

TAUNTON DEANE BOROUGH COUNCIL

STANDARDS COMMITTEE – 15 JANUARY 2008

REPORT OF DEMOCRATIC SERVICES MANAGER

Local Determination and hearing of complaints under the Code of Conduct for councillors

1. The Local Government and Public Involvement in Health Bill (snappy little title !) has received Royal Assent and is expected to come into force by April next year.
 - 1.1 The Bill includes a number of important changes in the way the current Standards regime operates.
 - 2.2 Complaints about Borough and Parish Councillors have hitherto been made directly to the Standards Board for England. The Board carry out the initial filter and decide what action should be taken. The intention of the Bill is for this procedure to change and for all complaints to be made directly to the appropriate local Standards Committee. The actual process of local determination will be defined by Regulation but as yet there has been no indication as to when these will be introduced. It is a safe bet, however, that the new regime will start in April next year so this Committee need to be ready and to have procedures and protocols in place as soon as possible.

2. Framework for undertaking the initial filter decision.

- 2.1 Once a complaint has been made, the Standards Committee will have three distinct roles:
 - Exercising the local filter
 - Reviewing the local filter if necessary (appeal)
 - Holding a hearing following an independent investigation

It is therefore necessary to give some consideration to how these roles will operate in practice.

- 2.2 We will need to establish who will take the initial filter decision, who will form a "Hearing" Panel and make a decision on referred complaints and who will handle any requests for a review of the initial filter decision.

2.3 Initial Filter.

This decision will determine whether a complaint is dismissed without investigation, whether it is investigated and determined locally by the Standards Committee or in the case of really serious allegations, referred to the Standards Board for England. The initial filter body will need to be able to meet at very short notice and to react to complaints within a short time of them being received. It is suggested that members who make this initial decision will then be “conflicted” and therefore not able to take part in any formal Hearing Panel.

2.4 Hearing Panel or Sub Committee

2.5 The Committee already have an agreed procedure for dealing with complaints that are referred to the Standards Committee to determine once an investigation has taken place. This procedure will be followed in all such cases. It is important to note that there is likely to be a greater number of complaints for the Standards Committee to hear once this new regime is in place.

2.6 There was originally some thought that members of the Committee that had sat on the initial filter panel would not be able to take part in the hearing. Having considered this further I can see no reason why this should be so. The decision to be taken by the filter panel will be around whether there is a case to answer. As the actual merits of the case will not be considered at that point there would appear to be no reason why members cannot also sit on the Hearings Panel. Wherever possible, however, different members will be asked to sit on the Hearing Panel..

2.7 Reviewing appeals against the initial filter decision that no action should be taken

2.8 For obvious reasons members who have decided upon the initial filter will not be able to take part in a review of that decision. It is suggested that this panel be formed by 3 members of the Committee, wherever possible being, at least one independent member, one councillor and where appropriate, one parish representative.

3.0 How will local filtering work ?

3.1 Complaints will be made in the first instance to the local Monitoring Officer. Presumably this will involve us in preparing some kind of local publicity and designing a standard complaints form. Care should be taken that any initial publicity is designed to point out that matters are now being dealt with locally and is not seen as an invitation for people to submit unnecessary complaints.

3.2 In the absence of anything from the Standards Board for England it might be a good idea to adapt the current “How to make a complaint” booklet and complaints form.

3.3. Once a complaint has been received, a meeting of the Filtering Panel will be called. Consideration will need to be given at this stage as to how many members should form the Panel. I would suggest that it be 3 comprising at least one independent member (one of whom should Chair the Panel), one councillor and a parish representative if the matter refers to a parish councillor. The councillor member should not be of the same political party as the councillor the subject of the complaint.

3.4. The filtering panel will decide:

- If the complaint relates to a breach of the Code of Conduct
- Whether there is prima facie evidence of a breach of the Code
- Is an investigation necessary – would it serve any useful purpose
- Is there an alternative – mediation/conciliation/brokering an apology
- Is the case suitable for local investigation

3.5 Further thought will also need to be given to such areas as whether or not the press and public should be permitted to attend, whether there is an ability to defer consideration if a parallel inquiry is taking place, voting (decisions don't have to be unanimous).

3.6 If the decision is taken not to proceed with a complaint and the Committee are asked to review that decision, then a criteria will need to be established on how such requests should be dealt with. Presumably a review will not be carried out just because a complainant has asked for it. There should be some additional information or evidence to persuade the review panel that a case needs to be looked at again.

3.7. It will also be necessary to establish a protocol for the operation of the filtering panel. In this litigious age it is essential that the correct procedure is followed or the decisions could possibly be open to judicial review. The proceedings of the meetings will, therefore, need to be formally recorded. Reasons for decisions not to proceed with a complaint should always be explained.

4.0 Training

4.1 The Standards Committee has already undergone some brief, informal training by dealing with some case studies at its last meeting. There will also be an opportunity for the whole committee to receive further training on 31 January 2008 when there will be a Standards Committee training event at County Hall.

5.0 Conclusion

5.1 In the absence of the required Regulations there can be no absolute certainty about exactly what the Standards Committee will be required to do. It is safe to assume, however, that it will be dealing with local regulation. It is essential, therefore, that we are ready to meet the challenge once the legislation is finalised.

6.0 Recommendations

- 6.1 That the Committee agree a framework for dealing with the initial filter of complaints and allegations;
- 6.2 That a procedure for local filtering be agreed (including a criteria for accepting or dismissing complaints and allegations)
- 6.3 That the necessary Panels be established for dealing with the initial filter, reviews of filter decisions and the hearing of complaints referred by the filter panel;
- 6.4 That a criteria be established for dealing with requests for a review;
- 6.5 That a media protocol be established

Greg Dyke
Democratic Services Manager