

STANDARDS COMMITTEE - 22ND JUNE 2006

REPORT OF THE MONITORING OFFICER

ANNUAL REPORT : MEMBERS' CODE OF CONDUCT

Purpose of Report

1. To consider the Annual Report on the operation of the Members' Code of Conduct.

Background

2. Within its Terms of Reference, the Standards Committee is obliged to monitor the operation of the Members' Code of Conduct, and this report is the third overview since the Code of Conduct was introduced.
3. In this report I will:-
 - provide a brief summary of the complaints that have been referred to the Standards Board for England since March 2005
 - give details of training and guidance for members
 - refer to representations made by me on behalf of the Standards Committee to the Standards Board and the Office of the Deputy Prime Minister regarding the Code of Conduct
 - refer to new arrangements for recording declarations of interests
 - indicate how the Code of Conduct has been publicised internally and externally over the last year or so
 - summarise the work of the Committee
 - propose some action points for 2006/7.
4. At the time of the finalisation of this report, the Council is awaiting the final Corporate Assessment Report of the Council by the Audit Commission as part of the Comprehensive Performance Assessment. It is understood that this

report may have some comments regarding the work of the Standards Committee and, if so, these will be reported verbally at the meeting.

Complaints to the Standards Board for England

5. Since March 2005, there has been a total of 10 complaints referred to the Standards Board and these are summarised below:-

(a) Allegation - A member made racist and untrue comments reported in a local newspaper regarding a planning application in respect of a caravan site.

The complaint to the Standards Board was that a member failed to treat members of the public with respect by making racial and factually incorrect remarks about a planning application to extend a local caravan park.

The complaint was investigated by an Ethical Standards Officer who considered that the members' remarks were ill judged, negative and of a generalised nature. It was therefore found that the member had failed to treat others with respect. However, the Ethical Standards Officer considered that although the members' remarks were offensive, they were not racist and his conduct was not sufficiently serious to require further investigation. The Ethical Standards Officer, therefore, found in these circumstances that no action needed to be taken.

(b) Allegation - A member failed to look into a complainant's concerns

The complainant had sought the assistance of a member on a problem regarding the home-to-school transport for his two children. It was alleged that the member had agreed to look into this problem but had failed to do so.

The decision of the Standards Board was that this allegation should not be investigated because, even if the alleged conduct were found to have occurred, it was not of such significance itself to justify an investigation and any consequent action.

(c) Allegation - A member had intimated to a complainant that his decision not to vote in a local election had in some way negated his right to have repairs carried out to his Council property

This complaint was the first to be referred by the Standards Board for England for local investigation and determination by the Standards Committee.

The complaint was investigated by the Deputy Monitoring Officer and a hearing took place before the Standards Committee on the 7th April 2005.

A majority of the Committee determined that there had been a breach of paragraph 4 of the Code and that the member could reasonably be

regarded as bringing his office or the Authority into disrepute. However, taking into account the submissions and the mitigating factors, the decision of the Committee was that no further action needed to be taken.

(d) Allegation - A member was arrested over an alleged racially-aggravated assault.

The complainant referred to a newspaper article regarding an alleged racially-aggravated assault by a member, and complained that the member had failed to treat others with respect, had damaged the reputation of the office of Councillor, and had possibly unlawfully discriminated.

The complaint was investigated by an Ethical Standards Officer who ascertained that the Police and the Crown Prosecution Service had decided that there was insufficient evidence to support any charge being made against the member. The Ethical Standards Officer concluded that this was an entirely private matter and that the conduct of the member was not capable of bringing his office or the Authority into disrepute.

(e) Allegation - A member had failed to control a meeting of a Committee of which he was the Chairman

The complainant was concerned about the way in which a Committee meeting was chaired by a member who had failed to bring members to order when they were disrespectful of the complainant and others, and when they damaged the reputation of their office by making threats and slanderous remarks.

The conclusion of the Standards Board was that the regulation of the discussion and the conduct of business at the meeting was not within their jurisdiction but rather was a matter at the discretion of the Chairman and one of internal administration. In some cases, such matters may bring the office of the member or the Authority into disrepute but, on the basis of the information provided, that was not considered to be the case here.

In all the circumstances, the Standards Board concluded that the alleged conduct (even if it were found to have occurred) would not have involved any failure to comply with the Code of Conduct. Their decision, therefore, was that this matter should not be investigated.

(f) Allegation - A member used his position to secure funding from the Council

The complainant alleged that a member used his position to secure Council funding to refurbish a building for whose management he was responsible.

The view of the Standards Board was that no information had been provided to them to support the view that the member had used his position improperly.

In all the circumstances, the Standards Board considered that the alleged conduct (even if it were found to have occurred) would not have involved any failure to comply with the Code of Conduct. Their decision, therefore, was that this allegation should not be investigated.

(g) Allegation - A member had failed to treat others with respect and brought the Authority into disrepute by reportedly stating that he had little respect for the three members of a particular Ward.

This complaint was connected with debates concerning Primary School closures.

Whilst the Standards Board noted that the complainant took exception to the statement made by the member regarding respect for the members of a particular Ward, in this regard it was considered that as a member himself, the complainant had a means of redress within Council procedures or the media against other members that may be less accessible to members of the public or officers.

With regard to the allegation that by making the statement the member had brought his Authority into disrepute, it was considered that the Standards Board does not usually investigate conduct of this nature unless it is so serious as to call into question the member's fitness to hold public office. The allegation was not considered to reach this threshold in this instance.

Accordingly, the decision was that this allegation should not be investigated.

(h) Allegation - A member had failed to reply to correspondence and had failed to report another member to the Standards Board.

This complaint was directly connected to the previous complaint at paragraph (g).

The same complainant alleged that another member had failed to reply to correspondence and had therefore failed to treat others with respect. However, the Standards Board noted that the member concerned had replied to the complainant's second e-mail although the complainant disagreed with the member's response. The conclusion of the Standards Board was that, in these circumstances, there was not a failure to comply with the Code of Conduct.

With regard to the allegation that the member had failed to report another member to the Standards Board, it was considered that the relevant paragraph in the Code only requires members who reasonably believe the alleged conduct involves a failure to comply with the Code to report the matter. Based on the information provided, it was not considered to be the case here.

Accordingly, the decision of the Standards Board was that this allegation should not be investigated.

(i) Allegation - A member had failed to declare an interest

The complainant alleged that at a Council Meeting, a member had failed to declare an interest in a report on the refurbishment of a car park, and that the Managing Director of a company directly affected by the refurbishment was a friend of the member.

The decision of the Standards Board was that the information provided did not support a view that the interest may have been prejudicial in nature. A personal interest would not have precluded the member from participating in the voting or discussion on the item.

In all the circumstances, it was considered that the alleged conduct (even if it were found to have occurred) would not have involved any failure to comply with the Authority's Code of Conduct.

Accordingly, the decision of the Standards Board was that this complaint should not be investigated.

(j) Allegation - A member had failed to respond to concerns by a complainant.

The complainant alleged that he had lost research work from a computer disc and memory stick whilst working on computers at a local library. He referred his complaint to a member who did not respond at first but, following a second e-mail, the member replied that she was waiting for a report from officers. The complainant reported that he then sent her a further e-mail and that she had not replied within 28 days.

The decision of the Standards Board was that, although not responding to a constituent's concerns can, on occasions, amount to a failure to treat others with respect, it was noted that officers had suggested a way forward to the complainant but he was unable to comply for personal reasons. The member had acknowledged the complainant's request when prompted and had indicated that she had taken the matter up with officers which would be the normal course of action in the circumstances.

Accordingly, the Standards Board considered that the alleged conduct (even if it were found to have occurred) would not have involved any failure to comply with the Authority's Code of Conduct. Therefore, the decision was that this application should not be investigated.

6. Although the number of referrals to the Standards Board (10) is a sharp increase on the two referrals summarised in last year's Annual Report, it must be noted that only two complaints were investigated, and although a breach of the Code was found in both cases, no further action was required because they were deemed to be minor infringements.
7. The higher number of referrals would seem to indicate that there is a greater public awareness of the Code and the role of the Standards Board.

Training and Guidance given to Members

8. On the 9th February 2006, a training seminar for members was held dealing with case studies and local investigations and determinations. The seminar was attended by 33 members of the Council, including the Deputy Leader and the Leaders of the two Opposition Groups. In May 2006, the newly elected members attended an induction seminar on the Code of Conduct.
9. In addition, in March 2005 we had training sessions for members of the Standards Committee on conducting a local determination in advance of the meeting of the Standards Committee on the 7th April. In September 2005 the Standards Committee also viewed a DVD produced by the Standards Board on local investigations and local determinations.
10. Following the determination of the Standards Committee at the hearing on the 7th April 2005, it was agreed that guidance should be issued to every member of the Council on the use of the Electoral Register. The Standards Committee considered this Guidance at its meeting in September 2005 and it was issued to members of the Council on the 16th September 2005. In summary, members were advised that they should take care to ensure that when making use of, or making references to, any marked copies of the Electoral Register, they do not engage in any conduct that could suggest misuse of such information in breach of paragraph 4 of the Code of Conduct. This could occur, for example, by linking, unwittingly or otherwise, a decision to take action on a person's behalf to that person's voting record.

Review of Members' Code of Conduct

11. In April 2005 and February 2006, the Standards Committee approved responses to the Standards Board and the Office of the Deputy Prime Minister respectively on proposals to amend the Members' Code of Conduct.
12. The submissions of the Standards Committee included:-
 - the need for an improved definition of "friend"
 - there should be a new category of "public service interest"
 - a member with a prejudicial interest should be allowed to contribute to the debate before withdrawing from the vote
 - there is no convincing public interest argument for requiring members to register their membership of private clubs and organisations.
13. Ultimately, any decision to amend the Code of Conduct is a matter for the Secretary of State, and we are still awaiting a public announcement.

Revised Arrangements for Recording Declarations of Interests

14. In my report on the annual review of the Constitution which was approved by the Council in February 2006, revised arrangements for the declarations of interests were agreed.
15. Members are already encouraged to give advance notification of personal interests at meetings of the Council, and now they are asked to make advance disclosure of prejudicial interests as well. In addition, a number of interests declared at the Council are simply repeats of interests declared at other meetings which are recorded in the White Book of Minutes. These declarations are now taken as read by the Mayor who will make a general announcement at the meeting that any declarations of interest which are recorded in the White Book are deemed to be repeated at the meeting.
16. These revised arrangements should streamline the process for declaring interests and reduce the amount of unnecessary time spent on declarations, whilst at the same time ensuring that members comply with the Code of Conduct.

Internal and External Publication of the Code

17. In the November 2005 edition of Dudley Matters, I wrote an article entitled "Doing the right thing", bringing colleagues up-to-date on a number of corporate governance issues including the Code of Conduct and Standards Committee, and the Whistleblowing Policy. This was replicated in my presentation to the Management Forum of the Council (attended by about 200 senior managers) in November 2005. I am satisfied that the existence of the Code and the role of the Standards Committee do have a high profile within the organisation.
18. I also submitted a report to, and attended, a meeting of the Dudley Community Strategic Partnership in December 2005, and invited colleagues to circulate a copy of my report within their organisation.
19. In the January 2006 cycle, I presented a report to each of the five Area Committees on the Code of Conduct. This report summarised the Code and a full copy of the Code was attached as an Appendix. As the Committee will appreciate, these meetings are well attended by the public and this provided a good opportunity to raise general public awareness of the existence of the Code and how a complaint should be made.

Summary of the work of the Standards Committee in 2005/6

20. Apart from the local determination hearing in April 2005, the Committee has looked at a number of issues including:-
 - Protocol for relationships between members and officers
 - Members' allowances for liquor licensing
 - Guide for members on internet access, use of e-mail, and Councillors' websites

- Responses to Standards Board for England and ODPM regarding a review of the Code of Conduct.

The work of the Committee continues to have a considerable impact upon the corporate governance of the Council, and its recommendations have been fully accepted by the Cabinet and Council with consequential additions to the Constitution.

Proposed Action Points for 2006/7

21. If, as expected, the Code of Conduct is reviewed within the next 12 months, this will be reported to the Standards Committee and the Council, and it will be necessary to provide briefing sessions for all members. In addition, it will be necessary to publicise the revised Code both internally and externally.
22. In July 2006, I propose to hold another member training event featuring the Standards Board DVD on local investigations and determinations, which was viewed by the Standards Committee in September 2005. As members will recall, this DVD concerns a member's prejudicial interest in a planning application, and deals with the various stages of undertaking a local investigation into a complaint about the member's conduct and a local hearing for the Standards Committee.
23. I am currently consulting Directorates on the operation of the Confidential Reporting (i.e. Whistleblowing) Policy, and this will be reported to a future meeting of the Standards Committee.
24. All of the action points for 2005/6 in my previous annual report have been accomplished.

Conclusion

25. In my view, we can draw comfort from the fact that, although there were 10 complaints to the Standards Board in the period covered by this annual report, only two resulted in findings of a minor breach which necessitated no further sanction. This suggests that members do continue to be aware of their responsibilities under the Code and that, generally, the public are more aware of the existence of the Code.
26. As Monitoring Officer, I continue to receive requests for advice from members on the declarations of interests and other issues relating to the Code of Conduct. This does prove to be an effective way of avoiding a potential breach of the Code, and I am sure that members find this to be very useful.
27. Having said that, we must continue to be vigilant and through training and monitoring we will take the necessary action to maintain and promote high standards of conduct by members.

Finance

28. Any financial implications arising from the promotion and maintenance of high ethical standards are met from within existing budgets.

Law

29. The relevant provisions regarding the Members' Code of Conduct are contained in Sections 49 – 52 of the Local Government Act 2000, and Regulations made by the Secretary of State.
30. As Monitoring Officer, I am satisfied that both the Standards Committee and I have sufficient resources to undertake our statutory functions.

Equality Impact

31. This report complies fully with the Council's policies on equal opportunities and diversity. It is a specific requirement of the Code of Conduct that members promote equality by not discriminating unlawfully against any person.
32. There are no particular issues arising from this report with regard to children and young persons.

Recommendation

33. It is recommended that this report and the action points set out in paragraphs 21 – 23 be considered by the Standards Committee and referred to the Council for approval.

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LIST OF BACKGROUND PAPERS

1. Correspondence with the Standards Board for England and with Ethical Standards Officers.
2. Correspondence with the Standards Board for England and the Office of the Deputy Prime Minister regarding a review of the Code of Conduct.
3. Letter sent to every member of the Council in September 2005 regarding the use of the marked copy of the Electoral Register.