

MEETING:	STANDARDS COMMITTEE
DATE:	14 JANUARY 2010
TITLE OF REPORT:	THE FUTURE OF THE LOCAL GOVERNMENT STANDARDS FRAMEWORK
REPORT BY:	ASSISTANT CHIEF EXECUTIVE LEGAL AND DEMOCRATIC

Classification: Open

Purpose

To consider the present outlook for standards and ethics in local government and the future role of the Committee.

Recommendation

THAT the report be noted and Members consider how best to advise the Council on the future maintenance of ethical standards.

Key Points Summary

- The Decentralisation and Localism Bill includes proposals to abolish the Standards Board regime.
- The Committee has previously considered some of the implications the proposed arrangements will have on the way ethical standards will be maintained and complaints dealt with in the future.
- Until such time as the new legislation is passed, the statutory framework remains operative and complaints are still being dealt with in the same way. A report about the progress of these is set out for Members in the confidential section of the Agenda.
- The Bill was introduced to the House of Commons on 13 December 2010 and gives some guidance about the arrangements that could be put in place locally to deal with matters when the Standards Board regime ceases.

Alternative Options

- 1 There are none.

Reasons for Recommendations

- 2 To note the emerging information about the Government's planned Decentralisation and Localism Bill on the SFE and the ethical standards framework.

Introduction and Background

3. The Government announced its intention to abolish the Standards Board regime on 20 May 2010 and the Bill has recently been published. The aim of the government is to have the new arrangements in place by late 2011 and the Council will therefore need to consider what arrangements, if any, it needs to put in place for an ethical framework and the way in which complaints about councillors are dealt with.

Key Considerations

4. The Decentralisation and Localism Bill has the following provisions:
 - **The 'predetermination' rules** – The Bill will end the situation where councillors are prevented from acting on local issues because of the risk of challenge that they are biased.
 - **The Standards Board regime** – The Bill will abolish the regime and allow councils to make their own arrangements to govern propriety and behaviour and empower the local community to hold their elected representatives to account.
5. The Following is an extract from the explanatory notes to the relevant sections of the Bill

Chapter 4 – Predetermination:

clause 13 - prior indications as to view of a matter not to amount to predetermination

143. Clause 13 clarifies how the common law concept of "predetermination" applies to councillors in England and Wales. Predetermination occurs where someone has a closed mind, with the effect that they are unable to apply their judgment fully and properly to an issue requiring a decision. Decisions made by councillors later judged to have predetermined views have been quashed. The clause makes it clear that if a councillor has given a view on an issue, this does not show that the councillor has a closed mind on that issue, so that that if a councillor has campaigned on an issue or made public statements about their approach to an item of council business, he or she will be able to participate in discussion of that issue in the council and to vote on it if it arises in an item of council business requiring a decision.

144. Clause 13 applies to members of all councils in England and Wales to which there are direct elections - although it applies both to elected and to co-opted members of those councils, and also to members of National Parks Authorities and the Broads Authority.

Chapter 5: Standards

Clause 14 - Amendments of existing provisions

145. Clause 14, and the Schedule it introduces, abolish the Standards Board regime, which consists of the Standards Board for England, standards committees of local authorities, the jurisdiction of the First Tier Tribunal in relation to local government standards in England and a

codes of conduct for councillors. The abolition of the Standards Board for England and revocation of the codes of conduct will take place on a date appointed by the Secretary of State. None of the functions of the Standards Board for England are to be preserved. The power for the Secretary of State to issue a model code of conduct and to specify principles to govern the conduct of members of relevant authorities is removed together with the requirement for relevant authorities to establish standards committees. The First Tier Tribunal loses its jurisdiction over councillor conduct issues.

146. The Schedule contains provision for the Secretary of State to make an order regarding the transfer of the assets and liabilities from the Standards Board for England. It also makes provision for the Secretary of State to issue directions in connection with the abolition, including directions about information held by the Standards Board for England and makes provision for the final statement of accounts for the Standards Board for England to be prepared by the Secretary of State.

Clause 15 - Duty to promote and maintain high standards of conduct

147. Clause 15 places a duty on a relevant authority to ensure that members and co-opted members maintain high standards of conduct. It also defines what a 'co-opted member' is and what a relevant authority is for the purpose of this Chapter.

Clause 16 - Voluntary codes of conduct

148. Clause 16 provides that a relevant authority may adopt a voluntary code of conduct. If an allegation of a breach of a code is made in writing, the authority must take a decision on whether or not to investigate the allegation and, if it is considered that an investigation is warranted, investigate in any way the authority sees fit.

Clause 17 - Disclosure and registration of members' interests

149. Clause 17 provides for the establishment and maintenance of a register of members' and co-opted members' interests by the local authority by giving the Secretary of State power to make regulations to specify what interests must be recorded in that register. The regulations may make provision for restrictions on taking part in the business of the council to be imposed on a member or co-opted member with a registered or declared interest. The regulations may require the register to be available to the public and may make provision about exempting sensitive information from it.

Clause 18 – Offence of breaching Regulations under Clause 18

150. Clause 18 makes it a criminal offence to fail, without reasonable excuse, to comply with obligations imposed by regulations under clause 17 to register or declare personal interests, or to take part in council business when prevented from so doing by such regulations. The penalty that the magistrates' court may impose upon conviction is a fine of up to £5,000 and an order disqualifying the person from being a member of a relevant authority for up to five years. A prosecution for the offence may be brought within 12 months of the prosecuting authorities having the evidence to warrant prosecution, but only by or on behalf of the Director of Public Prosecutions.

6. Whilst the effect of the changes will not be known until the proposals have been further debated and the contents of any secondary legislation are known, doubts have been raised about how complaints which fall short of criminality will be handled.
7. These concerns are shared by the Committee on Standards in Public Life. Its Chairman, Sir Christopher Kelly, feels that the lack of a national code of conduct and an independent complaints mechanism in the proposed new regime risks lower standards and a decline in public confidence. Sir Christopher also said:

"The Committee has long argued for proportionate ways of upholding strong ethical standards at local level and we recognise the problem in the existing regime of vexatious or politically motivated complaints. But the proposed stripping back of the current structure to virtually nothing loses sight of some important principles.

The proposals go well beyond the abolition of Standards for England. They involve the abolition of the national code of conduct for local authority members and remove the obligation on local authorities to maintain standards committees, chaired by independent people, to monitor standards and sanction aberrant behaviour. In future it appears that the only way of sanctioning poor behaviour between elections will be the criminal law or appeals to the ombudsman where someone's interests are directly affected by a decision.

The Bill refers to a duty on local authorities to promote and maintain high standards. If this is to mean anything, in the Committee's view it is essential that there remains a national code of conduct so that both councillors and – most importantly – the public can judge what is acceptable behaviour and what is not. Leaving it up to each local authority to decide whether to have their own code and - if so - what it should contain, risks confusion. National codes of conduct govern the behaviour of MPs, civil servants and others in public life. Why are councillors judged to be different?

Nor is it acceptable that the new regime leaves no independent mechanism for dealing with complaints about the behaviour of an individual Councillor aside from the criminal law– which will leave no way of responding between elections to behaviour which is seriously in breach of acceptable limits but not appropriate for criminal prosecution.

The Committee welcome the intention to make regulation more proportionate. But we believe that a national code and an independent complaints mechanism – however achieved – need to be retained to ensure that the public can have confidence in the integrity of the behaviour of our locally elected politicians."

8. The Department for Communities and Local Government have provided the following information:

“Proposed transitional measures

Any cases in the system at the appointed day will make their way through a transitional regime. This would meet the expectation of those who had made allegations that their allegations would be properly dealt with. It also enables that if a member has an allegation made against them, they should have the opportunity to clear their name.

The Government propose that any investigations being undertaken by Standards for England transfer, on the appointed day, to the local authority that referred the investigation. It will be for that local authority to arrange for the conclusion of the

investigation. The local authority's standards committee will remain established until the last complaint it is considering, referred either internally or from Standards for England, has been dealt with.

Any cases with which the First-tier Tribunal (Local Government Standards in England) is dealing on the appointed day will be concluded by that tribunal. It will not receive any appeals against standards committee rulings after that date.

The right of appeal will not exist for those cases standards committees deal with as they work their way through the transitional system. The Government considers that the risk of protracted proceedings justifies this approach. The sanctions available to standards committees are significantly less severe than the sanctions available to the First-tier Tribunal (Local Government Standards in England).

Further, the Government propose that the suspension sanction is removed from standards committees for the transitional period. Hence the most a standards committee could do is, for instance, to issue a councillor with a censure or a request that they undergo training.

The conduct regime in a post-Standards Board world

The Government is committed to maintaining high standards of conduct in office and will ensure that, in the absence of a statutory code of conduct, councillors do not abuse their office for personal gain by putting their personal interests before those of the general community or local area that they represent. Members will be required to continue to register and declare personal interests and will not be allowed to use their position improperly for personal gain. The Government intend that wilful failure to comply with these requirements will constitute a criminal offence.

The requirement for local authorities to adopt a model code of conduct and for local authority members to abide by that code will be abolished. However, local authorities will be free to adopt their own, voluntary code of conduct should they so wish.

The requirement to maintain a standards committee will be abolished. However, local authorities will be free, should they choose, to establish voluntary standards committees to consider complaints about the conduct of elected and co-opted members. Such committees will, according to councils' local constitutions, be able to censure but will not be able to suspend or disqualify members from council."

9. Numerous questions are raised about the proposals, interim arrangements and the adoption of a local procedure. Careful consideration will be given to these points and there will be further reports submitted to the Committee about them.

Community Impact

8. It is important to ensure that the community at large is aware that the statutory framework remains operative.

Financial Implications

9. There are no further financial implications known at this stage.

Legal Implications

10. Until such time as the relevant legislation is passed, the current statutory framework remains operative

Risk Management

11. There is a need to ensure that, until otherwise known, the statutory framework is adhered to. Ethical standards are important to the Council and, following the abolition of this framework, the effectiveness of the new statutory regime needs to be monitored

Consultees

12. There are none

Appendices

None

Background Papers

DCLG information release dated December 2010 & Ministerial Statement dated 13th December, 2010.