

STANDARDS COMMITTEE – 3 DECEMBER 2009

STANDARDS BULLETIN NO. 3

Report of the: **Monitoring Officer**

Status: For information purposes

Executive Summary: The report sets out recent developments surrounding the local standards regime and the ethical agenda. Topics that are covered include Guidance on Joint Standards Committees, Dispensations, Standards for England Annual Review, Review of on-line monitoring system, Sanctions and Disqualification following the Adjudication Panel's findings.

This report supports the Key Aim of effective management of Council resources.

Portfolio Holder Cllr. Elaine Bracken

Head of Service Head of Legal and Democratic Services – Christine Nuttall

Recommendation: Members are requested to note this report.

Background

- 1 The local standards regime continues to develop and this Bulletin updates Members as to how matters are progressing. This Bulletin follows on from the first and second Bulletin presented to the Committee on the 23 April 2009 and 14 July 2009 and covers current developments taking place in relation to the ethical agenda.

Guidance Joint Standards Committees

- 2 The Standards Committee (Further Provisions) (England) Regulations (SI 2009/1255) came into force on the 15 June 2009. These regulations give a discretion for two or more local authorities to set up a Joint Standards Committee.
- 3 The Joint Standards Committee can be established to discharge all of each participating authority's standards functions, or can be established to discharge just some of the authorities' standards functions, such that each authority retains its own Standards Committee to discharge those standards functions which have not been allocated to the Joint Committee.
- 4 The Standards for England have produced guidance entitled "Joint Standards Committees Guidance" which is set out at Appendix 1 to this report. The guidance identifies three model structures for joint standards committees which the Standards for England think offer the most practical ways of operating joint arrangements. The three models are as follows:

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- Model A – A joint standards committee to receive written allegations and requests for a review and to decide what action to take in relation to them.
- Model B – A joint standards committee to carry out the functions in Model A along with receiving and considering final investigation reports and conducting hearings, making findings and imposing sanctions.
- Model C – A joint standards committee to carry out all of the functions of a standards committee granted by or under Part III of the Local Government Act 2000 and Part 1 of the Local Government and Housing Act 1989.

The last model is thought to be most appropriate for single purpose authorities such as police or fire authorities and is not generally recommended that local authorities adopt Model C because it remains an important role of an authority's standards committee to promote and maintain high standards within its own authority.

Dispensations

- 5 The Standards Committee (Further Provisions) (England) Regulations 2009 revoke the previous regulations. The new provisions clarify the grounds on which standards committees may grant dispensations to local authority members.
- 6 Under these new regulations a standards committee may grant a dispensation to a member or co-opted member of an authority in the following circumstances:
 - where more than 50% of the members who would be entitled to vote at the meeting are prohibited from voting.
 - where the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.
- 7 Where one or more members have made a written application for a dispensation, setting out why they consider that a dispensation would be desirable, the standards committee may only grant a dispensation if it is of the opinion that it is appropriate to grant a dispensation. The Standards for England have produced Guidance entitled "Dispensations" which sets out the issues and criteria to consider when granting dispensations. This Guidance is set out at Appendix 2 to this report.
- 8 A dispensation can be granted for a particular meeting or for a period not exceeding four years. A dispensation cannot be granted for a member who is prohibited from participating at an Overview and Scrutiny Committee by virtue of having been involved in taking the original decision, or for a Cabinet Member with a prejudicial interest in an item of executive business to take an

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executive decision about it on their own. All dispensations once granted are entered in the register of members' interests.

- 9 In practice, the grant of dispensations will continue to be problematic because members are rarely aware of the number of members who are going to be debarred from the consideration of a particular matter by reason of prejudicial interests until it is too late to call a Standards Committee to consider their requests for dispensation before the meeting takes place.
- 10 In relation to the second ground it would seem that the request to be successful would need to be supported by clear evidence that voting at the meeting on a particular item will be conducted on strict party lines, and that the Standards Committee should only grant the minimum number of dispensations necessary to secure that the same result is achieved as would have been achieved had no members had prejudicial interests. In summary that the majority party, if any, secures a majority of votes, but not that it secures the same degree of majority as it would otherwise have secured.

Local standards; national perspectives Annual Review 2008- 09

- 11 The Standards for England published their Annual Review 2008-09 this autumn. The document is in two parts. Part one is a review of the work of the Standards for England and Part two is a review of the first year of the local framework based on information supplied by bodies covered by the Code of Conduct. The Review sets out examples of what the Standards for England consider to be notable practice and is available to download from the Standards for England's website.

Review of online monitoring system

- 12 A review has taken place this year into the Standards for England online monitoring system. The research entailed distributing surveys to a random sample of monitoring officers and officers who are nominated to make an online submission. A total of 50 surveys were sent to assess satisfaction levels with the quarterly return and another 50 for the annual return. Approximately half the questionnaires were returned. The survey results show that the majority of monitoring officers/nominated staff surveyed continue to agree that the quarterly return is working effectively, with respondents encountering minimal or no difficulty in submitting their return.
- 13 The annual return survey also showed that stakeholders are pleased with how the annual return form worked.
- 14 It would seem that the survey was looking for suggestions from respondents on how both the returns can be enhanced in the future and there is a return development team which is working on extending the design of the forms for next year.

Imposing Sanctions

- 15 Under Regulation 19 of the Standards Committee (England) Regulations 2008 there are listed 11 sanctions available to a standards committee. However,

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the Standards for England have advised that standards committees must be careful that any sanctions they choose are within the list set out in the regulations. For example a verbal apology is not listed and would not therefore be a valid sanction. Asking a member to submit a written apology in a form specified by the committee is valid.

- 16 The Standards for England state that a written apology sanction is a difficult sanction to enforce if a member chooses not to comply with it. Standards committees should consider this when deciding on which sanction to impose. If a standards committee decides that a written apology is appropriate it should:
- specify the form in which the apology should be written
 - set a time limit for the apology to be written.
- 17 If a member fails to issue the written apology, the member face a further complaint of potentially bringing their office or authority into disrepute by failing to comply with the sanction. However, it could be argued that it would be a better use of council resources to ensure the original sanction allows for the possibility that the apology is not given.
- 18 The regulations allow for the suspension of a member for a period not exceeding six months or until such time as the member submits a written apology in a form specified by the standards committee. In this way a standards committee can ensure that if a member does not apologise, they will remain suspended for a period of up to six months or until they do.
- 19 Care should be taken when deciding on the period of suspension that would apply if no apology is given. It should properly reflect the seriousness of the breach of the code of conduct. Imposing a six month suspension period to encourage an apology to be given would be a misuse of the power.
- 20 Standards committees should carefully consider the appropriateness of imposing a written apology when a member has shown no remorse for their conduct and no evidence at the hearing to indicate they are able to acknowledge their behaviour and its impact on others. Any apology issued in such circumstances is unlikely to be seen as being genuine.

Councillor Disqualified following the Adjudication Panel's Findings

- 21 Following a Standards for England investigation the former deputy leader of Somerset County Council was disqualified from office for two years on 15 July 2009.
- 22 In this case the Adjudication Panel for England confirmed the Standards for England ethical standards officer's view that Councillor Buchanan had breached the Code of Conduct by making a number of written allegations about Alan Jones, Chief Executive of Somerset County Council, which he knew to be spurious or exaggerated.

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- 23 The Adjudication Panel found Councillor Buchanan made these allegations in an attempt to discredit the Chief Executive.
- 24 The Adjudication Panel confirmed the ethical standards officer's view that Councillor Buchanan brought his office into disrepute and fused his position improperly to disadvantage Alan Jones.
- 25 In January 2008 Alan Jones alleged that Councillor Buchanan had made serious and unsubstantiated allegations of misconduct against him to two national organisations of which he is a member, and also to his employer, in an attempt to damage his reputation with his employer, colleagues and peers.
- 26 The Adjudication Panel for England found that Councillor Buchanan knowingly exaggerated the facts about certain issues in order to strengthen his serious misconduct allegations against Alan Jones.
- 27 The Adjudication Panel also agreed with the ethical standards officer that Councillor Buchanan was reckless as to whether he could substantiate the allegations he was making and found that he gave a series of changing and contradictory explanations as to how he had pursued alleged concerns from officers.
- 28 Dr Robert Chilton, chair of the Standards for England stated: "When standing and acting in public office as a councillor, Councillor Buchanan willingly took on a responsibility to maintain a high standard of ethical behaviour. Councillor Buchanan's conduct has diminished confidence in his ability to fulfil his role as a councillor, which requires him to act selflessly and with honesty and integrity. We welcome the Adjudication Panel's decision to disqualify Councillor Buchanan, and hope this case reassures the general public that local government has a Code of Conduct that sustains good conduct amongst local councillors and deals with breaches of this Code appropriately."

Options (and Reasons for the Recommendation)

- 29 The report is for information and discussion.

Key Implications

Financial

- 30 There are no identifiable financial implications.

Impact on and Outcomes for the Community

- 31 This report endeavours to set out the recent developments within the ethical framework thus providing Members and the public with news on current developments, changes and events taking place.

Legal, Human Rights etc.

- 32 The information provided shows how the ethical framework is evolving and the legal changes taking place based on legislation, guidance and case law.

Resource (non-financial)

- 33 No additional non financial resource implications are identified.

Value For Money and Asset Management

- 34 There are no identifiable value for money and asset management implications associated with the contents of this report.

Equality

- 35 All members of the public have access to the information contained within this report.

Sustainability Checklist

- 36 The ever evolving ethical framework should provide the public with confidence that robust systems exist for enabling high ethical standards to be applied across all levels of local government.

Conclusions

- 37 Some of the recent developments surrounding the local standards regime and the ethical agenda are high-lighted in this report in order that both Members and the public are kept informed and can discuss the implications of the changes and proposed changes.

Risk Assessment Statement

- 38 No risks have been identified by the contents of this report.

Sources of Information:

Bulletin from Standards for England – June 2009
Guidance from Standards for England on Dispensations
Guidance from Standards for England on Joint Standards Committee Guidance
Standards for England documentation and press releases

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