

Discussion document

- 1) The Local Government and Public Involvement in Health Bill brought in a revision of the ethical framework so that most decisions on complaints of breaches to the Model Code of Conduct are to be taken by local Standards Committees - the Standards Board acting more as a strategic regulator. The idea is to have an integrated regime - Code of Conduct, the Standards Board and Standards Committees.
- 2) The changes bite from April 2008 and it is necessary for the Kent Standards Committee to be ready for it. But it appears that it is not only the members of the Standards Committee that need to be aware of the changes - it seems important that all KCC members and officers know of the Standards Committee new role.
- 3) From this a number of issues arise:
 - a) As Standards Committee are expected to actively promote high standards of conduct, it will need to explain what they do – widely; the issues being addressed; the progress being made; and that it is independent and local.
 - b) It needs to improve communication/training/guidance information for members to ensure that high standards are ‘embedded’. Member know the Standards Committee exists but are they aware of the move to local determination? What should they be told and how? Should they have all the detail now or simply be told that they or others may make a complaint and then receive details of the process?
 - c) The aim is to ensure that breaches do not occur rather than simply dealing with allegations that they have occurred. To this end it was recommended that CEOs and political leaders are identified as ‘champions of high standards’ i.e. as positive role models for improving local governance ‘acting positively in relation to the Standards Committee and the codes of conduct’; in other words, that they have responsibilities in relation to promoting standards.
 - d) The Standards Committee has a responsibility to promote public knowledge of how to make allegations and what the process involves. This is a Standards Board requirement - albeit an unofficial one - and one that will be enforced through the Audit Commission. Locally we need to decide how to disseminate information without actually begging people to complain.
 - e) How to make it abundantly clear to everyone that the local Standards Committee will not tolerate vexatious or frivolous complaints nor will the Committee be used to score political points e.g. ‘political’ abuse as part of the ‘cut-and-thrust’ of political debate, which should be dealt with through firm chairing of the meeting: compare this to e.g. racial abuse which must always be unacceptable.
 - f) Any member or staff or the public may informally approach the Monitoring Officer for guidance on whether to proceed – and any advice proffered is to be without prejudice to pursuit of the issue. The Chairman may also be involved at this stage but should where possible keep out of it because of the potential for later involvement.
 - g) It costs: it is estimated that it costs £3,000 - £5,000 per investigation of a complaint and this will come out of local authority funds. Members should be made aware of this and also that Standards Committee will balance the resource implications against the complaint merits and possible max penalty.

Is it for the Leader to support the Standards Committee in making it clear where the resources come from to investigate a complaint? The Standards Board has historically adopted a 'high threshold' for referral and this should apply locally as well.

- 4) The Standards Committee needs to get its act together and not only advertise its wares so to speak but also to have systems in place: jargon is 'standing orders'. It will need to provide:
- a) A formal procedure on receipt of a complaint, perhaps a flowchart that will trigger automatically on formal complaint
 - b) Time limits as guides
 - c) How to respond to the complainant
 - d) How to inform the member complained of (the Standards Board has finally conceded that members needs to know *ab initio*). Provided the matter is dealt with expeditiously at the referral stage then there should be no need for a member to be left hanging for too long.
 - e) Circumstances in which a referral is to be made to the Standards Board in its (retained) capacity as investigator – only necessary for serious/complex/large cases.

The Standards Board as part of its support function has promised a set of flowcharts, model templates, letters, notices and forms + usual caselaw together with guidelines and recommendations.

- 5) The Standards Board requires independent Chairing at each stage:
- a) Sub-committee to decide whether there should be a referral based on jurisdiction, prima facie breach and sufficiency of evidence – only then could it merit investigation
 - b) If not referred the complainant may appeal to a different sub-committee
 - c) If referred then the committee issues clear directions to the Monitoring Officer for:
 - i) Investigation
 - ii) Actions other than investigation e.g. deal with informally by mediation or refer for training.
 - d) Hearing by a different sub-committee - the Standards Board says it is OK to have the same people as on the filter sub-committee (unless this is for some reason inappropriate)

The Standards Board says members on sub-committee one should stay silent until sub-committee three finishes.

- 6) If a breach of the Code of Conduct is found? If an 'informal' approach is not then appropriate, remedies include: exclusion, suspension for x days, apology, or reduction of suspension contingent on apology (the 'discount'), training or disqualification (although this is more likely from the serious cases referred to the Standards Board). There is an appeal process against a finding of the Standards Committee hearing, to The Adjudication Panel for England.

- 7) The Standards Board as part of its new monitoring function will require the Standards Committee/KCC to have: -
- a) A quarterly reporting process
- and

- b) An annual report approved by the full Council on Standards Committee actions including mediation and training etc. being an 'ethical health check' on the local filter process. The report is entitled Key Line of Enquiry for the Comprehensive Performance Assessment process and is to be sent to the Standards Board - it may be done on a website. The report should also be available on the KCC website. The Standards Board will intervene if the local Standards Committee is not acting properly and effectively; the Audit Commission may also be involved.
- 8) Miscellaneous points from the Assembly/Board/own thoughts:
- a) Possibility of joint committees with neighbouring authorities – at least at the filter/investigation stage?
 - b) Perhaps the Scrutiny Committee and Standards Committee could work together on some issues e.g. constitution revamps, to ensure compliance and avoid future problems
 - c) Need to ensure members of the Standards Committee are fully insured and covered in the event of a civil action.
 - d) Monitoring Officers may delegate their investigative role and this needs a formal procedure to record the delegation
- 9) Websites:
- a) www.standardsboard.co.uk
 - b) www.audit-commission.gov.uk
 - c) Improvement and Development Agency on www.idea.gov.uk, the Ethical Governance Toolkit (all 43 pages of it) is available from this website
 - d) The 6 Principles of Good Governance (all 40 pages of it) is available from www.opm.co.uk

Addendum

Currently there are booklets setting out How to Complain, Local Investigations, and Standards Committee determinations. These will, presumably, be updated to take account of the new procedures, however it may be helpful to very briefly say what currently happens.

Any person may make a complaint to the Standards Board against a member of Kent County Council alleging, in writing, a breach of the Code of Conduct.

On receipt of the complaint the Standards Board decides whether to refer the complaint for investigation – it is quite robust in rejecting the malicious, minor, vexatious, or politically inspired tit-for-tat complaint.

If it doesn't refer it tells the parties/local Standards Committee (to date this has been the 'fate' of complaints made against Kent members over the past 3 years).

If it refers the complaint an Ethical Standards Officer will investigate or, more usually, ask a local Monitoring Officer to investigate; the Standards Committee is merely kept informed. When a final report is produced it is disseminated.

If there has not been a breach the Standards Committee considers confirming this.

If there is a case to answer the Standards Committee holds a hearing and if it finds a breach of the Code it can impose various penalties.

There is a right of appeal to The Adjudication Panel for England.

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