



East Northamptonshire Council

Standards Board - 18 November 2009

Report from Standards for England Annual Assembly

Summary

This report provides a summary of learning and ideas noted by the delegates to the 2009 Assembly.

Attachment(s)

Appendix A - Understanding bias and predetermination checklist

Appendix B - The highly effective Standards Committee Quiz

Appendix C - Putting the Public in the Picture Quiz

1.0 Background

- 1.1 The Standards for England Annual Assembly was held in Birmingham on 12-13 October 2009. It was attended by the following Standards Board Members: Hilary Daniels (Independent), Cllr Glenvil Greenwood-Smith (District) and Lance Quantrill (Independent) together with the Monitoring Officer. The sessions attended included:
- The highly effective standards committee
 - Understanding bias and pre-determination
 - Managing investigations with confidence
 - Sharing good practice for Monitoring Officers
 - Sharing good practice for Standards Committees
 - Supporting Planning and Licensing Committees
 - Putting the Public in the Picture
- 1.2 Papers and presentations from the conference are available on line at the Standards for England website (www.standardsforengland.gov.uk).

2.0 Key Learning Points

- 2.1 Standards for England presented statistics showing support for the current framework and indicated that many of the problems associated with the former central assessment by the Standards Board for England, such as length of time to determine complaints, had now been resolved. It was noted that often Party Political Codes of Conduct were more stringent than the Members Code of Conduct in some aspects and this might provide alternative or additional action routes.
- 2.2 It is probable that further changes to the ethical governance arrangements for councils will be made next year. Some are known e.g. changes to the current code. Some may result from other sources e.g. possible change in government or extensions to rules re MP expenses etc. However, if our processes are aimed at excellent ethical governance through the district, we will be well placed to meet these changes.
- 2.3 It was noted that 80% of parishes have never had a single complaint although complaints about Town and Parish Councillors make up over half of all complaints under the code. There has been a heavy Town and Parish Council case load at some other Councils - we are fortunate not to have attracted this number of cases. This is probably due to a combination of the quality and general wish of our Councillors to act in good faith and the good work of the Officers in promoting the Code. Some of these cases elsewhere were clearly worthy of assessment, some were frivolous or vexatious, but most were errors of judgement or ignorance of the Members' Code.

(See 3.4 for an idea to reduce the latter)

2.4 Attitudes towards the level of ‘proof’ required to determine apparent bias and pre-determination does vary between whether a council decision is considered administrative or quasi-judicial. Planning functions seem to be being re-categorised as moving away from quasi-judicial to administrative which alters the way pre-determination is judged. (see appendix A)

3.0 Issues which the Standards Board may wish to consider

3.1 How proactive should a local Standards Board be in promoting its work and outcomes? Some councils had taken a very high profile approach in order to reinforce confidence in high ethical standards and transparency by their council. Appendices B and C are quizzes which highlight some of the ideas that might be considered.

3.2 Many Standards Boards produce a forward programme of activity, which includes a more proactive approach to training and publicity. Examples of activities this Board may wish to consider are included in a separate report on this agenda.

3.3 Communication to other Members of Standards Board, other Councillors and the wider public about the outcome of complaints made under the Code. Historically this council has taken a minimalist line, publishing the outcome of investigations as required. However with increasing use of ‘Other Action’ consideration needs to be given as to how the outcomes of this action are communicated.

3.4 In order to assist the widest possible understanding of the code it has been suggested that Independent Members supplement the work of East Northamptonshire Council Officers and proactively offer to attend Council meetings with a short (less than 10 minute) presentation and to attend for the whole meeting. In this way the Standards Board should create a corporate persona as a helpful mentor rather than a body of control and collectively achieve the objectives of effective management and good reputation. Members are asked to consider a pilot whereby each of the three current Independent Members attending one town or parish meeting over a three month period and reporting back to the Standards Board the outcome. This might also link with the Parish Council Audit noted in the Future Work Programme item on this agenda.

4.0 Conclusion and Recommendation

4.1 Members are invited to receive and note this report in the context of the report on Future Work programme also on this agenda.

Implications:		
Corporate Outcomes or Other Policy/Priority/Strategy		
Good Quality of Life	<input type="checkbox"/>	Good Reputation <input checked="" type="checkbox"/>
Good Value for Money	<input type="checkbox"/>	High Quality Service Delivery <input type="checkbox"/>
Effective Partnership Working	<input type="checkbox"/>	Strong Community Leadership <input type="checkbox"/>
Effective Management	<input checked="" type="checkbox"/>	Knowledge of our Customers and Communities <input type="checkbox"/>
Employees and Members with the Right Knowledge, Skills and Behaviours		<input checked="" type="checkbox"/>
Other: Ethical Framework/Governance Arrangements		<input checked="" type="checkbox"/>
Decision(s) would be outside the budget or policy framework and require full Council approval		<input type="checkbox"/>
Financial	There are no financial implications at this stage	<input checked="" type="checkbox"/>
	There will be financial implications – see paragraph	<input type="checkbox"/>
	There is provision within existing budget	<input type="checkbox"/>
	Decisions may give rise to additional expenditure at a later date	<input type="checkbox"/>
	Decisions may have potential for income generation	<input type="checkbox"/>
Risk	An assessment has been carried out and there are no material risks	<input checked="" type="checkbox"/>

Management	Material risks exist and these are recorded at Risk Register Reference - inherent risk score - residual risk score -	<input type="checkbox"/>
Staff	There are no additional staffing implications	<input checked="" type="checkbox"/>
	Additional staff will be required – see paragraph	<input type="checkbox"/>
Equalities and Human Rights	There will be no impact on equality (race, age, gender, disability, religion/belief, sexual orientation) or human rights implications	<input checked="" type="checkbox"/>
	There will be an impact on equality (see categories above) or human rights implications – see paragraph	<input type="checkbox"/>
Legal	Power: Local Government Act 2000; The Local Government and Public Involvement in Health Act 2007	
	Other considerations: Standards Committee (Further Provisions) Regulations 2009	
Background Papers:		
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Date: 5 November 2009		
CFO		MO
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(Committee Report Normal Rev. 19)

Understanding predetermination and bias

Checklist

What is predetermination?

1. Predetermination is a more accurate term than 'bias' to describe the state of mind which is capable of infringing both the law and the Code of Conduct.
2. Predetermination means closing the mind to all considerations other than the already held view. The exercise of a discretionary power where one or more of the decision makers does not in fact exercise the discretion at all is unlawful as an abuse of that discretion. That is actual predetermination.
3. However, the Courts continue to recognise what is called apparent predetermination. Apparent predetermination will exist where the fair minded and well-informed observer (sometimes referred to as "the notional observer"), looking objectively at all the circumstances, considers that there is a real risk that one or more of the decision makers has refused even to consider a relevant argument or would refuse to consider a new argument.

Interface with the Code

4. Where actual or apparent bias is found, paragraph 5 of the Code of Conduct is potentially engaged because behaviour of a councillor which renders the decision of the council unlawful, is capable of amounting to conduct which could reasonably be regarded as bringing both the office of member and the authority concerned into disrepute. Those who seek permissions, licences or otherwise rely on the exercise of statutory powers by local authorities rightly expect that the powers are lawfully exercised.
5. It may also be the case that the circumstances are such that other paragraphs of the Code are engaged. For example, actual or apparent bias may result from the existence of a personal and prejudicial interest and thus paragraphs 9 and 10 of the Code may also be engaged in an appropriate case.
6. A decision tainted by predetermination is not only unlawful, it also amounts to maladministration. The Code therefore interfaces with the jurisdictions of the High Court and the Ombudsman.

Pragmatism

7. The Courts however have recently begun to recognise the distinction between local authority members making administrative decisions as democratically elected representatives and those who exercise judicial or quasi judicial functions. There is now sufficient clarity in case law to set out some key principles.

The test

8. The test for predetermination is a **two stage test**. Firstly, all the circumstances which have a bearing on the suggestion that the decision made was vitiated by actual or apparent predetermination must be ascertained. Secondly, the questions which must be posed are:
 - (a) was there actual predetermination or
 - (b) were the circumstances such as would lead a fair minded and informed observer to conclude that there was real risk that one of the decision makers had predetermined the outcome.

Apparent predetermination: All the circumstances

9. Apparent predetermination is to be assessed having regard to all of the circumstances which are apparent upon investigation; this will extend beyond the circumstances available to the hypothetical observer at the committee.
10. All the circumstances do not include evidence from the member concerned as to whether or not they had closed their mind. The test is an objective one i.e. what objective view do the facts give rise to.
11. For the same reason the views of a complainant as to what they believed to be the member's state of mind are irrelevant save that these may have some bearing on whether to commence an investigation.

The fair minded and informed observer

12. Recognising that most local authority decisions are administrative decisions, made by elected representatives and with a heavy policy influence, the Courts have imbued the notional observer with a number of attributes. The notional observer can be assumed:
 - (i) to have access to all the relevant facts
 - (ii) to be neither complacent nor unduly sensitive or suspicious when looking at the facts
 - (iii) to be able to decide between the relevant and irrelevant and on the weight to be given to the facts
 - (iv) to be cognisant of the practicalities of local government.

The practicalities of local government

13. The Courts have accepted that these practicalities mean that the fair minded and informed observer accepts that:
- (i) Manifesto commitments and policy statements which are consistent with a preparedness to consider and weigh relevant factors when reaching the final decision, are examples of legitimate pre-disposition not predetermination
 - (ii) The fact that the member concerned has received relevant training and has agreed to be bound by a Code of Conduct is a consideration to which some weight can properly be attached when determining an issue of apparent predetermination
 - (iii) Previously expressed views on matters which arise for decision in the ordinary run of events are routine and councillors can be trusted, whatever their previously expressed views, to approach decision making with an open mind
 - (iv) To suspect predetermination because all members of a single political group have voted for it is an unwarranted interference with the democratic process
 - (v) Councillors are likely to have and are entitled to have, a disposition in favour of particular decisions. An open mind is not an empty mind but it is ajar.

The threshold

14. In the context of administrative decisions, the test of apparent predetermination is an extremely difficult test to satisfy. Unless there is positive evidence that there was indeed a closed mind, prior observations or apparent favouring of a particular decision is unlikely to suffice.

The highly effective standards committee

Delegate quiz

Characteristics of your authority

1. What type of authority are you? (tick one)
 - a. District
 - b. Unitary
 - c. Other
 - d. Single purpose authority
2. What is the population of your authority?
3. How many parish councils do you have? (tick one)
 - a. 0
 - b. 0 – 10
 - c. 11 – 29
 - d. 30+
4. How many members are on your standards committee?

The environment in which you work

What access to and support does your standards committee have from the **leadership** of the authority?

5. Does your monitoring officer sit on the corporate management team of your authority?
 - a. Yes
 - b. No

6. Does an executive member have matters included in their portfolio?
- a. Yes **Score 1 point**
- b. No **Score 0 points**
7. Does the Chair of the committee have regular meetings with the Chief Executive and Leader? If so, how frequent are they?
- a. No meetings in the last year **Score 0 points**
- b. 1-2 **Score 1 point**
- c. 3-4 **Score 2 points**
- d. 5 + **Score 3 points**

Total score for leadership:	/5
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How **proactive** is your standards committee?

8. Do you have a forward work programme?
- a. Yes **Score 1 point**
- b. No **Score 0 points**
9. Have you identified training needs for all the members of your authority and put in place a training programme to meet those needs?
- a. Yes **Score 1 point**
- b. No **Score 0 points**
10. What sort of training have you provided in the last year? (tick more than one answer if necessary – maximum score 6)
- a. Induction for new members **Score 1 point**
- b. Code of Conduct **Score 1 point**
- c. The local standards framework **Score 1 point**
- d. Chairing skills **Score 1 point**
- e. Planning and licensing **Score 1 point**
- f. Other **Score 1 point**

11. If you have parishes have you provided training for them?
- a. No parishes Score 1 point
- b. Parishes but no training Score 0 points
- c. Training just for parish clerks Score 1 point
- d. Training just for parish councillors Score 1 point
- e. Training for both parish clerks and councillors Score 2 points
12. Do you take active steps to promote the work of the standards committee?
- a. No promotion Score 0 points
- b. Promotion only to members Score 1 point
- c. Promotion only to the authority (as a whole) Score 2 points
- d. Promotion only to the public Score 1 point
- e. Promotion to both the authority and the public Score 3 points

Total score for proactivity:	/13
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How **transparent** are you about the work of your standards committee?

13. Is the member register of interests available on the authority's web site?
- a. Yes Score 1 point
- b. No Score 0 points
14. Is the register of gifts and hospitality available on the authority's web site?
- a. Yes Score 1 point
- b. No Score 0 points
15. What steps does your authority take to publicise the Code of Conduct and complaints mechanisms to the public? (tick more than one answer if necessary, maximum score 5)
- a. Information in the local press Score 1 point
- b. Information in council offices and other public buildings Score 1 point
- c. Complaints leaflet Score 1 point
- d. On the website Score 1 point
- e. Other Score 1 point

16. Do you produce an annual report?

a. Yes **Score 1 point**

b. No **Score 0 points**

17. Where does your annual report go? (tick more than one answer if necessary, maximum score 4)

a. On the web site **Score 1 point**

b. To full council **Score 1 point**

c. To partner organisations **Score 1 point**

d. To the parishes in your area **Score 1 point**

Total score for proactivity:	/12
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Add up your scores for leadership, proactivity and transparency to give your total score:	/30
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Putting the public in the picture

What does your authority's website say about standards?

Take this short quiz and see how your authority scores.

1. **How easy is it to find anything to do with the standards committee on your website?**

Score 15 for a mention of the standards committee or standards and ethics on your home page.

Score 10 for a link to a page dealing with the standards committee or standards and ethics on a page you reach by following a link from the home page.

Score 5 if, when you search for 'standards' or 'ethics', the top result takes you to a page about the standards committee. (Note: standards committee papers which are published online without any additional information don't count.)

2. **Does the standards committee have its own page or section on the website?**

Score 10 for yes.

3. **Is there a clear explanation of what the standards committee does on the website? Is it up to date?**

Score 15 for a good explanation (between 50 and 150 words) of the role of the committee.

Score 10 if the explanation is longer or shorter than that.

But **subtract 5** from that score if it's out of date – for example, if it has the wrong person named as chair, or hasn't been updated to reflect the work the committee has been doing since May 2008.

Score 2 bonus points for including frequently asked questions or something similar.

4. Can you find the names of standards committee members?

Score 15 for all members' names

Score 10 for the chair only

Score 5 for local authority committee members only

5. Does the website feature information about any proactive work the committee has done to raise the profile of standards, or any information about the standards committee's work programme?

Score 15 for articles and online access to committee papers

Score 10 for an annual report

Score 5 for online access to committee papers only

6. Does the website include decision notices and other information to publicise how your authority has handled complaints?

Score 15 for stories and/or press releases about serious cases, published decision notices, and information about the assessment process and decisions.

Score 10 for decision notices and information about assessment decisions only.

Score 5 for decision notices only.

Subtract 10 from your score if your authority has heard cases, but no information is available.

7. Is the Code of Conduct for your authority published on the website?

Score 15 for a page devoted to the Code of Conduct, including an explanation about what it is and how it works.

Score 10 if the Code is published online, but without further information.

8. Is it possible to find out how to complain about an elected member on your website?

Score 15 for a specific reference to how to complain about a member, and the ability to submit complaints online.

Score 10 for a specific reference to how to complain about a member, giving full details of how to phone or write in with a complaint.

Subtract 15 from your score if your website still gives Standards for England as the first port of call for complaints.

Subtract 5 if a web user cannot find information on how to complain by typing 'complaints' into the site's search function.

9. Is there a link to the Standards for England website?

Score 15 for yes, providing it works.

Score 10 for an explanation of Standards for England's role, but no link.

Score 1 for a link that doesn't work.

10. Does your website promote the value of high standards in public behaviour?

Score 15 for articles, statements from the leader or chief executive, or other materials linking the authority to a culture of high ethical and behavioural standards.

Score an additional 10 points for publishing other ethical governance policies or protocols online.

How did you score?

- 0 – 25** Online information about your authority’s standards is probably minimal or non-existent – but there are plenty of ways to improve. Speak to your authority’s communications team and ask them how the authority’s website can be used to get the standards message across. At the very least, start with the bare essentials: make sure that the site includes clear and easily searchable information about how to make a complaint and a clear explanation of what the standards committee does.
- 26 – 90** It sounds like your authority is starting to get the standards message across online, providing basic information. You might, however, be missing opportunities to provide more user-friendly content, such as an online complaints form or easily downloadable materials, so talk to your authority’s web team to find out how the site can be used more creatively. Remember also that a website is a promotional tool as well as an information source. There are lots of opportunities for proactive online PR, such as links to press release, articles and comment and regular updates on the standards committee’s work. And check that your web content scores on quality as well as quantity. Is the material fully up to date? Is the information easy for someone with no prior knowledge to find and understand?
- 91 – 165** Your standards committee is probably well-represented on your authority’s website and, if your score is at the higher end of this category, the information available is of a high quality and includes proactive promotion of standards issues. There’s always room for improvement, however! Make sure that you’re making use of every opportunity to promote the work of the standards committee, and make it clear that standards are key to your authority’s governance. Use your website to showcase your authority’s commitment to high ethical standards as a whole, and include positive, proactive material as well as case outcomes and committee papers. Make content interactive and engaging as possible – include links to other useful pages and offer web users a chance to give feedback.