

STANDARDS COMMITTEE

Thursday, 26 January 2012

Present:
Independent
Member

Mr Ken Harrison (Vice-Chair) – in the Chair

Present

Councillors WJ Davies A Bridson
D Roberts R Wilkins
J Salter C Blakeley
G Ellis

Deputies

Councillors S Mountney (In place of C Blakeley)
T Harney (In place of P Williams)

Independent
Member
Apologies

Mr Alex Nuttall

Councillors L Rowlands
P Williams
Ms S Elliott

16 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

Councillors A Bridson and D Roberts declared a personal and prejudicial interest in exempt Item No. 5 on the agenda – Correspondence received by the Chair. (Minute No. 21 refers) This was by virtue of them being the subjects of the complaint. They indicated that they would be leaving the meeting whilst this matter was under discussion.

Councillor G Ellis declared a personal and prejudicial interest in exempt Item No. 5 on the agenda – Correspondence received by the Chair. (Minute No. 21 refers) This was by virtue of him being named in the correspondence. He indicated that he would be seeking advice with a view to leaving the meeting whilst this matter was under discussion.

17 MINUTES

RESOLVED:

That the Minutes of the meeting of the Committee held on 29 September 2012 be confirmed as a correct record.

18 IMPLICATIONS OF THE LOCALISM ACT ON THE STANDARDS REGIME - UPDATE

On the 15 November 2011, the Localism Bill received Royal Assent and became the Localism Act 2011 (“the Localism Act”). The relevant provisions relating to standards matters were set out in Chapter 7 and Schedule 4 of the Localism Act.

A report by the Director of Law, HR and Asset Management provided an update in respect of the implications of the Localism Act 2011 on the current Standards regime.

The Committee was informed that the Coalition Agreement 'Our Programme for Government' included the commitment to "abolish the Standards Board regime". The Government had stated that it considered the Standards regime, consisting of a centrally prescribed model code of conduct, standards committees with the power to suspend a Council Member and regulated by a central quango, was inconsistent with the principles of localism and that the regime could be a vehicle for vexatious or politically motivated complaints.

Appended to the Director's report at Appendix 1 was an Explanatory Note detailing the key implications of the Localism Act on the Standards Regime. It was noted that the changes introduced by the Act concerning the standards regime were expected to take effect from 1 July 2012. On the 23 December 2011 the *Local Government Lawyer* reported that, in a letter to the Association of Council Secretaries and Solicitors (ACSeS), the Department for Communities and Local Government (DCLG) had written that while the Standards Board for England would cease to regulate Member standards from the 31 January 2012, "we envisage that the remaining local elements of the current regime, including statutory standards committees with the power to suspend councillors, will be abolished on 1 July 2012".

In the same letter, the DCLG had responded to concerns expressed by ACSeS that the original proposed implementation date of 1 April 2012 for the new local government standards regime was impracticable, in part due to the timing of the local Council elections and meetings in spring. The DCLG had advised ACSeS that from 1 July onward, all local government standards matters (including the consideration and determination of outstanding complaints made during the period the Standards Board regime was operating), would become the responsibility of Councils and would be dealt with under the new arrangements imposed by the Localism Act.

The Committee noted that the DCLG's decision to delay the implementation of the new local government standards Regime until the 1 July 2012 meant that the Government had more time to prepare the outstanding regulations defining what constituted a "disclosable pecuniary interest" as required by Section 30(3) of the Localism Act. In its letter to ACSeS, the DCLG advised that it recognised that Councils would need sufficient time to "advertise for and then appoint an "independent person" and put in place arrangements for handling allegations of breaches of their code, and principal authorities will have to put in place, and agree, arrangements with parish councils for both a code and register of interest related activity".

Appendix 2 to the Director's report set out the Association of Council Secretaries and Solicitors (ACSeS) draft Code of Conduct for Elected Members ("the Member Code of Conduct") for Members' consideration. The draft code had been used by many Merseyside Authorities as the basis for a new Member code of conduct. A further meeting of the North West Branch of ACSeS was scheduled for 20 January, which was expected to be attended by the Monitoring Officer and/or the Head of Legal and Member Services. Discussions would be held concerning the implications of the Localism Act and in particular in relation to the standards regime and the issues that

required consideration. An update of the outcome of this meeting will be provided at the next meeting of the Committee.

Many Merseyside Authorities had indicated (along with the Committee) that there was merit in one single Member code of conduct being developed for Merseyside Authorities. This particular issue would be raised at the next ACSeS Branch meeting, which was attended by officers from the Merseyside Authorities. Members reaffirmed their view that the adoption of a pan Merseyside Standards regime would bring consistency of standards across the whole region.

A number of Members had expressed concern over certain Members' conduct and behaviour. Some Members had emphasised the importance of improving the standard of Members' conduct and behaviour and that all Members of the Committee had an obligation to lead by example. Given the new standards regime that had been introduced by the Localism Act, the Committee was asked to consider whether it was an opportune time to progress this issue with a view to bringing about necessary improvement in behaviour.

The Committee considered the following issues and gave consideration to what action could be taken to ensure that the Council was in the position to discharge its duties and responsibilities, arising from the Localism Act in respect of Members' standards from 1 July 2012:

- (1) The terms of reference of the future of the Council's Standards Committee;
- (2) A Members' Code of Conduct;
- (3) The role, description and recruitment process for independent persons;
- (4) The Register of Interests;
- (5) The arrangements, procedures and protocols necessary to effectively deal with alleged breaches of the Member Code of Conduct;
- (6) The arrangements and procedures to deal with dispensations; (7) Member/Co-opted Member training needs; and
- (8) A possible protocol for dealing with and making referrals to the Police in relation to alleged criminal activities/offences.

In order to progress the above issues in an appropriate manner, the Committee was invited to consider establishing a cross-party working group. Appendix 3 to the Director's report set out the draft terms of reference for a Standards Committee Working Group, which could be tasked with considering the eight issues detailed above (and any other relevant matters and issues that may arise) and developing options in relation to them for consideration by the Committee.

A number of issues had been raised in relation to the Localism Act and the interpretation of certain provisions and the powers/options available to Councils. ACSeS, on behalf of its Members, had sought legal advice from Clive Sheldon QC on the following:

- (a) The range of options open to Councils to impose sanctions for breaches of the code of conduct under the 2011 Act; and

- (b) Whether past independent Members of standards committees are eligible to assume the role of “independent person” under the Localism Act.

A summary of Counsel’s Advice was provided at Appendix 4 to the Director’s report and a full copy of Counsel’s Advice was set out thereafter.

Members discussed the report in detail noting that under the Localism Act the current independent members would not be eligible to undertake the new role of independent person after 30 June 2012 in respect of Wirral Council’s Standards complaints. It was noted that may be possible for them to act as independent persons for another Council, if a Council appointed them to do so. It was also noted that further guidance was still awaited on the independent person and that it would be different to that of the independent member under the current Standards regime.

The Committee also agreed that all Members of the Council must be trained on the new Code of Conduct and Committee Members and their deputies must receive specific training on the new Standards process and on the administration of complaints about Members.

RESOLVED: That

- (1) the Explanatory Note and Counsel’s Advice set out at Appendices 1, 2 and 4 to the report be noted;**
- (2) a Standards Committee Working Group be established in accordance with the Terms of Reference set out at Appendix 3 to this report but to also include the use and review of the existing Members’ Code of Conduct and written arrangements as the basis of any proposed changes (if required);**
- (3) the Membership of the Working Group at (2) above comprise of Councillors C Blakeley, W Davies, L Rowlands, J Salter and P Williams and Mr K Harrison; and**
- (4) the Director of Law, HR and Asset Management be requested to update the Members’ Code of Conduct in accordance with the decision at (2) above as a starting point for the development of a new framework for the Standards regime.**

19 **STANDARDS COMPLAINTS - MONITORING**

Further to Minute No. 12 of the last meeting of the Committee held on 29 September 2011 the Committee considered a report by the Director of Law, HR and Asset Management which provided Members with a summary at Appendix 1 of the complaints made against Wirral Councillors where it had been alleged that the Council Members’ Code of Conduct had been breached. Members noted that a total of five complaints were outstanding. Two Standards Panel meetings had been held on 24 January 2012 and decision notices in respect of them were being prepared.

RESOLVED:

That the updated summary of standards complaints attached at Appendix 1 to the report be noted.

20 EXEMPT INFORMATION - EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED:

That, under section 100 (A) (4) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the following item of business on the grounds that it involves the likely disclosure of exempt information as defined by paragraph 7C of Part I of Schedule 12A (as amended) (by regulation 8(6) of the Standards Committee (England) Regulations 2008) to that Act. The Public Interest test has been applied and favours exclusion.

21 CORRESPONDENCE RECEIVED BY THE CHAIR

Councillors A Bridson and D Roberts left the meeting whilst this item of business was considered. Councillor G Ellis indicated his intention to leave the meeting but before doing so sought further clarification, from the Head of Legal & Member Services, on whether his particular interest was in fact personal and prejudicial. Following some discussion Councillor G Ellis also left the meeting whilst this item of business was under discussion.

The Committee considered the letters provided by Mr M Morton; one dated 17 July and the other hand delivered to Brian Cummings (Independent Committee Member at the time) on 29 September 2011, relating to complaints made by Mr Morton against particular Council Members, the manner in which his complaints had been dealt with and what further action/steps should be taken by the Council's Standards Committee.

The Head of Legal & Member Services advised Members that there was a jurisdictional issue that needed to be considered in relation to the matters raised by Mr Morton in his letters.

The Committee was advised that all the complaints lodged by Mr Morton against the Council Members in question were considered by the Committee's Initial Assessment Panel who had subsequently referred them to Standards for England for consideration. The complaints were considered by Mr Bannister of Standards for England, who determined that no further action be taken in respect of each complaint. The notices confirming Standards for England's decision was dated 17 July 2011.

Mr Bannister, in the decision notices had commented that "it may be for the Council's Monitoring Officer and Standards Committee to examine the findings of the investigation into the charging policy when (it) concludes and then consider the role of individual members".

Mr Morton requested that the Committee resolve at its meeting that the comment made by Mr Bannister (referred to above) be "acted upon" and that "the conduct of

Councillors McLaughlin, Roberts, Bridson and Williams is considered following the completion of the Independent Review undertaken by Anna Klonowski”.

The Head of Legal & Member Services advised that all complaints alleging a potential breach of the Members’ Code of Conduct must be dealt with in accordance with the current standards regime/framework. Under this regime/framework, all such complaints must be referred to an Initial Assessment Panel who decided the course of action (which was specifically defined) to be taken. With regards Mr Morton’s complaints, the Initial Assessment Panel referred all his complaints made to Standards for England who, after consideration of all the information provided, determined that no further action be taken in relation to the complaints.

The Head of Legal & Member Services advised that under the current standards regime/framework there was no appeal or other review provision available to a complainant where Standards for England had determined that no further action be taken in relation to a particular complaint following a referral by an Initial Assessment Panel. Where a complainant was dissatisfied with a decision of Standards for England, the complainant should consider seeking redress through Judicial Review. The Committee was advised that it could not, in view of the determinations made by Standards for England, re-examine or consider again the complaints made by Mr Morton under the current standards regime/framework.

The Committee was further advised that in considering this matter, regard needed to be had to the rights and expectations of those Subject Members against whom the complaints had been made. All Members were entitled to have any complaints made against them dealt with promptly and determined properly and fairly under the Standards regime/framework.

The Committee noted that Mr Morton was not seeking a ‘discretionary review’ into the decisions made by Standards for England. However, he did request that the Committee act upon the comment made by Mr Bannister (referred to above) and also consider the conduct of the Subject Members now that the independent review by Ms Anna Klonowski had been completed.

The Committee was advised that the final report prepared by Ms Klonowski did not recommend any action/steps be taken in relation to the Subject Members or the issues and matters forming the basis of the complaints made by Mr Morton. The Committee noted that the published final report had been redacted and it could not be certain if the Subject Members had been mentioned; however it was acknowledged that no specific issues or concerns had been raised concerning the conduct/role of Members in relation to the Council’s charging policy.

The Committee further acknowledged that the manner in which Mr Morton had been treated by the Council in relation to his ‘whistleblowing’ concerns had been disgraceful and was regretted by the Council. It was noted that the Council had apologised to Mr Morton accordingly.

The Committee considered that acceding to the request made by Mr Morton would be tantamount to the re-examination and further consideration of complaints that had already been fully considered and determined by Standards for England under the standards regime/framework. The Committee did not consider that there was any

justification or basis to refer the matter back to Standards for England for further considerations.

Consequently, in summary the Committee:

- considered the representations made by Mr Morton in his letters of 17 July 2011 and hand delivered letter of 29 September 2011. Particular regard was had to the representations made by Mr Morton in relation to the role and conduct of specific Council Members;
- gave due consideration to the representations made by Mr Bannister of Standards for England in the decision notices dated 12 July 2011 relating to the complaints made by Mr Morton against four Council Members and considered all relevant factors;
- acknowledged that the manner in which Mr Morton had been treated in the past by the Council was not acceptable and noted that the Council had apologised to Mr Morton for both its conduct and failings; and
- did not consider it could now address the matters raised by Mr Morton in his letters particularly given that the complaints made against the four Council Members in question had been properly and fully considered and determined by Standards for England; and a decision made that no further action be taken in relation to these complaints.

Accordingly, after careful consideration of this matter the Committee

RESOLVED (unanimously): That

- (1) it would not act upon the comments of Mr Bannister and would not consider any further the conduct of the four Council Members in question, following the completion of the independent review by Ms Anna Klonowski; and**
- (2) the Head of Legal & Member Services be instructed to write to Mr Morton to convey its decision on this matter, as soon as possible.**