



AGENDA

STANDARDS COMMITTEE

Wednesday, 19th March, 2008, at 10.00 am Ask for: **Mary Cooper**
Swale 2, Sessions House, County Hall, Telephone **(01622) 694354**
Maidstone.

Tea/Coffee will be available from 9.30 am outside the meeting room

UNRESTRICTED ITEMS

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

1. Declarations of Interest
2. Minutes of meeting held on 22 January 2008 (Pages 1 - 8)
3. Debrief on Training Event at Gravesend
oral report by Mr L Christie
4. Preparation for new Local Standards Regime - discussion document (Pages 9 - 14)
5. 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

Tuesday, 11 March 2008

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.

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KENT COUNTY COUNCIL

STANDARDS COMMITTEE

MINUTES of a meeting of the Standards Committee held at Sessions House, County Hall, Maidstone on Tuesday, 22 January 2008.

PRESENT: Miss R MacCrone (Chairman), Mrs N Ahmed OBE DL; Mr L Christie, Mr D S Daley, Mr P A Gammon MBE and Mr J F London.

IN ATTENDANCE: The Director of Law & Governance, Mr G Wild; Mrs J Samson, Audit Manager; and the Head of Democratic Services, Mr S C Ballard.

UNRESTRICTED ITEMS

1. Election of Chairman
(Item 2)

(1) Mr Gammon moved, Mr London seconded, that Miss MacCrone be elected Chairman of the Committee.

(2) There being no other nominations, Miss MacCrone was declared elected as Chairman.

Miss MacCrone thereupon took the chair

2. Membership
(Item 1)

Mrs Ahmed and Mr Gammon, who had been appointed by the Council to serve as Independent Members of the Committee, together with Miss MacCrone (re-appointment) for the four-year term from 1 November 2007 to 31 October 2011, were welcomed to their first meeting.

3. Minutes
(Item 4)

(1) RESOLVED that the Minutes of the meeting held on 30 May 2007 are correctly recorded and that they be signed by the Chairman.

(2) Mr Christie asked for, and received, an assurance that, in accordance with Minute 9(b) guidance would be given to Members about how to show political group activity on the Annual Report form about to be issued for 2007/08.

4. Changing Role of Standards Committees from 1 April 2008

(Item 5(a) - Report by Head of Democratic Services and Item 5(b) – Report by Miss MacCrone)

- (1) The Committee noted that the Department for Communities and Local Government (DCLG) had published a consultation paper seeking views by 15 February on proposed regulations to put into effect the standards regime arising from the Local Government and Public Involvement in Health Act 2007. The report (item 5(a)) included the consultation paper and a suggested draft response to be submitted by the Council.
- (2) The Committee discussed the suggested draft response and made some amendments to it.
- (3) The Committee also discussed a discussion document prepared by Miss MacCrone (item 5(b)).
- (4) The Head of Democratic Services reported that a local training course on operating the new standards regime, aimed at Members of Standards Committees and officers involved in ethical governance, would take place in Gravesend on 4 March 2008.
- (5) RESOLVED that:-
 - (a) the response to the Government consultation paper, as set out in Appendix 1 to these Minutes, be submitted to the Department for Communities and Local Government;
 - (b) proposals for the provision of appropriate training and advice about the new standards regime to all KCC Members be submitted to the next meeting following discussion between the Chairman and officers;
 - (c) that places at the training course on operating the new standards regime to be held at Gravesend on 4 March be reserved for all those Members of the Committee who were able to attend on that day.

5. Ethical Standards Audit

(Item 6 - Report by Audit Manager)

RESOLVED that:-

- (a) the recommendations of the Ethical Standards Audit conducted by KCC Internal Audit be noted;
- (b) on recommendation 5 of the Ethical Standards Audit (that more proactive fraud work should be undertaken, such as random checking of expense claims) KCC Internal Audit be requested to include the expense claims of Members, as well as officers, in the random checks.

6. New Allegations to Standards Board for England against KCC Members

(Item 7 - Report by Head of Democratic Services)

Mr L Christie declared a personal interest in this item as he had knowledge of the background to the allegation reported, and left the room during the discussion.

RESOLVED that the report be noted.

7. Standards Board for England (SBE) Annual Assembly – October 2007

(Item 8 - Report by Miss MacCrone)

RESOLVED that:-

- (a) the report by Miss MacCrone on her attendance at the Annual Assembly of Standards Committees held at Birmingham on 15-16 October 2007 be noted;
- (b) as well as being distributed to all Members of the Committee, the quarterly SBE Bulletin be made available to all Members of the Council.

8. Date of Next Meeting

(Item 9)

RESOLVED that the next meeting of the Committee be held on Wednesday 19 March at 10.00 am.

Kent County Council

Comments on CLG Consultation Paper on Regulations to Implement Changes in the Standards Regime arising from the Local Government and Public Involvement in Health Act 2007

Q1 Does our proposal to prohibit a member who has been involved in a decision on the assessment of an allegation from reviewing any subsequent request to review that decision to take no action (but for such a member not to be prohibited necessarily from taking part in any subsequent determination hearing), provide an appropriate balance between the need to avoid conflicts of interest and ensure a proportionate approach? Would a requirement to perform the functions of initial assessment, review of a decision to take no action, and subsequent hearing, by sub-committees be workable?

The Council supports the proposal to prohibit a Member who has been involved in a decision on the initial assessment of an allegation from reviewing a decision to take no action. However, the Council is anxious that involvement in the assessment or review stages should not prevent a member from taking part in any subsequent determination hearing, as this would create difficulties for authorities with small Standards Committees.

Q2. Where an allegation is made to more than one standards committee, is it appropriate for decisions on which standards committee should deal with it to be a matter for agreement between standards committees? Do you agree that it is neither necessary nor desirable to provide for any adjudication role for the Standards Board?

Yes, the Council agrees with both these assertions.

Q3. Are you content with our proposal that the timescale for making initial decisions should be a matter for guidance by the Standards Board, rather than for the imposition of a statutory time limit?

Yes, the Council agrees with this proposal.

Q4. Do you agree that the sort of circumstances we have identified would justify a standards committee being relieved of the obligation to provide a summary of the allegation at the time the initial assessment is made? Are there any other circumstances which you think would also justify the withholding of information? Do you agree that in a case where the summary has been withheld the obligation to provide it should arise at the point where the monitoring officer or ethical standards officer is of the view that a sufficient investigation has been undertaken?

Yes, the Council agrees with the two proposals made in this question. However, the Council is concerned at the apparent assumption in the consultation paper (Chapter 2, paragraph 13) that the obligation to provide the Member complained against with a written summary of the allegation will only normally arise after the decision is made on the initial assessment. This would mean that those Members of a Council serving on the Standards Committee's assessment sub-committee will know the details of the allegation against a colleague before that colleague even knows that an allegation has been made against him or her. The Council believes that (subject to the exceptional circumstances identified in the question) all authorities should have the discretion to tell the Member complained

against about the complaint as soon as possible after the allegation has been received and before the assessment hearing takes place, even if the 'obligation' to disclose will only arise after the initial assessment hearing. The Council urges that the Regulations should not only allow this discretion, but should also encourage all authorities to exercise it.

Q5. Do you agree that circumstances should be prescribed, as we have proposed, in which the monitoring officer will refer a case back to the standards committee?

Yes, the Council agrees with this proposal.

Q6. Are you in favour of an increase in the maximum sanction the standards committee can impose? If so, are you content that the maximum sanction should increase from three months to six months suspension or partial suspension from office?

Yes, the Council agrees with both these proposals.

Q7. Do you have any views on the practicability of requiring that the chairs of all sub-committees discharging the assessment, review and hearing functions should be independent, which is likely to mean that there would need to be at least three independent chairs for each standards committee? Would it be consistent with robust decision-making if one or more of the sub-committee chairs were not independent?

The Council believes that, in principle, the chairs of all sub-committees discharging the assessment, review and hearing functions should be drawn from the independent Members of the Standards Committee. Provided that a Member who has been involved in the assessment or review stages is not prohibited from taking part in any subsequent determination hearing (the issue raised in Q1 above), this should be practicable.

Q8. Do you agree with our proposal that the initial assessment of misconduct allegations and any review of a standards committee's decision to take no action should be exempt from the rules on access to information?

Yes, the Council strongly supports this proposal.

Q9. Have we identified appropriate criteria for the Standards Board to consider when making decisions to suspend a standards committee's powers to make initial assessments? Are there any other relevant criteria which the Board ought to take into account?

Yes, the Council agrees that paragraph 35 sets out appropriate criteria for the Standards Board to consider when making decisions to suspend the Standards Committee's powers to make initial assessments.

Q10. Would the imposition of a charging regime, to allow the Standards Board and local authorities to recover the costs incurred by them, be effective in principle in supporting the operation of the new locally-based ethical regime? If so, should the level of fees be left for the Board or authorities to set; or should it be prescribed by the Secretary of State or set at a level that does no more than recover costs?

The Council's view is that the Standards Board and other local authorities should be able to recover their costs (but not to charge any higher amount) for carrying out the

assessment function on behalf of an authority whose Standards Committee has had its assessment function suspended.

Q11. Would you be interested in pursuing joint arrangements with other authorities? Do you have experience of joint working with other authorities and suggestions as to how it can be made to work effectively in practice? Do you think there is a need to limit the geographical area to be covered by a particular joint agreement and, if so, how should such a limitation be expressed? Do you agree that if a matter relating to a parish council is discussed by a joint committee, the requirement for a parish representative to be present should be satisfied if a representative from any parish in the joint committee's area attends?

The Council would be interested in exploring the potential of joint working arrangements with other authorities, particularly in view of the size of its own Standards Committee. (The Council has a Standards Committee comprising only 6 Members (3 Councillors and 3 independent Members)). The Council does not believe that there is a need to limit the geographical area to be covered by a particular joint agreement.

Q12. Are you content that the range of sanctions available to case tribunals of the Adjudication Panel should be expanded, so the sanctions they can impose reflect those already available to standards committees?

Yes, the Council agrees with this proposal.

Q13. Do you agree with our proposals for an ethical standards officer to be able to withdraw references to the Adjudication Panel in the circumstances described? Are there any other situations in which it might be appropriate for an ethical standards officer to withdraw a reference or an interim reference?

Yes, the Council agrees with the proposals for an ethical standards officer to be able with withdraw references to the Adjudication Panel in the circumstances described in paragraph 54.

Q14. Have you made decisions under the existing dispensation regulations, or have you felt inhibited from doing so? Do the concerns we have indicated on the current effect of these rules adequately reflect your views, or are there any further concerns you have on the way they operate? Are you content with our proposals to provide that dispensations may be granted in respect of a committee or the full council if the effect otherwise would be that a political party either lost a majority which it had previously held, or gained a majority it did not previously hold?

The Council has never had to consider making a decision under the existing dispensation regulations but it supports the proposals for amendment set out in paragraph 62.

Q15 Do you think it is necessary for the Secretary of State to make regulations under the Local Government and Housing Act 1989 to provide for authorities not required to have standards committees to establish committees to undertake functions with regard to the exemption of certain posts from political restrictions, or will the affected authorities make arrangements under section 101 of the Local Government Act 1972 instead? Are you aware of any authorities other than waste authorities which are not required to establish a standards committee under section 53(1) of the 2000 Act, but which are subject to the political restrictions provisions?

The Council has no view on this issue.

Q16 Do you agree with our proposal to implement the reformed conduct regime on 1 April 2008 at the earliest?

Yes, the Council is very keen that the reformed conduct regime should be implemented on 1 April 2008, provided that all the necessary statutory regulations are in place, and all relevant CLG and SBE guidance has been issued sufficiently in advance of that date to allow authorities to make the necessary preparations.

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By: The Chairman of Standards Committee

To: Standards Committee - 19 March 2008

Subject: PREPARATION FOR NEW LOCAL STANDARDS REGIME

Classification: Unrestricted

Summary: This report deals with proposed changes to the regime and seeks Members' views on the way forward.

FOR DECISION

1. Publicity

- (1) Priority should be to ensure public aware of the changes to the regime.
- (2) There is nothing currently on the KCC website about 'How to complain about a Member'. It should be easy enough to add something to www.kent.gov.uk/council-and-democracy/about-the-council/contact-us/complaints.htm
- (3) Am I right in thinking the Register of Interests has gone on to the website? Could the whole thing not go on to the website?
 - (a) Code of Conduct
 - (b) Register of Interests
 - (c) Annual Reports
 - (d) Standards Committee
 - (e) Complaints procedure
- (4) How much should be on the website? Should it be very brief i.e. a copy of the full assessment and investigation process is available on request – or should it be an downloadable document in the website as on the website Complaints procedures: "There are separate procedures for" add 'Complaint against a Councillor'.
- (5) We also need to promulgate somehow through e.g. leafleting – doesn't KCC already do something annually that goes to every household in Kent (that no-one actually reads) but could it be incorporated in that?
- (6) Not happy at broadcasting it on the Kent TV or through local press – anyway which newspaper would be an issue.

2. Practicalities

- (1) Use Standards Board wording where possible both so as to avoid reinventing the wheel and because it is likely to have been thoroughly tested. Existing leaflets and advice can be adapted (q.v. below for some of it).

- (2) Preamble about Code of Conduct, and Standards in Public Life and Ethical standards.
- (3) Include KCC adoption of the Model Code of Conduct adopted KCC 21.6.2007.
- (4) Add local determination and a brief description of the change locally.
- (5) Introduce the Standards Committee:
 - (a) Independence
 - (b) Members
 - (c) Terms of reference
 - (d) A Standards Committee is a panel made up of 3 persons independent of the KCC and 3 elected members. They are all intended to be above party politics. They can decide if there was a breach of the Code and if so what penalty to impose.

3. Stage I:

- (1) Sub-C of the SC will make an initial assessment of the misconduct allegation from the papers before it.
- (2) Not in public
- (3) Aim to make a decision within 3 working weeks?
- (4) Notifies the complainant and member of its decision which can be:
 - (a) Take no action
 - (b) Refer the matter to the MO for investigation (s58) or other action
 - (c) Complainant has days in which to challenge a decision to 'take no action' and it will then be determined by a second (separate) sub-c of the SC. Again aims to give a decision within 3 working weeks?

4. Stage II:

- (1) The matter having been referred for further action.
- (2) The result of the MO investigation is provided to the full SC:
- (3) SC then determines whether:
 - (a) To hold a formal hearing with witnesses
 - (b) Take no further action
 - (c) Take informal action?
- (4) If no further action complainant has the right etc

5. Misc:

- (1) N.B. Advice Notes to members:
 - (a) Note 2 (30.5.2002)
 - (b) Note 3 (20.2.2003)
 - (c) Note 4 (20.2. 2003)
 - (d) Note 5 (June 2007) – with the new Code of Conduct that was adopted by the KCC on 21.6.2007.
 - (e) October 2007?
- (2) Compulsory training for members? What about the staff and what about the first point of contact.
- (3) CEOs and leaders to be ‘champions of high standards’
- (4) Standing orders, flowcharts, time limits
- (5) Agenda items:
 - (a) debrief from KMISCMLG
 - (b) Insurance for SC members
 - (c) Delegation of powers to MO

6. From Standards Board website and leaflets:

- (1) The Standards Committee can only consider a complaint that falls within the powers set out by Parliament. For a complaint to be considered it has to be about an elected, co-opted or independent member of Kent County Council and it has to be about something covered by the Code of Conduct*
- (2) Behaviour covered by the Code of Conduct 2007
 - (a) unlawfully discriminating against someone
 - (b) failing to treat people with respect
 - (c) bullying any person
 - (d) intimidating any person involved in any investigation or proceedings about someone's misconduct
 - (e) doing something to prevent those who work for the authority from being unbiased
 - (f) revealing information that was given to them in confidence, or stopping someone getting information they are entitled to by law
 - (g) damaging the reputation of their office or authority, where the conduct is linked to their public role and not in their private capacity

- (h) using their position improperly, to their own or someone else's advantage or disadvantage
 - (i) misusing their authority's resources
 - (j) allowing their authority's resources to be misused for the activities of a registered political party
 - (k) failing to register financial or other interests
 - (l) failing to reveal a personal interest at a meeting
 - (m) taking part in the discussion or making a decision where they have an interest that is so significant that it is likely to affect their judgment (known as a 'prejudicial interest')
 - (n) improperly influencing a decision about a matter that they have a prejudicial interest in
 - (o) failing to register any gifts or hospitality (including its source), that they have received in their role as a member worth over £25
- (3) Which complaints will the Standards Committee refer for investigation?
- (a) The Standards Committee will decide a matter should be investigated only when it meets one of the following criteria:
 - (b) it is serious enough, if proven, to justify the range of sanctions available to the Standards Committee or the Adjudication Panel for England
 - (c) it is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Kent County Council and there is no other avenue left to deal with it, short of investigation
 - (d) account will be taken of the time that has passed since the alleged conduct occurred
- (4) Which complaints are unlikely to be referred for investigation?
- (a) The Standards Committee is unlikely to decide that a complaint should be investigated if it falls into any of the following categories:
 - (b) it appears that the complaint is really about dissatisfaction with a council decision
 - (c) 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
 - (d) the Standards Committee believe it to be malicious, relatively minor, or tit-for-tat
 - (e) 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 Standards Committee or the Adjudication Panel
 - (f) there is not enough information currently available to justify a decision to refer the matter for investigation

- (g) except in the most serious of cases, conduct that would not be considered to be a breach of the revised Code of Conduct adopted by Kent County Council on 21.6.2007.
- (5) How can you complain?
- (a) The complaint must be in writing to (Name/details). You may download a form from the KCC website www.kent.gov.uk but if you don't want to use the form you can write a letter including all the points covered in the form. If this is difficult, ask someone to help you, for example your local Citizen's Advice Bureau. If you cannot write your complain in English the Standards Committee will arrange to have it translated for you.
 - (b) ***Please be aware that your identity is unlikely to be kept confidential and that the member complained of will usually be made aware of the matter complained of.***
- (6) What happens to your complaint?
- (a) When it is received it will be acknowledged. The Standards Committee will then review the complaint to determine whether it is suitable for investigation. One of the Standards Committee officers may contact you personally to go through the details of your complaint.
 - (b) If the Standards Committee cannot investigate, or decides not to, you have the right to ask for the decision to be reviewed.
 - (c) If the complaint is one that the Standards Committee decides to investigate, it will carry out an independent investigation, keeping you informed of progress. At the end of the investigation you will be notified of the Standards Committee outcome decision.

7. Recommendation

Members are request to:-

- (a) note the report; and
- (b) submit their views on the way forward.

Miss R MacCrone
Chairman

Background Documents: None

