



Standards Board – 2 February 2011

Activity Report of the Monitoring Officer

Purpose of report

This report provides a brief update on current Monitoring Officer activity and ethical matters as requested by the Board for each meeting.

Attachment(s)

1.0 Parish and Town Council Activity

- 1.1 Since the Board met on 18 October 2010, 18 enquiries have been recorded from parish and town council clerks and councillors, district councillors and the general public, seeking advice on the complaints process, personal and prejudicial interests and other code of conduct matters.
- 1.2 Changes to the town and parish council registers of interest continue as vacancies arise and are filled. There are currently 14 vacancies around the district. The majority of these are unlikely to be filled before the elections due to be held on 6 May.

2.0 Training

- 2.1 Planning has started with regard to the training of both district, town and parish councillors in standards matters, as for at least the first few months from taking office after the elections they will be subject to the current Code of Conduct and complaints process. It is proposed that joint sessions are held in late May/early June, primarily aimed at new district or town and parish councillors who will have no experience of the current code. Discussions will be held with NCALC on joint promotion of these events.
- 2.2 Further sessions on the implications of the Localism Bill will be held as required. These will probably have to be held separately for district councillors by East Northamptonshire Council (ENC) and NCALC for town and parish councillors as the solutions and implications may vary locally.

3.0 Complaints

- 3.1 Since the last meeting the complaint which was the subject of ongoing investigation at that time has been finalised. The investigation found that the Code of Conduct did not apply as the town councillor concerned was not carrying out the duties of a councillor at the time of the incident which led to the complaint. The Assessment Sub-Committee agreed with this position. As the town councillor concerned has asked for no further publicity to be given to the case their name has not been reported here.
- 3.2 The Monitoring Officer has received two further complaints since the last meeting. The first was referred for 'other action', the outcome of which will be considered shortly by the Assessment Sub-Committee. A separate Assessment Sub-Committee was convened for the second complaint against a town councillor and decided to take no further action. This action was challenged by the complainant and a Review Sub-Committee convened to reconsider the complaint. This is the first time this part of the procedure has been invoked at this Council. The results of the Review Sub-Committee will be reported verbally to the Board.

4.0 Localism Bill

4.1 The Localism Bill was published on 13 December 2010, several weeks later than anticipated. At the time of writing this report the Bill is undergoing its second reading and it is thought it will be modified considerably during the committee stage as there appear to be some ambiguities in the current drafting. The bill is very long with 405 pages, 208 clauses and 24 schedules. Its key aims are:

- strengthening local democracy
- community empowerment
- reform of the planning system
- social housing reform

4.2 The relevant parts for the Standards Board are clauses 14 to 18 and 20 which deal with the standards regime and clause 13 which deals with pre-determination. Schedule 4 and schedule 24 part 3 deal with the necessary repeals and revocations in relation to the changes in the standards arrangements

4.3 Clause 14 brings into effect schedule 4 which covers:

- a) the abolition of Standards for England
- b) the transfer of responsibility for certain actions from the standards committee to the Head of Paid Service (usually the chief executive)
- c) deletion of the specific regulations surrounding the complaints process (see clause 16)
- d) removal of the requirement of district councils to provide an assessment of complaints process for town and parish councils
- e) the applicability of the current model code of conduct once the bill is enacted.
- f) removal of the requirement for independent members on the standards committee

It is important to note however that, despite being included in most commentaries on the Localism Bill, the schedule does not however appear to remove the requirement for a district council to have a standards committee to promote and maintain high standards of conduct by members and assist members to observe the authority's Code of Conduct. The latest position will be reported verbally at the meeting.

4.4 Clause 15 introduces a new duty on all councils (including town and parish councils) to promote and maintain high standards of conduct by members and co-opted members of the authority.

4.5 Clause 16 allows a council to either revise its existing code of conduct, adopt a voluntary code of conduct to replace its existing code of conduct, or withdraw its existing code of conduct without replacing it. It also provides that if a written allegation is made to the council that a member of the authority has failed, or may have failed, to comply with its code of conduct, it must consider whether it is appropriate to investigate the allegation, and if it decides that an investigation is appropriate, the council can investigate the allegation in such manner as it thinks fit. Finally this clause allows the council to decide whether to take action in relation to the member if a breach of the council's code is found and to determine what the action should be. This means the council can create its own complaints procedure to suit its requirements.

4.6 Clause 17 makes separate provision with regard to the declaration of interests by members and allows the Secretary of State to introduce further regulations to define what should be declared and how. This may include:

- (a) specifying the financial and other interests that are to be registered in the register;
- (b) requiring any member or co-opted member of a relevant authority who has an interest of a specified kind to disclose that interest before taking part in business of the authority relating to the interest;
- (c) preventing or restricting the participation of a member or co-opted member of a relevant authority in any business of the authority to which an interest disclosed by

virtue of paragraph (b) relates;

(d) for a relevant authority to grant dispensations in specified circumstances from a prohibition imposed by virtue of paragraph (c);

(e) about the sanctions that a relevant authority may impose on a member or co-opted member for failure to comply with regulations under this section;

(f) requiring a relevant authority to make copies of the register available to the public and to inform the public that copies are available

It is probable that regulations under (f) will include a requirement to publish on the council's website as this would be consistent with the Government's transparency agenda.

The sanctions referred to in paragraph (e) will not include suspension or disqualification of the councillor.

- 4.6 Such sanctions are however available to the courts under clause 18 which creates a new offence where if, without reasonable excuse, the person—
- (a) fails to register a financial or other interest in accordance with regulations under section 17,
 - (b) fails to disclose an interest of a kind specified in such regulations in accordance with such regulations before taking part in business of the authority relating to the interest, or
 - (c) takes part in business of the authority to which an interest disclosed by virtue of such regulations relates contrary to a prohibition or restriction imposed by such regulations.

Such an offence may only be prosecuted by the DPP who must take any action within three years of the date of the possible offence. The court may impose fines or disqualify a person from being a councillor for up to five years.

- 4.7 Clause 20 covers the transitional arrangements and provides for the completion of cases with Standards for England at the point the bill is enacted. It is anticipated that these will be returned to the council concerned for completion.
- 4.8 Clause 13 covers pre-determination and provides some guidance for councils concerned that decisions may be challenged on the basis of pre-determination of one or more of the decision makers. The clause provides that a decision-maker is not to be taken to have had, or to 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 which was relevant to the decision. The intention is that the normal activities of a councillor, such as campaigning, talking with constituents, expressing views on local matters and seeking to gain support for those views, should not lead to an unjust accusation of having a closed mind on an issue that can lead to a legal challenge. In practice, the Court of Appeal has already asserted that such activities will not preclude participation in decision-making, unless the councillor is so committed that they are not even prepared to listen to the evidence,
- 4.9 Further reports will be presented to the Standards Board as greater clarity emerges on the final provisions of the Localism Bill. Because significant changes may yet be made to the bill it is not proposed to bring papers regarding any resultant options or requirements for change to the council's constitution until after the committee stage.

5.0 **Equality and Diversity Implications**

- 5.1 There are no specific equality and diversity implications arising from this report.

6.0 Legal Implications

6.1 It is clear that the council's constitution and other policies and procedures will have to be amended once the Localism Bill is finalised.

7.0 Risk Management

7.1 There are no material risks arising from this proposal for the council at this time. However any changes to the Code of Conduct for councillors or the process by which complaints against councillors are handled should be assessed before implementation for their potential impact on the council's reputation as a fair and transparent authority.

8.0 Financial Implications

8.1 It is too early to anticipate the financial implications arising from changes to the standards regime arising from the Localism Bill.

9.0 Corporate Outcomes

9.1 This report fulfils the following corporate outcomes:

- Good reputation
- High quality service delivery
- Strong community leadership

10.0 Recommendation

10.1 The Committee is recommended to

- (1) Note the contents of this report with regard to the level of current advice and complaint activity (*Reason - to monitor the workloads relating to the Standards regimen and assess that the resources are appropriate to the demand*).
- (2) Consider any views it may have with regard to the provisions of the Localism Bill as currently drafted which it wishes to bring to the attention of the wider council (*Reason – to support good governance*)

Legal	Power: Local Government Act 2000 and Local Government and Public Involvement in Health Act 2007				
	Other considerations: Localism Bill				
Background Papers:	The Localism Bill and various commentaries on it at first and second reading stages.				
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Date: 21 January 2011					
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