

INDEPENDENT MEMBERS' FORUM

Berkshire, Oxfordshire and Wiltshire Standards Committees

Notes of a meeting of the Independent Member's Forum held at the Professional Development Centre, Shute End, Wokingham, Berkshire on Friday 19 October 2007.

PRESENT:

Gordon Anderson	Independent Member	Bracknell Forest
Michael Field	Independent Member	Slough
Paul Lipscomb	Independent Member	Slough
John Bingham	Independent Member	West Berkshire
James Rees	Independent Member	West Berkshire
Alison Mihail	Independent Member	Windsor and Maidenhead
Roger Sparrow	Independent Member	Windsor and Maidenhead
David Comben	Independent Member	Wokingham
David Soane	Independent Member	Wokingham
Colin Lawley	Deputy Monitoring Officer	Wokingham
Kevin Jacob	Democratic Services	Wokingham
Christopher Turner	Independent Member	Oxford City
Malcolm Butler	Independent Member	South Oxfordshire
Sylvia West	Independent Member	South Oxfordshire
Peter Cleasby	Independent Member	Thames Valley Police
Bob Philpott	Independent Member	North Wiltshire
James Carine	Independent Member	North Wiltshire/Wilts Fire
Rodney Job	Independent Member	Salisbury
Trevor Davies	Independent Member	Swindon
Keith Shipman	Independent Member	Wiltshire County
Catherine O'Sullivan	Independent Member	Wiltshire County
John Adams	Independent Member	Wiltshire Police
John Williams	Policy Advisor	Standards Board for England

1. **Welcome**

David Comben, Independent Chairman of the Wokingham Borough Council Standards Committee, welcomed participants to the meeting.

2. **Apologies for Absence**

Apologies for absence were received from:

Name	Position	Authority
Albert Gregory	Independent Member	Royal Berks Fire
Fred Ashmore	Independent Member	Slough
Henna Khan	Independent Member	Slough
Steven Quayle	Monitoring Officer	Slough
Charles Elly	Independent Member	Windsor and Maidenhead
Anita Grosz	Independent Member	Wokingham
Susanne Nelson-Wehrmeyer	Monitoring Officer	Wokingham
Douglas Frewer	Independent Member	Cherwell
Sadie Reynolds	Independent Member	Cherwell
John Lay	Independent Member	Oxford City
Jeremy Thomas	Independent Member	Oxford City
Peter Clark	Monitoring Officer	Oxfordshire County
Margaret Reed	Monitoring Officer	South Oxfordshire
Stuart Harrison	Independent Member	West Oxfordshire

Name	Position	Authority
Margaret Thompson	Independent Member	West Oxfordshire
Gordon Halliday	Independent Member	West Oxfordshire
Keith Butler	Deputy MO	West Oxfordshire
Paul Thomas	Solicitor	Thames Valley Police
D Jones	Independent Member	Thames Valley Police
Alan Savill	Independent Member	Kennet
Peter McGuigan	Independent Member	Wiltshire County
Paul Lefever	Independent Member	Wiltshire County
Lynne Liptrot	Independent Member	Wiltshire County
Isabel McCord	Independent Member	Wiltshire County
Keith Strickland	Monitoring Officer	Wiltshire Fire
Ron Flux	Business Manager	Wiltshire Police
Anthony Hadfield	Independent Member	Wiltshire Police

3. Notes of the Previous Meeting

The Forum received the notes of the previous meeting held on 20 April 2007.

4. National Co-ordinator's Forum: 30 July 2007

Trevor Davies from Swindon Borough Council introduced the notes from the National Co-ordinators meeting held on the 30 July and presented a paper that he had written summarising the main points of that meeting from his perspective. These papers had been included within the Agenda.

Key issues were:

- Whether standards committee chairman needed to be legally qualified – the consensus being that this was not required;
- The need for Parish Council to receive more education and training;
- The desirability of promoting the role of Standards Committees via the press to help with recruitment and the presentation of a balanced view of code of conduct issues;
- The feasibility of joint committees in order to manage the local filtering process;
- Processes for local filtering;
- Whether the maximum sanction of standards committees should be increased from the current three month disqualification – the consensus being that it should be;
- That independent Member forums continued to be preferred rather than regional forums open to all standards committee members;
- increases in work load arising from local filtering in the absence of resources;

Some Members of the Forum commented that given the generally small size of standards committees, implementing all the stages of the local hearings process would present difficulties that might necessitate increased number of members or joint working.

Members of the Forum strongly supported the principle that a chairman of a standards committee must be an independent members and some members felt that it important for independent members not to be politically active at all.

Members thanked Mr Davies for representing the interest of the Forum.

5. Presentation on the Local Filter by John Williams, Policy Advisor at the Standards Board for England

The Forum received a presentation on the Local Filter from John Williams, Policy Advisor for the Standards Board for England. A copy of his presentation is attached to these notes (page 5).

A summary of the main points discussed by the Forum and John Williams during questioning and general discussion is set out below:

- Members of the Forum felt that it was appropriate for local Standards Committees to decide upon assessment and filtering criteria locally, but that there would be a need for criteria to be consistently applied by Standards Committees;
- That in order to maintain independence, a separate panel of Standard Committee members would be required to sit on the initial consideration of a complaint and a separate panel consider any appeal against a decision to take no action. Members of the Forum expressed mixed views on whether a member involved in a decision to refer to the monitoring officer would be conflicted out from the consideration of any subsequent investigation;
- Members of the Forum expressed concern that applying the filtering process at the local level would inevitably generate additional bureaucracy and extra costs that would have to be met by the local Council Tax payer;
- Members of the Forum felt that authorities should be required to note annual reports from Standards Committees rather than approve them;
- In response to a number of questions relating to the monitoring of the local filter process, John Williams commented that the Standards Board would be operating a light touch approach, but would be checking quarterly returns and sampling a proportion of annual reports. In the event of problems every effort would be made to support the Council concerned to improve its performance, but that ultimately the Standards Board could remove local delegation for the filter;
- John Williams commented that it was recognised by the Standards Board that the local filter process would be challenging for authorities, perhaps particularly so in the case of single purpose authorities such as fire or police authorities. Joint committees between such authorities might be an effective solution and he gave an example of joint working within Buckinghamshire;
- Formal arrangements will be needed to specify how a complaint would be handled in terms of the different stages of the filter;
- John Williams commented that some innovative approaches had been trialled in considering complaints as part of the piloting process, given the logistical problems of arranging physical meetings. These include the use of virtual meetings. It was not yet clear whether the legislation before parliament would allow for this type of approach or whether the existing rules around access to information and publication of Agendas would continue to have to be applied. He felt that the decision on whether to investigate a complaint against a Councillor should be made in private. A key principle was that 'justice delayed was justice denied' and therefore hearings virtual or otherwise should be held as quickly as possible;
- Members of the Forum expressed concern over the cost implications of local investigations. However, it was noted that the financial cost of conduct issues going wrong within local authorities was also very high, notwithstanding the lasting damage to the reputation of local government. Therefore investment in standards regimes should be seen to represent value for money;
- A number of Forum Members commented that given the size of their present Standards Committee they would need to consider enlargement or joint working in order to administer local filtering. Various ways of recruiting independent members were discussed including advertisement and it was noted that a number of independent members sat on more than one Standards Committee;

- Members of the Forum felt that the sanctions available to Standards Committees should be increased. It was noted that local standards committees would have power to refer matters directly to the Adjudication Panel for England which would have a full suite of powers up to disqualification of five years, but that this would have to be at the point of the standards committee considering the complaint initially;
- It was clarified that a complainant would have 30 days in which to lodge an appeal against a decision to take no action. Some Members felt that if a standards committee did not consider a complaint or appeal in a timely way, the matter should be referred to the Standards Board, but the alternative view was also suggested that this worked both ways in that it might be used a way of avoiding making a decision on difficult cases;
- Procedures for lodging and raising complaints against Councillors on the basis of breaches of the Code needed to be considered and integrated with other complaints procedure within Councils as it was often the case that a complaint against a Councillor would also touch on wider issues. John Williams commented that the Standards Board for England was in discussion with the Local Government Ombudsman over this issue.
- With regard to the new Code, some Members of the Forum expressed concern that the outcome of civil cases involving Councillors did not fall within the Code.
- With regard to consultation in general, some Forum Members felt that when they had expressed views those opinions had not been seen to have been taken into account by the Standards Board. John Williams commented that it was important to take into account that the Standards Board was one step removed from the Department for Communities and Local Government and that often they were only given a relatively short period in which to make representations.

Following the discussion, Members of the Forum joined in their thanks to Mr Williams for what was considered to be a very insightful and useful presentation and discussion.

6. **Open Forum**

Members raised the following matters:

(a) Officer Attendance

Members of the Forum discussed the attendance of monitoring and other officers at meetings of the Forum and wished to make clear that such officers were very welcome to attend and made a valuable contribution to proceedings.

Colin Lawley, the Deputy Monitoring of Wokingham Borough Council stated that he very much endorsed this and had personally found the meeting very informative and useful.

(b) Resources

The Forum briefly discussed resources and the increase in local standards committee activity as a result of the local filter. John Williams commented that a key issue was to prevent breaches of the Code in the first place before they become a resource issue.

7. **Date and Venue for the next meeting.**

No final decision was made, although it was felt that a date towards the end of February or beginning of March would be the most suitable, depending on the publication of guidance on the local filtering process.

**Berkshire, Oxfordshire and Wiltshire Forum for
Independent Members of Standards Committees**

Friday 19 October 2007

The ethical framework for local government

It is the intention that ethical standards should be handled locally

When current ethical standards regime and mandatory code was introduced

- All complaints made to Standards Board for England
- All investigated by Standards Board for England
- Those requiring hearings all went to Adjudication Panel for England

Then local determination was introduced so that hearings of many cases went to local standards committees

Then local investigations so that now over 50% of cases are investigated locally.

The local filter is the last part of the jigsaw, returning the management of complaints to the local authority where it belongs.

The Local Filter

From next April complaints will be made to a local authority who will decide:

- a) to refer to its monitoring officer
- b) to refer to Standards Board for England
- c) to take no action

If c) then complainant may appeal within 30 days and standards committees must reconsider and may make then decide to

- a) to refer to its monitoring officer
- b) to refer to Standards Board for England
- c) to take no action

If it decides again no action there is no further appeal.

That is the local filter, or assessment, and the biggest change we are expecting.

Local Filter Pilots

- The Standards Board for England has just run pilots with nearly 40 standards committees, with a wide geographical spread and range of authorities including the Greater London Authority, county councils, metropolitan borough councils, unitary councils and district councils, fire and national park authorities
- Locally, Swindon and Kennet took part
- Each pilot committee worked through an exercise dealing with the same 10 cases. These were real allegations which had been made to the Standards Board for England in the past, but anonymised
- Some councils ran out of time to deal with all cases. But average results can be compared to the Standards Board for England's decisions.
- Standards Board for England referred 3 out of the 10 cases. Pilot Committees referred 6 out of the 10 (but some of these were for other action than investigation)

- Practically all committees did refer the ones that Standards Board for England had referred.
- Those that were referred were mainly referred to the monitoring officer, not to the Standards Board for England
- One of these scenarios had resulted in 1 year disqualification (Adjudication Panel for England) but 40% of councils referred it to their own standards committee and 56% to the Standards Board for England.

Criteria for Referral

The pilot committees were not asked to use the Standards Board's own referral criteria, but were provided with a flowchart illustrating the key stages of the process.

Focus on two questions:

Does this allegation disclose a potential breach of the Code of Conduct?

If so, should anything be done about it?

Standards Board for England criteria are published on our web site:

- *It is serious enough, if proven to, to justify the range of sanctions available to the Adjudication Panel for England or local standards committees*
- *It is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the authority and there are no other avenues left to deal with it, short of investigation*
- *In considering this, we will take into account the time that has passed since the alleged conduct occurred*

The Standards Board for England does not refer cases if

- *We believe it to be malicious, relatively minor or tit-for-tat*
- *The same, or substantially similar, complaint has already been the subject of an investigation or inquiry and there is nothing further to be gained by seeking the sanctions available to the Adjudication Panel for England or the local standards committees*
- *The complaint concerns acts carried out in the member's private life, when they are not carrying out the work of the authority or have not misused their position as a member*
- *It appears that the complaint is really about dissatisfaction with a council decision*
- *There is not enough information currently available to justify a decision to refer the matter for investigation*
- *Except in the most serious of cases, conduct that would not be considered to be a breach of the revised Code of Conduct, which authorities are able to adopt from May 2007 and which will become mandatory in October 2007*

Standards committees will have to develop their own criteria for what to refer, bearing in mind that they may refer to their monitoring officer for action other than investigation e.g., mediation, training etc. The Standards Board for England is currently considering what guidance to give in relation to this

No Action and Appeals

- If the standards committee makes a decision to take no action on a complaint, the complainant can appeal within 30 days.
- The appeal is a reconsideration of same issues, and a decision must be made within 3 months.
- The same range of options is open to the standards committee but if it again decides to take no action, then there is no further appeal
- Standards committees will have to develop their own procedures for dealing with original allegations and appeals.

- The pilot committees had two appeals to deal with. They were more inclined to overturn an earlier decision not to refer a matter than the Standards Board was.

Implications of Local Filter – Pilot Committee Recommendations

Pilot committee suggestions about the new arrangements were varied, but the most consistent comments were

- Increased use of sub-committees
- a pool of members to sit on sub-committees and joint arrangements
- use of joint committees

Timescales

Standards committees also need to consider timescales for dealing with complaints.

Justice delayed is justice denied

Delay in dealing with complaints likely to attract more criticism than anything else standards committees do

Criteria for Referral to the Standards Board for England

Standards committees also need criteria for what to refer to Standards Board for England

Standards Board for England current criteria for referring cases to be investigated locally are:

Local Referral Criteria approved by the Standards Board for England

The presumption is that complaints about breaches of the code of conduct by members will be investigated locally, unless there is a particular reason to retain them for investigation by an ethical standards officer.

Ethical standards officers take account of the following criteria in determining whether a matter should be referred back for investigation:

1. *Whether the allegation will require evidence beyond that available from documents of the local authority, its Members or members of the staff*
2. *Whether the allegation, if proved, would undoubtedly warrant sanctions greater than those available to local standards committees.*
3. *Whether the allegation raises significant and/or unresolved legal issues*

The ethical standards officers will also have to evaluate whether the local circumstances would provide for a fair investigation and one that would have the appearance of being fair. Matters to be considered in making this assessment would include:

1. *the status of the member (e.g. is the member or complainant a group leader or a member of the authority's cabinet);*
2. *whether there is a potential conflict of interest of the MO and are there alternative arrangements in place to address the conflict, the focus being methods of managing conflict by delegation, outsourcing or reciprocal arrangements;*
3. *whether there is substantial governance "dysfunction" within the principal authority;*
4. *Whether there is an allegation of long-term or systemic member/officer bullying;*
5. *whether there are any exceptional local resource implications of referring the matter back for local investigation.*

Summary – what Standards committees need to be thinking about now

How you will deal with complaints

- whole committee
- sub-committee
- joint committee
- timescales
- appeals

Criteria/policies to inform your decisions

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- Refer/dismiss
- Refer to monitoring officer for investigation or other action
- Refer to Standards Board for England

Will you use joint committees? If so how?

- consideration of complaints only
- appeals only
- hearings only
- whole process

Joint Committees

Substantial interest throughout local government, for example in Buckinghamshire – Pathfinder

Attractive for single-purpose authorities such as police and fire

Awaiting regulations: the Standards Board has called for maximum flexibility

Monitoring and Audit

The Standards Board will become a light-touch strategic regulator

We are developing an online system for authorities to make a quarterly return to the Standards Board.

For many authorities, there will be a simple nil return if nothing happened that quarter. Otherwise, we expect the system to double as the authorities' own tracking system

The standards committee will make an annual report to the Standards Board

Where a standards committee is underperforming, the Standards Board will provide support and encouragement. Ultimately, the Board is empowered to claw back the local assessment.

Parliamentary Timetable

The Bill is expected to complete all its stages and gain royal assent in the autumn before the end of this session of parliament.

Then we will need regulations and DCLG expect to issue consultation in October ending in December 2007

New regulations should come into force February to March 2008

Current start date for local assessment is April.

Regulations should cover (among other things)

- operation of local assessment
- joint working arrangements
- increased power of sanction for local standards committees
- powers for local standards committees to refer matters directly to the Adjudication Panel for England
- Monitoring and audit of standards committees' performance by the Standards Board for England

The Standards Board for England will produce guidance as soon as possible after regulations.

John Williams
Policy Adviser
Standards Board for England