

MINUTES of the meeting of Standards Committee held at the Council Chamber, Brockington, 35 Hafod Road, Hereford on Friday, 18th January, 2008 at 4.30 p.m.

Present: Robert Rogers (Independent Member)(Chairman)

David Stevens (Independent Member)
Councillor John Stone (Local Authority Representative)
Councillor Beris Williams (Local Authority Representative)
Richard Gething (Parish and Town Council Representative)
John Hardwick (Parish and Town Council Representative)

22. CHIEF EXECUTIVE

The Committee welcomed the newly appointed Joint Chief Executive of Herefordshire Council and the Primary Care Trust, Mr. Chris Bull, to the meeting. Members said that they looked forward to building on the relationship that had existed with the former Chief Executive, which had assured the Committee of the Council's full support in terms of resources, and had placed a very positive emphasis on the Committee's role.

23. APOLOGIES FOR ABSENCE

There were no apologies for absence received.

24. DECLARATIONS OF INTEREST

The Chairman, Mr Robert Rogers, reported that since December 2007, he had become the Chairman of the Hereford Cathedral Perpetual Trust, for which the Council provided a project worker. He said that it was to be regarded as a general interest, therefore, and that he would update his entry in the Council's Register of Interests accordingly.

25. MINUTES

RESOLVED: (unanimously) that the minutes of the meeting held on 19 October 2007 be approved as a correct record and signed by the Chairman.

26. APPLICATIONS FOR DISPENSATIONS RECEIVED FROM PARISH AND TOWN COUNCILS

There were no applications for dispensations received from parish or town councils.

27. INDEPENDENT REVIEW OF THE COUNCIL'S CONTRACTUAL AND FINANCIAL ARRANGEMENTS

[Note: The Committee agreed to consider this Agenda Item (5), and Agenda Item 6 (Contractual and Financial Standing Orders) together, in view of the strong link between subject matters.]

The Head of Legal and Democratic Services, Mr. Alan McLaughlin, presented the report of Mr. Ian Crookall, former Chief Executive of Buckinghamshire County Council. Mr Crookall had been appointed to conduct an independent review of financial and contractual governance arrangements in respect of the Council's Information and Communications Technology Department (ICT), following reports by the Director of Resources.

The Director of Resources had initially reported financial impropriety in the ICT Department in accordance with her statutory duty under Section 151 of the Local Government Act 1972. At its meeting on 19 October, 2007, the Standards Committee had considered her two reports, namely the report to the Corporate Management Board on a special audit investigation, and the report to Cabinet on financial governance in Information and Communication Technology and Customer Services. The Committee had decided to monitor the issues involved, in particular, those of reputation, financial and legal elements, the Constitution, and assuring that Members received complete advice from the Monitoring Officer and the Section 151 Officer.

The Chief Executive, Mr Bull, reported on progress made since Mr Crookall's review. He made the following principal points:

- The Council required clearer definitions of the roles of members and officers, and of the relationship between the two. It was necessary to establish a process which indicated exactly where responsibilities for decision making lay, and to achieve greater consistency in decision making. The role of member development would be expanded and improved in order to achieve this, and would also be tailored to suit members' requirements, for example: the roles of cabinet member, backbencher (ward representation and scrutiny), and also the various political groups and how they were supported.
- Mr Bull was working with the Leadership Centre for Local Government on a wide range of issues, in order to devise an action plan for the next few years, including appropriate training. The action plan would be implemented quickly to enable the organisation to move forward, and a communications strategy was also in place to complement this.
- Mr Bull said that one of his principal tasks would be to rebuild confidence in the effectiveness of the Council's Management. To this end, he would propose a re-structure, which would reinforce the developing joint relationship between the Council and the Primary Care Trust, and would introduce a new corporate management team with roles which were fit for the purpose of managing the organisation in the future. He wanted to ensure that officers were in a position where they were trusted, and worthy of trust, and that the quality of the advice they gave was of the highest possible standard, and the same regardless of members' political stances.

Members made the following comments:

- Councillors had always been required to rely on the advice of officers as part of the decision-making process, and it was important to make a priority of rebuilding the trust that had been lost in the wake of financial impropriety in the ICT Department. This would help to avoid any potential difficulties amongst councillors which might lead to referrals to the Standards Board for England.

- At the meeting of Council on 23rd November 2007, it was noted that councillors had made numerous positive and constructive suggestions about the issues surrounding Mr Crookall's report, and had demonstrated enthusiasm to embrace the proposed changes. Mr David Stevens reported that his presence had been permitted throughout the meeting, including the discussions from which members of the public had been excluded under Section 12 of the Local Government Act 1972. This was because the Standards Committee had agreed to monitor aspects of the action plan, and he felt that it indicated how well the Council continued to support the work of the Standards Committee.

RESOLVED: (unanimously) that the report be noted, and the Standards Committee expresses its willingness to be involved in the proposed action plan as required.

28. CONTRACTUAL AND FINANCIAL STANDING ORDERS

[Note: The Committee agreed to consider this Agenda Item (6), and Agenda Item 5 (Independent Review of the Council's Contractual and Financial Arrangements) together, in view of the strong link between subject matters.]

Members considered the proposed amendments to Appendices 3, 4 and 5 of the Council's Constitution, which related to the Council's contractual and financial standing orders. The amendments had arisen from an independent review of the Council's contractual and financial arrangements by Mr. Ian Crookall, former Chief Executive of Buckinghamshire County Council.

RESOLVED: (unanimously) that the proposed amendments to appendices 3, 4 and 5 of the Council's Constitution be endorsed so far as they touch on the responsibilities of the Standards Committee.

29. STANDARDS BOARD FOR ENGLAND BULLETIN 36

Members noted the contents of Bulletin 36 from the Standards Board for England. Two issues in particular, namely local assessment, and political activities by local authority officers, required detailed consideration and were the subject of additional reports at Items 8 and 9 of the agenda.

RESOLVED: (unanimously) that the report be noted.

30. LOCAL ASSESSMENTS

The Head of Legal and Democratic Services presented his report in respect of Pages 4 to 6 of the Standards Board for England Bulletin 36, which provided a checklist of things for local authorities to consider in the run-up to the implementation of local assessment. From April 2008, most decisions relating to complaints against Herefordshire Local Authority, Parish or Town Councillors, would be devolved to local Standards Committees. This was in addition to the existing powers to hear and determine cases.

Bulletin 36 gave advice on the size and structure of Standards Committees, training needs, and how to deal with the various stages of the complaints process. The Committee agreed that some changes would be necessary in order to maintain a robust and resilient system, and decided on the following courses of action:

- The recruitment of one additional independent (external) member was essential to enable the Committee to use in any review process a member who had not been previously involved. The independent status of the additional member was deemed particularly important because it would be a requirement that all local hearings and reviews must have an independent Chairman. The additional appointment would also ensure cover in the event of any conflicts of interest, other commitments or sickness. Members agreed that additional representatives were not required from the local authority or from parish and town councils because the Committee had the ability to co-opt from these sectors, should it become necessary;
- The possibility of making a reciprocal arrangement with the Standards Committees of Worcestershire and Shropshire Councils to ensure impartial review when necessary;
- A review of the Council's Constitution to reflect any necessary changes;
- A Sub-Committee would be established for initial consideration of complaints.

RESOLVED: (unanimously) that

- (i) **the Head of Legal and Democratic Services update the Committee on local assessment as and when information becomes available;**
- (ii) **one additional external independent member be recruited;**
- (iii) **the Head of Legal and Democratic Services liaise with the Standards Committees of Worcestershire and Shropshire Councils to explore the possibility of a reciprocal arrangement in respect of local assessment;**
- (iv) **the Head of Legal and Democratic Services review the Constitution to reflect any necessary changes; and**
- (v) **a Sub-Committee be established to deal with the initial consideration of complaints.**

31. RESTRICTIONS ON POLITICAL ACTIVITIES BY LOCAL AUTHORITY OFFICERS REPORT

The Committee considered the Head of Legal and Democratic Services' report in respect of the implications of Sections 202-203 of the Local Government and Public Involvement in Health Act 2007. Before this Act came into force, local authorities had appointed an independent adjudicator to grant dispensations to staff in politically restricted posts who wishes to engage in political activity. Members noted that the role of the adjudicator had been abolished, and would instead be undertaken by Standards Committees. The Committee would also oversee the Council's list of politically restricted posts and offer general advice on applying the criteria for designating a post. The Act had set a new precedent for Standards Committees who had previously dealt exclusively with councillors.

RESOLVED: (unanimously) that

- (i) the report be noted; and
- (ii) the Head of Legal and Democratic Services makes a further report to the Committee when the Department for Communities and Local Government issues its national guidance, and the Committee will not embark on the task until such guidance is available.

32. CONSULTATION ON ORDERS AND REGULATIONS RELATING TO THE CONDUCT OF LOCAL AUTHORITY MEMBERS IN ENGLAND

The Committee considered a consultation paper from the Department of Communities and Local Government (DCLG) which sought views on the detailed arrangements for putting local assessment into effect. The consultation required a response to 16 questions on a range of issues by 15 February 2008. Members commented on each part of the consultation, and made comments for submission to the DCLG which are appended to these minutes.

The Committee acknowledged that the brevity of the consultation period (one third of the time recommended by Government) might cause particular difficulties for parish councils who wished to comment, but only met bi-monthly or quarterly. It was agreed that this should also be mentioned in the response, which would be posted on the Council's Website.

RESOLVED: (unanimously) that the Committee's response to the Department of Communities and Local Government (DCLG) in respect of its consultation paper on the arrangements for implementing local assessment (as appended to these minutes), be submitted to the DCLG by 15 February 2008, and the response be posted on the Council's website.

33. TRAINING ON THE NEW CODE AND AND LOCAL ASSESSMENTS

The Committee considered its approach to joint training with Standards Committee members from Worcestershire and Shropshire County Councils, Hereford and Worcester Fire and Rescue Authority, and West Mercia Police Authority, on the new Code of Conduct and local assessment. The Head of Legal and Democratic Services said that he had written to these authorities and had received a positive response. He would arrange a meeting with them to agree a training plan.

Mr Richard Gething and Mr David Stevens reported on the joint Herefordshire Association of Local Councils (HALC) training session held on 25 October 2007, which had been well attended and received. A significant increase in the number of training sessions had been planned for 2008, and Mr Gething said that HALC would publicise these sessions as widely as possible, ensuring that all local councils received a letter, and would also seek to engage those councils who were not HALC members. HALC would also keep records of attendance in order to ensure the best possible coverage.

RESOLVED: (unanimously) that the report be noted, and the Head of Legal and Democratic Services agree a joint training plan with Worcestershire and Shropshire Councils, and Hereford and Worcester Fire and Rescue Authority and West Mercia Police Authority.

34. STANDARDS COMMITTEE ANNUAL REPORT 2007

The Committee considered the first draft of the Standards Committee Annual Report for 2007, and chose the cover design. The Chairman would make further amendments to the draft and liaise with the Democratic Services Officer over updates to biographies and photographs as necessary, with a view to finalising it for the Committee's approval.

RESOLVED: (unanimously) that the Chairman and the Democratic Services Officer make any necessary amendments to the Standards Committee Annual Report for 2007, to produce a final version for approval by the Committee.

35. DETERMINATIONS BY THE STANDARDS BOARD FOR ENGLAND

The Committee considered a report on the current investigations by the Standards Board for England in respect of complaints of alleged misconduct against certain councillors during 2007.

RESOLVED: (unanimously) that the report be noted.

APPENDIX

RESPONSE TO THE DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT CONSULTATION PAPER IN RESPECT OF IMPLEMENTING LOCAL ASSESSMENT

This appendix relates to Minute 32 above:

HEREFORDSHIRE STANDARDS COMMITTEE

Response to Consultation - Orders and Regulations Relating to the Conduct of Local Authority Members in England

<p>Q1. Does our proposal to prohibit a member who has been involved in a decision on the assessment of an allegation from reviewing any subsequent request to review that decision to take no action (but for such a member not to be prohibited necessarily from taking part in any subsequent determination hearing), provide an appropriate balance between the need to avoid conflicts of interest and ensure a proportionate approach? Would a requirement to perform the functions of initial assessment, review of a decision to take no action, and subsequent hearing, by sub-committees be workable?</p>
<p>A1. Our committee has six members: two independent members, two parish/town council representatives, and two local authority members. Under the proposals, our members would not have a conflict of interest for a determination hearing, but we will need to make [presumably reciprocal] arrangements with other local standards committees to conduct reviews.</p>
<p>Q2. Where an allegation is made to more than one standards committee, is it appropriate for decisions on which standards committee should deal with it to be a matter for agreement between standards committees? Do you agree that it is neither necessary nor desirable to provide for any adjudication role for the Standards Board?</p>
<p>A2. If it is a local matter, then we feel that any such decision should be made locally, without the need for participation by the SBE.</p>
<p>Q3. Are you content with our proposal that the timescale for making initial decisions should be a matter for guidance by the Standards Board, rather than for the imposition of a statutory time limit?</p>
<p>A3. A statutory time limit might lead to a risk of judicial review, because some factors are beyond any Committee's control. An example of this might be if an individual were not available for interview over a long period of time (possibly deliberately). We feel that any timescale should be a matter of guidance, and not statutory.</p>

<p>Q4. Do you agree that the sort of circumstances we have identified would justify a standards committee being relieved of the obligation to provide a summary of the allegation at the time the initial assessment is made? Are there any other circumstances which you think would also justify the withholding of information? Do you agree that in a case where the summary has been withheld the obligation to provide it should arise at the point where the monitoring officer or ethical standards officer is of the view that a sufficient investigation has been undertaken?</p>
<p>A4. Yes.</p>
<p>Q5. Do you agree that circumstances should be prescribed, as we have proposed, in which the monitoring officer will refer a case back to the standards committee?</p>
<p>A5. Yes.</p>
<p>Q6. Are you in favour of an increase in the maximum sanction the standards committee can impose? If so, are you content that the maximum sanction should increase from three months to six months suspension or partial suspension from office?</p>
<p>A6. We think that nine months suspension should be the absolute minimum period (and we prefer a power of twelve months suspension), for several reasons: first, because the power of a significant period of suspension is needed to send a clear signal that there is effective devolution to local standards committees; second, to ensure that in a moderately serious case standards committees do not routinely refer upwards on the grounds that they do not expect that the powers they have will be adequate; and third, because in respect of parish councils which meet bi-monthly or even quarterly lower suspension periods have commensurately less impact and effectiveness.</p>
<p>Q7. Do you have any views on the practicability of requiring that the chairs of all sub-committees discharging the assessment, review and hearing functions should be independent, which is likely to mean that there would need to be at least three independent chairs for each standards committee? Would it be consistent with robust decision-making if one or more of the sub-committee chairs were not independent?</p>
<p>A7. We feel that it is essential that an independent member chairs. We are recruiting a third independent member to help us ensure that we are always in a position to achieve this.</p>
<p>Q8. Do you agree with our proposal that the initial assessment of misconduct allegations and any review of a standards committee's decision to take no action should be exempt from the rules on access to information?</p>
<p>A8. Yes.</p>

Q9. Have we identified appropriate criteria for the Standards Board to consider when making decisions to suspend a standards committee's powers to make initial assessments? Are there any other relevant criteria which the Board ought to take into account?

A9. Yes, we feel the criteria identified are reasonable.

Q10. Would the imposition of a charging regime, to allow the Standards Board and local authorities to recover the costs incurred by them, be effective in principle in supporting the operation of the new locally based ethical regime? If so, should the level of fees be left for the Board or authorities to set; or should it be prescribed by the Secretary of State or set at a level that does no more than recover costs?

A10. If a national charging regime were imposed, it might not reflect the true cost of what is required. On the other hand, we feel that local charging would cause some parishes significant difficulties (not least with precept-setting). Given the suggested choices, we would opt for a "common sense" approach of evening things out over time: one Standards Committee would assist another. We prefer a system of bartering and flexibility, rather than the constraints and bureaucracy of a charging regime.

Q11. Would you be interested in pursuing joint arrangements with other authorities? Do you have experience of joint working with other authorities and suggestions as to how it can be made to work effectively in practice? Do you think there is a need to limit the geographical area to be covered by a particular joint agreement and, if so, how should such a limitation be expressed? Do you agree that if a matter relating to a parish council is discussed by a joint committee, the requirement for a parish representative to be present should be satisfied if a representative from any parish in the joint committee's area attends?

A11. Yes. We have as yet no experience of working with other authorities, but we are exploring the possibilities. We are currently arranging joint training with two neighbouring authorities. Referring to the last part of the question, we feel that the parish representative should be local, and from a contiguous area.

Q12. Are you content that the range of sanctions available to case tribunals of the Adjudication Panel should be expanded, so the sanctions they can impose reflect those already available to standards committees?

A12. We feel that any sanctions should reflect those available to Standards Committees (bearing in mind our answer to Q6).

Q13. Do you agree with our proposals for an ethical standards officer to be able to withdraw references to the Adjudication Panel in the circumstances described? Are there any other situations in which it might be appropriate for an ethical standards officer to withdraw a reference or an interim reference?

A13. Yes. No other situations thought to be appropriate.

Q14. Have you made decisions under the existing dispensation regulations, or have you felt inhibited from doing so? Do the concerns we have indicated on the current effect of these rules adequately reflect your views, or are there any further concerns you have on the way they operate? Are you content with our proposals to provide that dispensations may be granted in respect of a committee or the full council if the effect otherwise would be that a political party either lost a majority which it had previously held, or gained a majority it did not previously hold?

A14. We have made numerous decisions under the existing dispensation regulations. Any inhibitions we might have are down to the poor drafting of the guidance, which Paragraph 61 seeks to address. We welcome the proposals as set out.

Q15. Do you think it is necessary for the Secretary of State to make regulations under the Local Government and Housing Act 1989 to provide for authorities not required to have standards committees to establish committees to undertake functions with regard to the exemption of certain posts from political restrictions, or will the affected authorities make arrangements under section 101 of the Local Government Act 1972 instead? Are you aware of any authorities other than waste authorities which are not required to establish a standards committee under section 53(1) of the 2000 Act, but which are subject to the political restrictions provisions?

A15. No response - not applicable.

Q16. Do you agree with our proposal to implement the reformed conduct regime on 1 April 2008 at the earliest?

A16. Yes, if possible - the sooner the better.

Additional Comment: The brevity of the consultation period (one third of the time recommended by Government) might cause particular difficulties for parish councils who wish to comment, but only meet bi-monthly or quarterly.

**Robert Rogers
Chairman of Herefordshire Standards Committee**

14th February 2008

The meeting ended at 5.58 p.m.

CHAIRMAN