

SC/016/09

Committee Standards Committee

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Annual Assembly of Standards Committees 12 -13 October 2009

1. **Purpose of the Report**

To advise Members of the Committee about the contents of the Annual Assembly of Standards Committees held in Birmingham this year

2. Robert Chilton the Chair of Standards for England gave the opening address. He introduced a video of the Minister for Local Government; Rosie Winterton. She gave an outline of progress in standards matters over the previous year. She endorsed the role of Independent Members and the current regime of Local and National regulation.

Robert Chilton went on to deliver a “state of the nation” address. He spoke on the issues around the politicisation of democracy and standards. He acknowledged the current long run up to a general election and noted that people had become angry about how politics was run. Referring to the Conservative Green Paper on the Abolition of the Standards Board, he reflected on his own duties which he indicated were to act as a dutiful and impartial public servant within the law, to ensure that the debate in relation to the proposal was well informed and evidence based and to deliver the current project excellently. He went on to discuss criticisms of the Standards regime and to argue against those complaints.

Although he recognised the possibility that the Standards Board might be abolished under a new political regime, he felt that there was cause for hope because there had been no mention of abolition by the Shadow Minister in the most recent paper. He indicated that the current climate in parliament/central government was an issue in determining the future of Standards for England. He acknowledged that there were numerous matters that could still be improved and acknowledged that the future lay in determining what an excellent Standards Committee looks like and to move on from compliance to quality.

In closing he felt sure that there would be a national event next year notwithstanding any changes that might result from a general election.

3. Robert Chilton was followed by Glenys Stacey the Chief Executive of Standards for England who commended the annual review to the Assembly and set out the hot topics for the current year.

4. The Highly Effective Standards Committee was a workshop session which dealt with the importance of contextual effectiveness and emphasised likewise the importance of the profile and access afforded to the Chair of the Standards Committee. It dealt with the importance of transparency in communication together with building a positive profile for the Committee. The fact that many Committees are not longer led by the Monitoring Officer and operate more independently was commented upon favourably. The degree to which a Standards Committee is embedded and engaged with the rest of the Authority and with a whole standards agenda was an indicator of effectiveness. The shift from mere investigation to education of Members in relation to Standards matters was important. There was a section in relation to effective Member recruitment.
5. A session was attended on Investigations Management dealing with a number of issues. It emphasised the important of the Monitoring Officer or their delegate keeping control of the investigation process as well as dealing with some issues of good practice around the conduct of investigation. There were useful points on appeals and how to avoid them following hearings.
6. A ‘train the trainer’ session was attended which gave some information about how the Standards Committee in Lincolnshire conducts itself as well as excellent coaching on how to deliver training sessions in terms of how to design them, deliver them and thereafter evaluate them. All materials from the Annual Assembly are available on the website: www.standardsforengland.gov.uk.
7. **Report received from Tony French**

The sessions chosen to attend (as well as the plenary ones) were on:-

Examples and Results of “Other Actions”
Sharing Lessons Learnt from Local Assessment
Focus on Determinations, Sanctions and Appeals
Focus on Code Changes

Examples and Results of “Other Actions”

“Other Actions” are remedies proposed by an Assessment or Hearing Sub Committee as an alternative to requiring an investigation or in the case of a Hearings deliberation, a sanction – they include apologies, mediation, etc.

Speakers were Jennifer Rogers an ESO and Alex Oram an Investigator both from Standards for England; Ian Rickard, Monitoring Officer at Mid Sussex District Council and Fiona McMillan, a Lawyer from South Cambs. District Council.

Other Action seems to have been used a lot as a way of sorting out Parish Councils where there seems to have been a view that the Parish Council was dysfunctional.

Supporters of Other Action view it as a way to resolve conflict without the complexity and cost of a full investigation.

A large area of concern, raised on a number of occasions, was the inability to carry out any other remedy if the other action – request for an apology, mediation, etc -failed. Some Authorities suspend the Assessment or Hearing, request the Monitoring Officer to investigate with the parties, the prospect of Other Action being successful, and then report back to the Assessment/Hearing for it to conclude its deliberations.

If a Member refuses to accept Other Action, then the only other way back for other sanctions is for a new complaint to be raised that the Member, in refusing Other Action, has brought his position/the Authority into disrepute.

A further area of concern continues to be the inevitable presumption of some element of guilt if Other Action is proposed before an Investigation is carried out.

Standards for England produced a 15 page guidance note on “Other Action” in May of this year.

Sharing Lessons Learnt from Local Assessment

This session was led by the Chairmen of three Standards Committees, and was a general exchange of views.

There was a variable quality in the information provided to both Assessment and Hearing Sub Committees. In some authorities, the Monitoring Officer will sit down with a complainant to ensure that the complaint is at least full enough for an Assessment Sub Committee to look at. That was felt preferable to trying to work out what a complainant actually meant when all the Committee had to go on was a three line letter.

Others felt that we should move on a bit further, to both gain an insight into the complaint and request an initial response from the “accused”, to ensure that the Assessment Hearing at least had a balanced set of data – no other tribunal system operates solely on prosecution evidence.

Concern was expressed at the cost of the whole process, especially at times when Local Authority funding is coming under increasing pressure. While Standards Committees were considered to be “Forces for Good” were their costs, bureaucracy and results proportionate. We should always consider if the public interest would be best solved by an investigation or should we try alternative actions. Focus on Determinations, Sanctions and Appeals

This session had three speakers, Gylan Murphy, Lawyer, Standards for England; Beverley Primhak, Chair of the Adjudication Panel for England and Gill Cooper, Monitoring Officer, Craven DC.

A draft timetable for organising a hearing was handed out – this provides a critical path to identify all of the actions necessary to meet the requirement of holding a hearing within 90 days of receiving a report of an investigation. Whilst the intermediate dates are clearly flexible, it provides an aide-memoir for organising a hearing.

We were also provided with sample forms to send out to the accused Member to gain their response to the report.

The presenters then went through a long list of do's and don'ts, from checking that the report identifies the actual breach and the reference to the correct paragraph in the Code, to identifying the areas of disputed fact so that the hearing concentrates on resolving those, emphasising the need at a hearing to clearly list out the evidence used and reasons for decision.

The need to sort out membership of a particular panel well before the hearing was emphasised to ensure that panel members do not have prejudicial interests themselves that they only identify on the day, and that they have ample time to study before the hearing well set out paginated bundles of papers.

When it comes to determining sanctions, although there is no set tariff, we were reminded to use SfE and APE guidance and to fully consider the mitigating and aggravating factors in the case.

When the sanction is an apology, it is strongly recommended that the panel determines the wording of the apology, sets a time limit for it to be delivered and considers suspending the member until the apology has been delivered.

Some statistics were provided on Appeals to APE. Around 30% of cases are refused by the President of the Panel; in a further 30% of cases the Standards Committees findings are upheld; only 15% of findings are rejected and in 6% of cases a different sanction is imposed (*the chart did not add to 100%!, probably because they only had 12 applications per year, but that is increasing*)

Reasons for successful appeals include – the Member was not in his official capacity; lack of respect was not found, and it was considered that the matter was part of political debate; inadequate reasons given for the Code Breach-etc.

Focus on Code Changes

The main speaker on this topic was Mark Jones, Principal Lawyer at Standards for England.

You will recollect that we were consulted last year on changes that may be made to the Code, and it had been anticipated when the programme for this Assembly was put together that the revised Code would have been published by now. It is now expected to be published as a draft in November, with implementation, including its associated Regulations and guidance notes in time for local elections in May 2010!!

The following is therefore based on what Standards for England expect the new Code to contain.

The changes to the code can be divided into two parts:- firstly a major change to bring some aspects of Member conduct when **not** performing in their official capacity into the Code, and secondly some minor tidying up of the remainder of the Code.

A new section will be introduced on “Non-Official Capacity” – **“You must not bring your office or authority into disrepute by conduct which is a criminal offence”**

It is likely therefore to exclude fixed penalty notices or cautions and will not come into play until the criminal process has run its course – *the presenter was not able to comment on how appeals in the criminal court would affect application of the code, nor was there a conclusion at this time as to what you do with a complaint against a Member who has been accused, but not yet found innocent or guilty in a Court – do you adjourn the case or do you find that the Code does not apply?*

The minor changes to the Code relate to such matters as applying para 12(2) to Parish Councils; clarifying wording on Gifts and Hospitality; removing a double negative from the wording on prejudicial interests; clarifying that a member is not barred from giving evidence at his own standards hearing through having a prejudicial interest; allowing non –executive members of committees to attend overview and scrutiny committees investigation of their committee to answer questions and transitional provisions to allow interests registered under the previous code to stand under the new code.