action the removal would have to be effected by the body or person who made the original appointment. Thus, the removal from the position of Leader would have to be effected by full Council. Removal from the Executive may rest with full Council or with the Leader. Removal from a Committee may have to be effected by full Council.

Item 5

- 15 In less extreme cases, the authority may wish to take action to prevent a recurrence of such misconduct. Thus, if the Councillor behaves in a disruptive and disorderly manner in Committees, it may be necessary to remove him/her from such Committees, at least until they have gone through appropriate training and demonstrated the ability to exercise the necessary self-discipline. If the Councillor has close connections with local property-owning or developer interests, and has demonstrated that he/her will put those interests above the public interest, it may be necessary to remove him/her from the Planning Committee, or take away any responsibilities which he/she has in respect of the authority's property, at least until any formal complaint of misconduct has been determined. Equally, if the Councillor has shown that he/she is incapable of treating the authority's staff in a reasonable manner, for example by repeated bullying or verbal abuse, it may be necessary to remove the Councillor from any executive position in which he/she is likely to have frequent contact with the authority's staff.

Exclusion from Meetings

- 16 The model Constitution provides for the Chairman to warn a disruptive Member and on repetition to put it to a vote of the body that the Member be excluded, either for the duration of the meeting or for the duration of that item, as appropriate.
- 17 However, this does not cover anticipated future disruption. However, a letter could be sent to the Member seeking an undertaking within a set period which could be as short as 24 hours in cases of urgency that he/she will not disrupt future meetings of the authority and warning that unless such an undertaking is received the authority will seek an injunction prohibiting the Member from such disruption. The effect of the injunction would be that further disruption would be the arrestable offence of contempt of court.

Who Would take the Decision

- 18 The power could be exercised at two different levels:
- There may be actions which need to be taken as a matter of urgency. It is unlikely that there will be a convenient meeting of the Council itself, or of an appropriate Committee or Sub-Committee and so it could be taken by the Leader of the Council or by the Chief Executive or the Parish or Town Clerk of a Parish or Town Council. Consultation would normally take place with leading Councillors before taking such action, where this is practicable. Such emergency action precludes giving the Councillor the opportunity of a full hearing, so the action could only be provisional until such a hearing can be arranged.
 - The authority must act fairly in exercising the power of self-regulation, so it must offer the Councillor the opportunity of a hearing if at all possible. The Council could delegate to the Standards Committee the power to conduct such hearings and to take self regulatory action in so far as such powers can be delegated to the Committee, and otherwise to make recommendations to the appropriate body, such as full Council. Where

Item 5

no such delegation has been given, the powers will rest with full Council. Each authority would have to decide what procedure it would apply to such hearings, but the advantages of delegating such hearings to the Standards Committee would include:

- i The impartiality of the Standards Committee with its Independent Members.
- ii The Committee's existing experience of dealing with complaints.
- iii The ability to adopt the hearing procedures which the Committee already applies to referred cases.

19 As set out above, some decisions can only be taken by particular parts of the authority, as the Standards Committee may not have the statutory power. Accordingly the Standards Committee could make a recommendation to the relevant decision maker or decision making body.

When Might Self Regulation be Appropriate?

20 The essence of self regulatory action is that it is administrative action which is necessary in order to protect the authority's ability to continue to provide efficient and effective services or to protect its credibility. Accordingly, self regulation might be appropriate where:

- There is a real risk that the Councillor will repeat the misconduct and further misconduct will adversely affect the authority. This would include cases where the Member's repeated misconduct would cause loss to authority, disrupt the efficient delivery of services or cause the authority to act unlawfully.
- The Member's continued participation will adversely impact upon the reputation of the authority. This might be with other Councillors, or with the authority's staff or with recipients of service from the authority, or with the general public.

21 However, as self regulation is a last resort, it would not be appropriate in the following cases:

- Where the councillor or co-opted member's misconduct does not affect the authority's continuing ability to continue to provide efficient and effective services to the public or its credibility.
- Where the Leader or Chief Executive has met with the Councillor and is confident that there is no risk of a recurrence and that the Councillor 's continued participation does not adversely affect the authority's reputation.
- Where the matter can be dealt with adequately by other means. It may be that the matter falls squarely within the responsibilities of the Police, District Auditor or even the Ombudsman. However, even where such an

Item 5

agency is involved, there may still be a need for self regulatory action. For example, the fact that the Police are investigating a particular matter does not mean that a prosecution or a conviction will inevitably ensue, nor does it mean that any sentence of the Court would be such as to protect the authority from a recurrence and therefore it may still be appropriate for the authority to take preventive action in the meantime.

- Where there has been a substantial time lapse between the time when the authority became aware of the Councillor's misconduct and the time when the decision is to be taken for such self regulatory action.
- As self regulatory action is only justified in order to protect the authority's interests, any substantial time lapse would appear to indicate that there was no immediate necessity for such self regulatory action.

Self Protection Rather than Punishment

- 22 It would seem that the power of self regulation must not be exercised in order to punish the Councillor but only in order to protect the authority. Accordingly, in considering whether to take any such action, the authority should consider whether the action proposed is genuinely required in order to protect the authority.
- 23 The fact that such action may need to be taken at the allegation stage, before all the facts are known, or proven, means that the action is frequently provisional in nature, and should be only for so long as is necessary to protect the authority and should be reviewed when any parallel formal processes are completed, for example when the matter has been dealt with by a Tribunal or by a court of law.

Do we Know What will Follow the Standards Regime

- 24 The Decentralisation and Localism Bill may abolish not only the Standards for England and the Code of Conduct for Members and even Standards Committees.
- 25 It has been suggested that barring unlawful expenditure or criminality, it will be left to the electorate to remove errant Councillors. The opportunity to remove Councillors would normally occur only once every 4 years. In recognition of this the Government intends to introduce Electoral Recall as a mechanism to enable an errant Councillor to be removed mid-term. This proposal is heavily qualified by the assertion that recall will only be available on evidence of serious misconduct such as a criminal conviction or a High Court finding of personal liability on audit challenge.
- 26 We are told that Councillors will have to register certain personal interests in a publicly available register. This could include anything that could reasonably be regarded as likely to influence or affect their conduct when on business for the authority or voting. The new legislation will make failing to register an interest, or deliberately seeking to mislead the public about an interest a criminal offence.

Item 5

- 27 It is proposed that the law of predetermination may be amended. The purpose of the change is to enable a Councillor to implement election manifesto commitments without falling foul of predetermination.
- 28 Once the Decentralisation and Localism Bill is published plans can be made for how authorities may take forward any new powers and decide whether there is a need to implement a process of self regulation.

Key Implications

Financial

- 29 None arising from this report.

Community Impact and Outcomes

- 30 The community would expect the Council to operate to the highest ethical standards.

Legal, Human Rights etc.

- 31 Many would argue that there needs to be a governance framework to ensure against corruption and abuse of power. It would seem unacceptable that members could be allowed to seriously misconduct themselves damaging the reputation of their authority and local government as a whole.
- 32 If Standards Committees are to be abolished in the Decentralisation and Localism Bill the law may still confer upon authorities a general power to appoint a committee for the purpose of discharging any of their functions. Even without express statutory power an authority could set up a discretionary committee limited to considering and reporting.

Conclusions

- 33 Evidence from the Adjudication Panel and First Tier Tribunal decisions have shown that some Councillors have seriously misbehaved, and the probability is that some will continue to misbehave. Councillors have been disqualified as a result of assaults on fellow Councillors, deliberate breaches of personal confidentiality, racial abuse, deliberate breach of Council procurement rules and deliberate misuse of position to vote on matters for personal advantage or out of malice. An individual Councillor's misconduct can damage the reputation of local government as a whole. We await the detail of the Decentralisation and Localism Bill to see what means will be available to Councils to deal with Councillor misconduct and whether a Committee such as the Standards Committee can still have a role to play.

Risk Assessment Statement

- 34 No specific risks identified arising directly from this report.

Item 5

Sources of Information: Information from the Standards for England and the writings and lectures of Peter Keith-Lucas

Contact Officer(s): Christine Nuttall – Ext. 7245