

PROBLEMATIC PARISHES**REPORT TO: Board Meeting 8 December 2004****ISSUE**

1. To inform the Board on some issues being looked at in relation to supporting particular parishes and the parish sector more generally and to invite Board views.

RECOMMENDATION

2. **That the Board note the issues raised and considers how it wishes to take matters forward. In particular, that they agree that we pursue the options set out in paragraph 44.**

CONSIDERATION

3. Over half of the allegations received by the Board relate to parish councillors. This is of course not surprising given that they constitute some 90% of our constituency.
4. Some external views have been expressed (notably in the media) that the Board has been bogged down by trivia (often equated to parish matters). In fact many of the parish issues raised come from the public rather than from fellow councillors and are of a serious nature (for example bullying, wilful failures to declare interests or allegations of fraud). In fact, we tend to refer a greater proportion of parish cases in relation to the number we receive. This highlights the Board's concern that something needs to be done about certain types of behaviour at parish level and is a refutation of the argument that parish equals trivia. That said, the Board does need to demonstrate that parish matters are important and it is concentrating on serious concerns and making an improvement in behaviour at that most local level.
5. Whilst some of the parish cases raise no more significant issues than those at principal authority level, there are three reasons why the Board needs to have a distinct approach to certain parish issues.
6. The first is a pragmatic reason. Given the number of cases they represent within the Board, having an effect on preventing misconduct at a parish level could have a disproportionate effect on our caseload.
7. The second issue relates to the nature of some of the parish complaints. Whilst it is not unique to the parish sector, the pattern of complaints we have received so far tends to indicate that we are more likely to get multiple complaints from parishes than from other types of authorities. Such complaints tend to highlight as much a local democratic failure as individual misconduct and, if the Board wishes to be seen to be raising standards and local governance generally rather than merely being an essentially disciplinary body it needs to find ways both of dealing with those authorities once complaints have been made and, perhaps, more importantly, identifying problems beforehand so that it does not reach the stage of descending into allegations.

8. The third issue which is significant is the relative lack of support (in particular financial) there is for improving parishes. Whilst principal authorities have access to funding streams for capacity building and leadership development as well as peer support and inspection, little of this support is replicated at a parish level. Government sees parishes as a key vehicle for developing local democracy. The Quality Parish scheme in particular is seen as a way of encouraging devolution of services and, in the longer term, the Government's agenda for developing more neighbourhood-based decision-making is likely to see increased emphasis on parishes. The Standards Board for England has, however, been seen by the parish sector as the only regulator to take them seriously. A number of allegations also come to us because there is no other perceived remedy to sort out general issues of governance or poor decision-making at parish level. The Audit Commission does have a remit over parishes but has not concentrated resources on working with them and the IDeA likewise sees itself as having little interest in the parish sector. The Ombudsman of course has no jurisdiction over parishes.
9. It should of course be borne in mind that the term 'parish council' (or 'town and parish council') is a very broad term and this is the most diverse of the tiers ranging from very small hamlets with minimal budgets through to major population centres. More than other sectors therefore a 'one size fits all' approach is even less appropriate and, whilst many parishes are keen to embrace greater responsibilities and powers many others do not have the capacity to take on change. In considering issues, the Board should therefore bear in mind whether any particular measure is appropriate for the sector as a whole or in fact only appropriate to those parishes, for example, who wish to move towards quality status.
10. The Board's officials have a quarterly roundtable meeting with national parish representatives. The bodies represented are NALC (which has some 80% of parishes within membership), the Society of Local Council Clerks (which represents 4,000 clerks in England and Wales, including all the medium and large councils and all those deemed more active) and the Association of Larger Local Councils (who represent the larger, predominantly town, councils who saw themselves as having a distinct identity and needs). In addition the Board has also of course worked closely with county associations and individual county secretaries.
11. The 2000 Act also gives monitoring officers and standards committees specific responsibilities with regard to parishes and the ethical framework. Any work the Board does with parishes can therefore draw on the work of all the above stakeholders.
12. In looking at the issues I want to address first of all councils that we know to be problematic and then more generally support work we can do to build capacity.

Problematic parishes

13. There are a small number of parishes that we know have serious problems in the way that they work because of the number of complaints that we receive about them. There seem to be a number of characteristics within these authorities which give rise to the complaints and our experience has shown that investigation and sanctions against individuals may not resolve the problems. Equally many of the allegations tend to fall below our threshold (although we may end up investigating them either because they are a way of

getting into the council to address the issue or because the ESO is required to consider further matters under their s59 duty). The following characteristics are a personal impression and have not been thoroughly tested. However, characteristics may include the following.

Factionalism

14. The Board will be familiar with a number of cases where the authority has basically split into two warring camps. Causes behind such factionalism can be essentially political (either party political or otherwise). However, that political factionalism which goes beyond mere healthy disagreement can happen at all tiers. The particular parish dimension is often where it is either to do with disagreement over a particular controversial decision (one example being the decision whether to allow parking on the village green which has split one community) or merely a clash of two or more personalities. In these cases the allegations tend to be trivial, tit for tat and often seeking to reopen a decision rather than allegations of serious misconduct. Investigations can often exacerbate issues and it is usually a case of a plague on both your houses. The investigation process can actually prevent the council from moving on as they continue to make additional allegations whilst the matter is ongoing, thereby prolonging the investigation. On the other hand, non-referral often means the underlying issues are not addressed and the council is likely to reappear on our books. So some investigation may be necessary if painful to draw a line under matters and help the authority move on subsequently.

Dominant/destructive personality

15. This factionalism can be taken a step further where there are one or two members of the parish council who are determined to damage the reputation of the rest of the council. This can sometimes happen because they are new and think the 'old' council is complacent or corrupt and needs shaking up. It can also happen where these people want to seize control of the parish for a variety of other reasons. Again this is characterised by multiple allegations, often emanating from the same source and most, if not all, of which are minor, technical or indeed appear, upon investigation, to be fabricated. Such cases may often also give rise to allegations of bullying and intimidation of the clerk and others. These are also often the cases which cause most distress locally and where the 'new' framework is seen as having encouraged mischief making and disrupted a previously well run authority (although that is not of course always the case – we have merely brought matters to a head). In many of these cases, investigation can work (although it is resource-intensive and frustrating for all involved) either because it can seek to disprove and therefore exonerate the 'innocent parties' or, in more extreme cases, because ESOs can use their duty to extend the investigation to the original source of the complaint on a disrepute charge and seek to remove that person from the authority. In these cases, local opinion is that the council needs to have that individual removed to move on. However, upon investigation some of these cases merely reveal a 'difficult' member who is disruptive and greatly disliked but whose behaviour is barely, if at all, over the line.

Change of control

16. One factor peculiar to parishes does seem to be that change of control seems to have a more disruptive effect on parishes than other tiers. This can be particularly the case where a political party takes control from a traditionally 'independent' council. This can lead to some of the issues under the above

two headings but in these cases it is often the clerk who has particular difficulties adapting to newer working practices because they have been or are perceived to have been very cosy with the previous council.

Lack of training/professionalism

17. Leading on from this, many of the issues thrown up come back to lack of training and/or professionalism, particularly of the clerk. In some parishes the clerk has been appointed as a 'friend' of the councillors rather than on merit and this leads to difficulties when there is a change of control. In one case I have had drawn to my attention, the clerk is alleged to earn in the region of £40k yet the post was not advertised and there is no job description or competency framework. As the district CEO pointed out any member of the staff of the district on comparable pay would have had rigorous assessment, and ongoing appraisal and development. Where problems do arise these clerks often are out of their depth and cannot respond adequately to the issues raised.

Lack of procedures/skills

18. Another key dimension is lack of procedures (for example no standing orders) or lack of chairing skills. I have heard it said 'we don't need procedures here because we're all gentlemen' or 'he's chair because it was his turn'. Again, when problems do arise these councils are poorly placed to respond and they are unwilling to see they have problems or training needs preferring instead to blame disruptive elements. In both of these scenarios, whilst investigation can deal with individual problems, there is an endemic issue which is likely to continue if not addressed.

Bullying of clerks

19. This is not so much a symptom but often a result from any of the above factors. The parish clerk is often in a particularly vulnerable and isolated position. In many cases, where there is a bullying member for one of the reasons set out above, they have been allowed to go unchecked. Many clerks, because of the often-voluntary nature of their role, prefer to walk away rather than have to undergo the processes involved in getting a member removed. This merely leaves the problem for the next incumbent and is a difficult circle to break.

Remedies

20. How we can address these concerns should be approached from two angles: how we resolve issues where there are already concerns known to us; and how we can be proactive to resolve underlying issues before they break down and become allegations.

21. In considering options, it should be borne in mind that addressing these concerns is an issue for all the stakeholders listed in paras 8-11. However, one of the issues the Board faces is identifying 'problem' authorities as we are largely driven by allegation-led information and have little specific locus to intervene directly in an authority except where an investigation is already ongoing. Even then, the breadth of our involvement is fairly narrow.

Parishes with existing cases

22. Where there are ongoing investigations, the potential remedies tend to be limited until such time as the investigations are finished as there would be a risk of pre-empting any decisions or disrupting the investigation. The investigative route can clearly be effective where there are particular individuals who need to be dealt with or where there is systemic bullying and we have had positive results in dealing with those factors.
23. However, the period of an investigation will always be a stressful time for an authority and does not allow them to move on until the investigation is over. I have had the issue raised with me that clerks in particular need support in keeping the authority running whilst there is the poisonous atmosphere still around or whilst the bully is still attending council. At their recent annual conference, SLCC said that they were keen to develop a mentoring system for clerks. This was predominantly meant to help new clerks gain experience about how to do the job. However, in my presentation to the conference, I said that such a scheme would interest the Board if it could be developed also to mentor those clerks who were in a vulnerable position in a difficult authority as one of the most common complaints I have heard in such circumstances is that the clerk feels isolated and unsupported. SLCC were keen to explore this idea. Funding for such a scheme would of course be an issue (but see section on funding below).
24. There is a similar issue around supporting councillors at such times, particularly where the authority is split and is failing to deliver for its community. These authorities can be seen as analogous to those poor or weak principal authorities where serious corporate governance issues have been identified. There is a need for them to be turned around but before this is done they need to recognise their faults. Again, the investigative process can help deal with the symptoms and recommend courses of action. For principal authorities in such a situation, however, turnaround often begins when a politician from another authority is able to come in and hold a mirror up to the authority. Such peer support has been effective but does not exist for parish councils. I would like to explore with NALC and IDeA whether such a network could be developed although again funding is an issue.
25. The new direction-making power for ESOs in the s66 regulations could also be a useful tool. This is the subject of a separate Board paper but, in the context of this discussion, it could be used here both to deal with systemic failures (for example a direction to adopt certain procedures) and interpersonal failures (a direction to seek conciliation between parties). Whilst this is a direction to the MO rather than to the council and we are still exploring its scope it has been widely welcomed by MOs who oversee these parishes. For example, it has been said to me that a district has been telling one council for years to adopt proper standing orders but it is being ignored. If they could go back with a stick to say the Standards Board is ordering this to happen, it would be a powerful inducement.
26. However, if we do make such directions we need to be able to give proper advice about implementation. It is no good, for example, us telling an authority to adopt a proper member-officer protocol if we do not ourselves have in mind what a good protocol is. Our research will seek to develop some of this best practice over time but we should, as a case of urgency, seek to review some of the existing local arrangements as 'off the peg' solutions. I am again aware of one district which is developing model standing orders for its

parishes and NALC also have such materials. We may therefore as a short-term measure want to collect and evaluate some of this material until such time as we have done more rigorous research so that we can advise authorities who approach us for help.

27. There is a similar issue around any direction to seek conciliation or mediation. We are likely to be asked for recommendations on an appropriate process and cost issues will be a factor. I am aware that a couple of county associations, such as Hampshire, have been developing mediation processes for the parish sector. We may wish to work with NALC to develop some pilots, although again cost is clearly a factor.
28. We have also built into the work programme an evaluation of the effectiveness of the direction-making power to see whether it has led to any real improvement down the line in conduct in these types of parishes. Timing of this would obviously depend upon the number of directions issued.

Non-referred cases

29. The Board has always had particular concern about those allegations which we do not deem merit investigation at a cost to the public purse but nevertheless highlight potential failings and patterns of unacceptable behaviour at a local level. This is an area we need to explore further. One approach could be to refer such matters to other bodies locally, not for investigation but for consideration for general issues. The Board has a duty to consider whether or not to investigate an allegation and we have received legal advice that we cannot seek alternative remedies in lieu of investigation. However, once the Board has discharged that duty and decided not to investigate, the Board could then consider, under its more general duty to promote high standards, whether the matters should nevertheless be drawn to somebody's attention. For example, we could express our concern that a series of allegations, whilst of themselves not meriting investigation, points to a wider systemic failure at local level and invite, for example, the local standards committee or county association to consider what support the council might need to deal with the issues raised. In effect, we would be sending a warning signal locally that the Board had concerns about the direction in which the authority was heading.
30. Such an approach could have difficulties in practice. Many of these councils do not wish to cooperate with outside bodies and there would be resource implications at a local level. However, this could be an option we could explore in consultation with outside bodies and as part of a package of measures about how best to support such authorities.

Preventing allegations

31. The third area of concern is how we can seek to prevent such allegations arising in the first place and how we can identify problems and build better systems locally. Clearly, the investigative process can again itself work here. Where a member has already been disciplined that can act as a powerful deterrent to others and can start to improve behaviour by demonstrating serious misconduct will not be tolerated. However, that inevitably depends on there having been a significant case locally. If we are to be more systematic we need to develop proper tools of wide application.

32. Again, there is plenty of support for principal authorities and the diagnostic tools we are developing with the Audit Commission and IDeA are both principal authority focussed. The CPA modifications will also provide a valuable incentive but again are principal authority focussed although they do make reference to building successful relations with parishes.
33. We have spoken with both the Audit Commission and IDeA about further developing the diagnostics so that parishes can use them. Both bodies are receptive to doing this although there will clearly be funding issues (for IDeA in particular) and our present focus is to develop the tools for the principal authorities first.
34. Quality Status could be a useful lever for helping to raise standards. The scheme at present is very light on conduct matters although it does address broader governance issues and issues of democratic legitimacy. The very act of applying for quality status is a signal that you take these matters seriously and districts could be encouraged to approach their councils about moving towards quality status, tied in to greater devolution of services. We may wish to discuss with NALC how we can work to encourage development and uptake of quality status.
35. The Board has identified poor chairing skills at the heart of some complaints. We are working with NALC and the Countryside Agency to develop a module for parish councils on chairing skills, which is being funded by the Countryside Agency. We shall continue to keep the Board informed on progress. We shall also seek ways of working more closely with bodies such as SLCC and NALC to see how we can support better training for clerks.
36. Standards committees have a remit to work with their parishes to promote higher standards. The research into monitoring officers produced by Teesside University highlighted that it was not so much the number of parishes as the one or two poor performers which absorbed monitoring officer resource. This has been echoed in my discussions with some independent chairs and district officers who say they know where their problem authorities are or are going to be. Independent members and parish standards committee reps are often more trusted than district officers. We could therefore encourage these people to be more proactive in seeking to give support to councils where there might be problems. Independent members are often happy to give their time voluntarily and this could have a resources saving in the long run if it prevents issues escalating. We should therefore work to find some examples of proactive working we could seek to promote.

Funding

37. As mentioned above, resources for parish development are extremely scarce notwithstanding the Government's stated aim of increasing the professionalism and capacity of parishes. The Board's scope for developing and funding projects is extremely limited and bodies such as NALC do not have funding or capacity to develop schemes.
38. I have had a meeting with the official at ODPM in charge of administering the Capacity Building Fund. He has admitted that parish schemes could be eligible for Capacity Building but said they had never considered it being used in that way and he suspected the LGA would be resistant (the Fund projects have to be jointly approved by ODPM/LGA).

39. Separately, David has spoken to Sir Brian Briscoe who recognised that strengthening the parish sector would clearly have relevance to strengthening local democracy generally and could help ease some of the burden from district monitoring officers.
40. David and I have also met with NALC's John Findlay who would be keen to pursue some of these issues. We have suggested that he may wish to develop some bids from the parish sector which the Board could lend support to. The fund's aims are to enhance and develop councils' confidence, leadership and skills to drive forward improvement as well as developing their capacity to learn, innovate and share knowledge and expertise about what works and how. Areas which we might wish to explore could include seeking to develop the IDeA toolkit for parishes; county-based approaches to conflict resolution; promoting better working between standards committees and parish councils; and developing pilots for mentoring or peer review. We shall continue to discuss these issues with NALC.
41. David and I are also due to meet with the ODPM's Regional Directors for Local Government Practice in January and we can use that opportunity to put parishes onto their horizon.
42. However, there is a need to continue to raise concerns about central support for parishes. The Board may wish to consider how far it wants to lobby Government on this issue.
43. There is also a perception that some of the more problematic parishes are those who are outside the NALC/County Association framework. Consideration is needed about how to engage with these and how far we should be putting pressure on them to come within that framework, given that it is a subscription-led framework.

Summary

44. To summarise, there are a number of possible measures we can take above and beyond the investigations route, although none of them are instant remedies and funding remains a key concern. Some of these measures are:
 - a) continue to champion the need for greater support for parishes at Government level;
 - b) seek with NALC how to fund some pilot work both to support councils already in trouble and to develop early warning and prevention systems;
 - c) explore how ESOs can make effective use of direction-making powers;
 - d) explore on a short term existing good practice around protocols etc as well as through longer-term research;
 - e) explore our options for raising issues locally on non-referred cases;
 - f) seek to develop diagnostic tools for parishes (subject to funding issues);

- g) work with SLCC and others to develop mentoring and training proposals;
- h) explore with NALC how quality status can be used as a lever for change; and
- i) work with standards committees to develop good practice in support.

RISK/FINANCIAL CONSIDERATIONS

- 45. There is a risk that if some of these issues remain unaddressed our caseload will continue to increase. The Board's reputation could suffer if local communities continue to see problematic parishes appearing and not being dealt with adequately.
- 46. There is a risk that some parishes will not be receptive to being supported. Some parishes are only concerned about themselves and dislike the concept of being made more 'professional' (including resistance to quality status). The size and capacity differences of parishes needs to be borne in mind and there is a risk of there appearing to be a two-tier approach to the sector.
- 47. Standards committees are looking to the Board for national leadership and guidance. There is a risk that if we are unable to develop some of the areas above we will look impotent and not be seen as making a difference.
- 48. There are clear financial implications if the Board decides that it wants to put additional resources into supporting some of this work. A shift of resources away from casework towards greater support is indicated in the Corporate Plan, particularly in years 2 and 3.

FURTHER INFORMATION

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