

STANDARDS COMMITTEE

Tuesday, 8th February, 2011

10.00 am

**Swale 1, Sessions House, County Hall,
Maidstone**





AGENDA
STANDARDS COMMITTEE

Tuesday, 8th February, 2011, at 10.00 am
Swale 1, Sessions House, County Hall, Maidstone

Ask for: **Peter Sass**
Telephone: **01622 694002**

Tea/Coffee will be available 15 minutes before the start of the meeting in the meeting room

Membership

Miss R MacCrone (Chairman), Mr L Christie, Mr D S Daley, Mr J F London, Mrs N Ahmed and Mr P Gammon, MBE

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

- 1 Substitutes/apologies
- 2 Declarations of Interest
- 3 Minutes of the meeting held on 15 July 2010 (Pages 1 - 4)
- 4 The Localism Bill - proposed changes to the Standards regime (Pages 5 - 8)
- 5 Complaints Monitoring (Pages 9 - 12)
- 6 Standards Committee Work Programme and future meeting dates (Pages 13 - 14)
- 7 Any other urgent business
- 8 Date of Next Meeting

EXEMPT ITEMS

(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)

Peter Sass
Head of Democratic Services and Local Leadership
(01622) 694002

Monday, 31 January 2011

Please note that any background documents referred to in the accompanying papers maybe inspected by arrangement with the officer responsible for preparing the relevant report.

KENT COUNTY COUNCIL

STANDARDS COMMITTEE

MINUTES of a meeting of the Standards Committee held in the Wantsum Room, Sessions House, County Hall, Maidstone on Thursday, 15 July 2010.

PRESENT: Miss R MacCrone (Chairman), Mr L Christie, Mr D S Daley, Mr J F London and Mr P Gammon, MBE

ALSO PRESENT: Mrs T Dean, Mr A J King, MBE and Mrs F Leathers

IN ATTENDANCE: Mr G Wild (Director of Law and Governance) and Mr P Sass (Head of Democratic Services and Local Leadership)

UNRESTRICTED ITEMS

1. Substitutes/apologies

(Item 1)

An apology from Mrs Ahmed was received.

It was also noted that Mr Alex King was present on behalf of Paul Carter.

2. Declarations of Interest

(Item 2)

There were no declarations of interest by Committee Members in any item on the agenda, but Mrs Dean asked the Committee to note that she was the subject of an ongoing complaint to Tonbridge and Malling Borough Council.

3. Minutes of the meeting held on 12 May 2010

(Item 3)

Resolved: that the Minutes of the meeting held on 12 May 2010 be approved as a correct record and signed by the Chairman.

4. Annual Meeting with the Group Leaders

(Item 4)

The three group leaders had been invited to their annual meeting with the Standards Committee to discuss the promotion and maintenance of ethical standards in the authority. It was noted that the Deputy Leader, Alex King, was in attendance in place of the Leader, Paul Carter, who was representing the County Council at an external meeting.

The Chairman commented on the impending demise of Standards for England and that it was currently unclear what might happen to serious complaints that couldn't be dealt with at a local level.

Mrs Leathers stated that she did not support the recent views of the junior Minister about Independent Remuneration Panels.

Mrs Dean stated that the Local Government Association itself might take over responsibility for dealing with serious complaints about Member conduct, or alternatively, to expand the existing powers of the Local Government Ombudsman.

Mr Gammon stated that the existing arrangements that KCC had with the London Borough of Bromley and the Fire Authority could be extended for the purposes of dealing with serious complaints.

The Chairman stated that it was currently a confusing picture because the First Tier Tribunal was not being abolished.

Mr King stated that the new coalition Government appeared to be content for local authorities to manage their own arrangements for dealing with ethical standards. He added that he would be reluctant to lose the Independent Remuneration Panel, which did a valuable job for KCC.

In response to a question about the timescale for any changes to the process for dealing with complaints, Mr Wild stated that there would be a formal consultation period in the autumn, prior to the changes taking effect during 2011. He added that, in the meantime, the existing arrangements would still apply.

Mr Gammon suggested that the existing template for the annual return to Standards for England could be used as a self-assessment tool for the Standards Committee.

Mrs Dean stated that she was pleased to see a higher return rate for the Members' Annual Reports, but questioned whether they serve the purpose they were originally intended for. She added, however, that it was useful to have the Independent Remuneration Panel's feedback on good and not so good reports.

Mr Christie stated that a key value of the Members' Annual reports was that it allowed important "one-to-one" time with the Group Leader to discuss performance and one's role in the activity of the Group. In relation to the future, he wondered if elected Members should serve on a Standards Committee at all and suggested that there should also be regional arrangements to deal with serious issues.

Mr King stated that he was impressed that the Leader had managed to have 73 "one-to-one" meetings with his Members and that such meetings were especially important in a larger group.

Mr London stated that he saw little value in the Members' Annual Reports and that they were not seen by the electorate to be useful either.

Mr Daley stated that the Members' Annual Reports were a good discipline for Members and also enhanced the reputation of KCC. Most Borough and District Councils had no such process.

Mrs Leathers stated that she was heartened by the largely positive comments from Members about the Annual Reports and undertook to look again in the autumn at the content and guidance to see if they could be improved yet further.

Mr Sass undertook to find out whether it was possible to find out how many hits there were on the Annual Reports on KCC's website and also to enquire whether the forms could be pre-completed as far as possible, especially in relation to meeting attendance.

The Chairman stated that more should be done to market the availability of the Annual Reports, perhaps via "Around Kent". This suggestion was supported by the Group Leaders.

Mr Gammon stated it was important to have elected Members on Standards Committee, in order to provide information about the Member role – he added that he didn't think Standards Committees could function effectively without elected Members.

Mr Wild stated that, from his point of view as Monitoring Officer, the Standards Committee was working effectively and he was satisfied with the progress made on all fronts. He added that there would continue to be a focus on proper governance and that the Committee was well-placed for the future.

Mr Gammon stated that both he and Mrs Ahmed would find it useful to shadow key elected Members to find out more about what they do. Mr King, Mrs Dean and Mr Christie all agreed that they would be more than happy to be shadowed. Mr Sass undertook to arrange for this to happen.

The Chairman thanked the Group Leaders for attending the meeting and assured them that the points raised in the discussion would be taken forward.

(Mr King and Mrs Dean left the meeting).

5. Complaints Monitoring

(Item 5)

Mr Sass updated the Committee with regard to complaint KCC/01/2010, which had resulted in no action being taken by the Assessment Sub Committee and was now subject to the review period.

There was a general discussion about the effectiveness of the Monitoring Officer Protocol. It was accepted that the balance between fact-finding and "investigating whether to investigate" was a delicate one but, on the whole, the Protocol appeared to be working well.

Resolved: that the contents of the report be noted.

6. Standards Committee Work Programme and future meeting dates

(Item 6)

It was noted that Mr Gammon would be presenting the Committee's Annual Report to the County Council meeting on 22 July.

Mr Gammon also suggested that there should be a standing item to each meeting on the future of the standards regime, post Standards for England.

Resolved: that the contents of the report be noted.

7. Any other urgent business

(Item 7)

There were no urgent items.

8. Date of Next Meeting

(Item 8)

The Committee noted that its next meeting was on Thursday 18 November 2010.

By: Peter Sass - Head of Democratic Services and Local Leadership

To: Standards Committee – 8 February 2011

Subject: The Localism Bill – proposed changes to the Standards regime

Summary: To discuss the implications of the proposals in the Localism Bill to abolish the standards regime and to determine a way forward with regard to the detailed examination of the main options for the future.

Unrestricted

Background

1. The Localism Bill was published in December 2010. This report focuses on the implications the Bill will have for supporting and enforcing high standards of conduct amongst elected and voting co-opted Members of Kent County Council, subject to enactment and change through the legislative process. Much of the content of the Bill has been raised previously in speeches and press releases and there are very few surprises in the drafting. However, while some of the more fundamental issues are addressed in the primary legislation, much has been reserved for secondary legislation, which has yet to be published, even in draft. The reforms proposed to the existing standards regime are radical in nature and it is unclear how some will work in practice.

2. The implementation of the proposed changes appears likely to be with effect from early 2012. Any cases that have begun will proceed to their conclusion but all will have to be dealt with by the Standards Committee as Standards for England will no longer be available. The Standards Committee in its current statutory form will remain in place until all outstanding cases have been dealt with.

The main provisions

3. The main provisions are contained in chapter 5 of the Localism Bill. Further provisions are set out in Schedules 4 and 24.

- (a) The Bill abolishes the standards regime overseen by Standards for England, including the model Code of Conduct for Members of relevant authorities in England and their standards committees. The abolition arrangements also affect the First Tier Tribunal (Local Government Standards in England) under the jurisdiction of the Ministry of Justice because the Tribunal will receive no further cases after those that it is already dealing with on the abolition date have been determined. The appointed day is likely to be two months after the coming into force of the provisions.
- (b) Local Authorities will be under a duty to promote high standards of conduct. The new arrangements for standards to help them comply with this duty will be part voluntary and part mandatory, with criminal sanctions where certain interests are concerned.

- (c) Standards for England will no longer exist and none of its functions transfer to any other body. There will no longer be a requirement for relevant authorities to adopt a code of conduct for their Members or to appoint Standards Committees and there will be no mandatory enforceable code of conduct for Members that they have to undertake to follow when they take up office
- (d) Matters relating to standards will be the function, i.e. the responsibility of the authority (not the Executive) and the adoption of a voluntary code must be done by the authority as a whole.
- (e) The duty and any voluntary arrangements adopted by an authority still only apply to Members who can vote; therefore non-voting co-opted Members will not be covered by any new arrangements.
- (f) Relevant authorities can create a voluntary code either by revising an existing code or adopting a new one. Because the code is voluntary, an authority can also withdraw its existing code without replacement. The authority can publicise what it has done about the code as it sees fit.
- (g) Where an authority has adopted a code, it can put in place any procedure it wishes to deal with complaints and take any action it sees fit, but this may exclude suspension or disqualification as these sanctions are expressly forbidden by provisions relating to how the council deals with failure to register or declare interests. If an authority chose to have a standards committee, it would be regarded as an “ordinary committee” of the authority and, therefore, not need to have independent representation.
- (h) The arrangements regarding interests and criminal sanctions will be dealt with by way of Regulations issued by the Secretary of State and the main requirement to maintain a register will remain with the Monitoring Officer. Regulations will be able to specify the interests to be registered; the requirements for disclosure; participation in decision-making; dispensations; sanctions and access and publicity arrangements for the register. Prosecutions in relation to interests can only be brought with the consent of the Director of Public Prosecutions (DPP) and will be dealt with in a Magistrates’ Court. Offences will relate to a failure to register; a failure to disclose; and, taking part in relevant local authority business.

Changes to the common law pre-determination rules

4. Although not a conduct matter as such, it is also worth noting the changes proposed in the Bill to the rules about “predetermination”, which have developed in case law. Currently, if a member participates in decision-making, particularly quasi-judicial decision-making, with a closed mind, this may be a ground upon which a decision can be judicially reviewed. Case law has established that it is acceptable for a member to have a predisposition towards making a particular decision about a matter before hearing the arguments, but must not have decided which way to vote in advance. Recent court decisions have recognised more clearly than in the past the role that local politics and campaigning can play in the decision-making process and have recognised that elected members would be entitled, and indeed expected, to

have, and to have expressed, their views on local issues, including, for example, planning issues.

5. Under the provisions in the Bill, a decision maker is not to be taken to have had, or have appeared to have had, a closed mind when making the decision just because the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take, in relation to a matter, relevant to the decision. This doesn't entirely do away with the pre-determination issue. In a recent letter to all Council Leaders, the Minister for Housing and Local Government mentioned this provision but said in addition:

"of course councillors will still need to be open minded at the point of decision in the sense of listening to all the arguments and weighing them against their preferred outcome, before actually voting."

Decisions to be made by the County Council

6. The County Council will need to make a number of decisions in due course in respect of its future approach to Members' conduct, including the following:

- (a) whether to have a code of conduct at all
- (b) If it has a code, what form that will take and whether it will seek to adopt provisions that are either the same or similar to those being adopted elsewhere in Kent
- (c) What procedures to have in place for the investigation of complaints about the conduct of members, whether or not a voluntary code is adopted
- (d) How it intends to undertake the duty to promote and maintain high standards of conduct and what future role it sees, if any, for a standards committee.

Conclusion

7. The proposals in the Localism Bill for changes to the conduct regime for local authority members will make sweeping changes to the current arrangements. A number of decisions will need to be made by the County Council in due course to implement the changes and the Committee is asked to consider and comment upon the information in this report as an early contribution to the debate that must be had. The Committee may also wish to meet formally or informally with the Group Leaders to discuss the various decisions that need to be made.

Recommendation:

3. The Committee is invited consider this report and determine a way forward with regard to a detailed examination of the main options for the future.

Peter Sass – Head of Democratic Services and Local Leadership
January 2011

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By: Peter Sass - Head of Democratic Services and Local Leadership

To: Standards Committee – 8 February 2011

Subject: Complaints Monitoring report

Summary: To formally note the current position with regard to the receipt and consideration of complaints about KCC Members and the action taken by the Assessment and Review Sub Committees.

Unrestricted

Background

1. At the meeting of the Standards Committee on 25 November 2008, it was agreed that a report would be submitted to the Committee every six months, giving the relevant details of the current stage of any complaints that had been considered by the Assessment, Review or Consideration Sub Committee in the previous 12 months. Accordingly, attached at **Appendix 1** is a schedule detailing this information.

Recommendation:

2. The Committee is invited to note the current position with regard to the receipt and consideration of complaints in the previous 12 months (Appendix 1); and

Peter Sass – Head of Democratic Services and Local Leadership
July 2010

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Complaints received by the Standards Committee – February 2010 to February 2011

During the last 12 months, the Assessment, Review and Consideration Sub Committees have dealt with two complaints about the conduct of Members, as follows:

Reference	Complainant	Assessment outcome	Review outcome (only applicable if “no action” taken by the Standards Committee at the first stage)	Comments
KCC/6/2009	Member of the public	Conclusion of “no breach” accepted by the Standards (Consideration) Sub Committee following a formal investigation	Not applicable	A formal press notice was <u>not</u> issued, as this is the subject Member’s right when no breach is found. Complainant has submitted a complaint to the Local Government Ombudsman, alleging maladministration. Ombudsman decided not to formally investigate. Complainant now considering judicial review
KCC/01/2010	Member of the public	Assessment Sub Committee decided to take no action	Complainant did not ask for assessment outcome to be reviewed	Case closed

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By: Peter Sass - Head of Democratic Services and Local Leadership
To: Standards Committee – 8 February 2011
Subject: Standards Committee Work Programme and future meeting dates

Summary: To consider the Committee's forward work programme.

Unrestricted

Background

1. At the Committee's meeting on 25 November, 2008, it was agreed that the Head of Democratic Services and Local Leadership would formulate a work programme for the Committee's consideration and also, in consultation with the Chairman, agree a series of future meeting dates, so that all Members can ensure they are available to attend Committee meetings.

2. Accordingly, attached at **Appendix 1** is a suggested work programme based on relevant aspects of the Committee's work in previous years, together with the conclusions reached at a previous meeting about the Committee's future role.

Recommendation:

3. The Committee is invited to consider and agree the Committee's future work programme and proposed meeting dates (Appendix 1)

Peter Sass – Head of Democratic Services and Local Leadership
January 2011

Standards Committee Work Programme – 2010/11

Meeting	Item	Source (*Standard item unless stated)
8 February 2011	The Localism Bill – proposed changes to the Standards regime	
	Monitoring of Complaints	
	Work Programme and future meeting dates	
17 March 2011	The Localism Bill – proposed changes to the Standards regime	
	Monitoring of complaints	
	Work Programme and future meeting dates	
	Review of Register of Interests, Gifts and Hospitality	
11 May 2011	The Localism Bill – proposed changes to the Standards regime	
	Members' Annual Reports	
	The Committee's Annual Report	
	Work Programme and future meeting dates	
14 July 2011	The Localism Bill – proposed changes to the Standards regime	
	Annual Meeting with Group Leaders	
	Monitoring of Complaints	
	Work Programme and Future meeting dates	
17 November 2011	The Localism Bill – proposed changes to the Standards regime	
	Work Programme and Future Meeting dates	