

STANDARDS COMMITTEE

11th DECEMBER 2007

BUSINESS REPORT – MONITORING OFFICER

RICHARD LONG, DIRECTOR OF LEGAL & DEMOCRATIC SERVICES

1. RESIGNATION: W.W. ANDERSON

- 1.1 I have recently received notification from Mr Anderson, an independent member of the Standards Committee that due to other commitments he has decided to retire from the Committee. I have written to Mr Anderson passing on the Committee's best wishes and thanking him for his service.
- 1.2 A public notice seeking a replacement has been published and the procedure to be followed will be the same as that previously adopted.

RECOMMENDATION

- 1.3 That Mr Anderson's resignation be noted.

2. LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT

- 2.1 The above Act received Royal Assent on the 30th October and covers a wide range of issues. Part 10 of the Act deals with Ethical Standards. The sections give effect to the Government's proposals for the reform of standards in local government. The proposals are aimed at devolving most decision making on the conduct regime to local authorities, with a revised, regulatory role provided for the Standards Board. In future local standards committees will make initial assessments of misconduct allegations, and for review arrangements for those assessments which lead to no action being taken. The Standards Board may suspend that role, and it may also give guidance to Standards Committees and Ethical Standards Officers. The Act also provides for the local standards committee, rather than Independent Adjudicator, to make decisions in respect of posts subject to political restrictions.
- 2.2 The provisions of the Act as they affect Middlesbrough can be summarised as follows:-

2.2.1 **Section 183: Conduct that may be covered by code**

This section amends sections 49, 50, 51 and 52 of the Local Government Act 2000 in relation to the principles that govern the conduct of members and co-opted members, the provision of the code of conduct they are required to follow and the provisions which such authorities may add to the code of conduct they adopt. The effect is that such principles and provisions may apply to a member when he or she is acting in an official capacity, but the only principles and provisions which may apply to members outside their official capacity are those which prohibit conduct that would (if engaged in) constitute a criminal offence.

2.2.2 **Section 185: Assessment of allegations**

- (a) This section inserts section 57A of the Local Government Act 2000 which provides for individual local standards committees of authorities to undertake the role currently exercised by the Standards Board for England for conducting the initial assessment of allegations of misconduct which relate to authorities' members or co-opted members. It sets out the course of action to a standards committee where such an allegation is received. The options are: to refer the allegation to the authority's monitoring officer for consideration; to refer the allegation to the Standards Board; or to take no action in respect of the complaint. It also provides that a standards committee has discretion, where the subject of the allegation is no longer a member or co-opted member of the authority in question and has moved to another relevant authority, to refer the allegation to the monitoring officer of the member's current local authority. The section requires that, if a standards committee decides to take no action over an allegation, it should write to the person who made the allegation informing them of the decision and the reasons for this. The section also makes provision for the Standards Board to issue guidance and give directions to a standards committee with respect to the exercise of these procedures.
- (b) The section also inserts section 57B of the Local Government Act 2000, to provide, where a standards committee of an authority has made a decision that no action should be taken regarding an allegation, for the person who made the allegation to be able to ask the standards committee to review its decision. The request for review must be made in writing within 30 days of the date of the notice of the original decision. Following receipt of such a request, the standards committee must undertake a new assessment of the allegation and reach a decision within three months of the date it received the request for a review of its original decision.
- (c) The section also inserts section 57C into the Local Government Act 2000 which provides that where a person makes an allegation of misconduct to a standards committee it must take reasonable steps to give a written summary of the allegation to the person who is the subject of the allegation. Where the standards committee makes a decision that no action should be taken, it must also take reasonable steps to give notice of this and the reasons for the decision to the subject of the allegation. In addition, where the standards committee receives a request to review a decision to take no action, it must take reasonable steps to give notice of this to the subject of the allegation. A power is also included for the Secretary of State to make

regulations which may prescribe circumstances in which the duty to give a summary of the allegation to the subject of it should not arise at the time the standard committee receives the allegation but at another time.

- (d) The section also inserts section 57D of the Local Government Act 2000, to enable the Standards Board to direct that a standards committee's power to undertake initial assessments of misconduct allegations should be suspended, and to direct that any allegations the standards committee receives must be referred either to the Standards Board or to a specified standards committee of another authority. The section provides a power for the Secretary of State to make regulations concerning the circumstances in which the Standards Board can exercise this power. Subsection (7) of new section 57D provides the Standards Board with a power to issue guidance in connection with section 57D or in connection with any direction under that section.
- (e) The section also inserts a new section 58 of the Local Government Act 2000 setting out the courses of action open to the Standards Board when an allegation is referred to it for consideration. The Standards Board must either refer the allegation for investigation to one of the Board's ethical standards officers, or decide that no action should be taken, or refer the matter back to the relevant local standards committee. Where it decides to take no action, it should give notice of the decision and the reasons for it to the person who made the allegation and to a person who was the subject of the allegation.

2.2.3 Section 186: Information to be provided to Standard Board by relevant authority

This section requires a relevant authority to furnish the Standards Board with periodic information on the allegations of misconduct its standards committee has received, any requests received to review its standards committee's decisions to take no action in respect of allegations, and the exercise of functions by the standards committee or the monitoring officer. The authority must comply with the request for information by such date as the Standards Board may specify.

2.2.4 Section 187: Chairman of standards committees

Section 53(4) of the Local Government Act 2000 is amended to provide that standards committees of authorities should be chaired by a person who is neither a member nor an officer of a relevant authority.

2.2.5 Section 188: Sub-committees of standards committees

This section has the effect that a standards committee of a relevant authority in England may appoint a sub-committee to undertake any of its functions, including any functions concerning parishes.

2.2.6 Section 189: Joint committees of relevant authorities in England

This section inserts section 56A into the Local Government Act 2000 to empower the Secretary of State to make regulations under which two or more relevant authorities may establish a joint committee and arrange for functions otherwise exercisable by their standards committees to be exercisable by the joint committee.

2.2.7 Section 190: Standards Board for England: functions

This section amends section 57(5) of the Local Government Act 2000 and Schedule 4 of that Act to provide that the Standards Board may issue guidance to ethical standards officers with respect to the exercise of their functions, and to enable the Board to be able to take action to facilitate the functions of standards committees or monitoring officers.

2.2.8 Section 191: Ethical standards officers: investigations and findings

This section makes amendments to sections 59 and 62 of the 2000 Act, amending the description of two of the findings which an ethical standards officer can make and providing that his access to documents will not be limited, as now, to documents relating to a relevant authority. It also extends section 63 to provide that information obtained by an ethical standards officer in the course of an investigation may be disclosed where the disclosure is made to allow the monitoring officer to carry out his duties or it is made to the Commissioner for Local Administration or to the Electoral Commission for the purpose of their functions. An order making power is also provided for the Secretary of State to allow for such disclosures to be made to other people.

2.2.9 Section 192: Ethical standards officers: reports etc

This section amends sections 64 and 65 of the Local Government Act 2000 to provide that an ethical standards officer's report on the outcome of his investigation or an interim report on his investigation can be passed to the relevant standards committee in order to assist it in carrying out its functions. It also provides a power for the Secretary of State to make regulations concerning the withdrawal of a reference by an ethical standards officer of matters which are the subject of either his report or his interim report to the Adjudication Panel.

2.2.10 Section 193: Disclosure by monitoring officers of ethical standards officers reports

This section inserts section 65A into the Local Government Act 2000 to allow a monitoring officer to inform any member or officer of an authority of the outcome of an ethical standards officer's investigation into an allegation, and also to furnish them with a copy of the report or any part of it where this will help to promote high standards of conduct by members and co-opted members of the authority.

2.2.11 Section 194: Matters referred to monitoring officers

This section amends section 66 of the Local Government Act 2000, to provide for regulations to enable a monitoring officer to refer back cases referred to him by a standards committee and set out the circumstances in which such a referral back may be made. Regulations may make provision with regard to access to and disclosure of information.

2.2.12 Section 195: References to Adjudication Panel for action in respect of misconduct

This section inserts section 66A, which allows regulations to be made in respect of the referral by standards committees of a case to the Adjudication Panel where it considers the sanction available to it would be insufficient. The Adjudication Panel's members will then decide what sanction, if any, should be imposed against the person.

2.2.13 Section 196: Consultation with ombudsmen

This section extends to standards committees the provisions in section 67 of the Local Government Act 2000 to provide that the Local Government Ombudsman may consult the standards committee (as well as the Standards Board) about a case if he believes that the complaint he is considering relates partly to a matter which may be of concern to the committee.

2.2.14 Section 197: Interim case tribunals

This section amends section 78 of the Local Government Act 2000 to provide that, where an interim case tribunal decides that a member should be suspended, the effect of the tribunal's notice is to suspend or partially suspend the member, rather than, as currently, requiring that the authority should take action to put the notice into effect. In addition, new provision is made for an appeal to the High Court against a decision by an interim case tribunal only to be possible where permission of the High Court has been given.

2.2.15 Section 198: Case tribunals: England

This section inserts sections 78A and 78B into the Local Government Act 2000 in respect of case tribunals in England. Section 78 A provides a new power for the Secretary of State to make regulations concerning the sanctions, which a case tribunal can impose. Section 78B provides that a case tribunal must give notice of its decision on a case to the Standards Board, the member who is the subject of allegation, and the person who made the allegation. The case tribunal must also publish its decision in one or more local newspapers. New provision is also made for an appeal to the High Court against a decision by a case tribunal only to be possible where the permission of the High Court has been given.

2.2.16 Section 200: Exemption from Data Protection Act 1998

This section inserts new sub-sections 31(7) and (8) of the Data Protection Act 1998 to provide that personal data processed by a monitoring officer, an ethical standards officer for the purpose of discharging any function under Part 3 of the Local Government Act 2000 are exempt from the subject information provisions of the Act to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of that function.

2.2.17 Section 202: Politically restricted posts: grant and supervision of exemptions

The Local Government and Housing Act 1989 provides that a person is disqualified from becoming a member of a local authority if he or she holds a politically restricted post. This section amends the 1989 Act so that the granting and supervision of exemptions from the political restriction will be the responsibility of the standards committee of each local authority in England, rather than that of the Independent Adjudicator. The section also provides that the Secretary of State may issue a general advice with regard to the making of decisions on political restrictions. Before giving such general advice, the Secretary of State must consult those representatives of local government he considers appropriate.

2.2.18 Section 2004: Political assistants' pay

This section provides for the Secretary of State to make an order in relation to England, which will specify the maximum pay of political assistants by reference to a point on a relevant pay scale.

3. JOINT STANDARDS COMMITTEE

- 3.1 In paragraph 2.2.6 above, reference is made to an amendment to the Local Government Act 2000, to enable a number of authorities to establish a Joint Standards Committee with other authorities.
- 3.2 I have been approached by the other monitoring officers within the Tees Valley to consider whether it would be advantageous to establish such a Joint Committee. At this stage, I would recommend that a Joint Committee is not ruled out but that a formal decision is not made until full consideration can be given to the advantages and disadvantages of such a proposal.
- 3.3 It is recommended that further discussions take place with the other authorities.

4. STANDARD BOARD BULLETIN

- 4.1 In September the Standards Board published issue 35 of the Standards Board Bulletin.
- 4.2 The main issues contained in the Bulletin which are not covered elsewhere in the Agenda are as follows:
 - (a) Lobby group and single issue campaigns: The Bulletin gives information in relation to the fact that the new 2007 Code of Conduct is less restrictive than the previous Code for members who have been elected on a specific issue, e.g. hospital closure. The Standards Board hold the view that some members who were prevented by the 2001 Code from voting on a matter will not have a prejudicial interest under the 2007 Code.

The 2007 Code requires a member to declare a personal interest in any matter that they have requested e.g. interest in the "Save St. Mary's hospital lobby group". However, members may not have a personal interest if they merely campaigned as an individual as opposed to being a member of a lobby group, in which case they cannot have a prejudicial interest. However, members should still consider the general test for personal and prejudicial interests and whether there is any other reason outside the code why they should not participate in the decision making process.

Also of particular relevance to lobbyists is the exception in the new code to having prejudicial interest in the following circumstances:-

- (i) Where the decision does not affect the members financial position or interests, or
- (ii) It does not relate to a planning or regulatory matter in which they have an interest.

- (b) Complaints: As referred to elsewhere, the Local Government and Public Involvement in Health Act makes provision for all complaints against Councillors to be referred initially to the local standards committee rather than the Nation Standards Board. The Act also makes provision for the Standards Board to take on a more strategic regulatory role. The Standards Board will provide supervision, support and guidance for authorities whilst ensuring a degree of consistency across the country.

Even under the current regime, local authorities have undertaken investigations and conducted hearings. Under the new regime all complaints will be referred to the local standards committee. The standards committee will have to decide whether to refer complaints for further action locally, whether to refer them to the Standards Board, or whether no further action should be taken. At present cases can either be rejected or referred for investigation, however, the new regime will also enable case to be resolved by alternative means such as mediation or training.

The Standards Board anticipate that a district council will receive approximately six complaints per year, of which approximately 25% will be referred for investigation.

The Standards Board considers that the new arrangements will provide standards committees with the opportunity to promote the high ethical standards within the authority. This will be achieved by developing effective procedures for managing the local system in the following ways:

- (i) Responding to and deciding complaints in the right way and on time,
- (ii) Becoming proficient in identifying what is appropriate for investigation/sanction, and what is not,
- (iii) Being proportionate in their decisions to the nature of the issue and the harm caused,
- (iv) Aiming to resolve the harm caused by non-compliance, and aiming to deter future non-compliance,
- (v) Participating fully in the reporting protocols operated by the Standards Board and sharing good practice.

The Standards Board will monitor the position by:

- (i) Ensuring its reporting systems are as simple as possible,
- (ii) Measuring outcomes as well as outputs,
- (iii) Offering support and guidance,
- (iv) Removing local powers only as a last resort,
- (v) Ensuring that the monitoring is complimentary (Standards Board wording) to, and does not duplicate, the work of other regulators.

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