

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

Minutes of a meeting of the Standards Committee held on
Wednesday, 8 November 2006.

PRESENT: Mr D Gilbertson (Independent Member) – Chairman

Members:	Mr P Brindle	Independent Member
	RF Bryant	District Council Member, Independent Group
	EW Bullman	District Council Member, Conservative Group
	Ms G Butcher	Independent Member
	Mrs GM Everson	Parish Member
	Mr M Farrar	Parish Member
	Ms M Good	Independent Member
	Mrs CA Hunt	District Council Member, Conservative Group
	A Riley	District Council Member, Independent Group
	Mr E Revell	Independent Member
	Mrs VM Trueman	District Council Member, Liberal Democrat Group
	Dr SEK van de Ven	District Council Member, Liberal Democrat Group
Officers:	Holly Adams	Democratic Services Officer
	Fiona McMillan	Assistant Solicitor and Deputy Monitoring Officer
	Colin Tucker	Head of Legal Services and Monitoring Officer

Councillors JD Batchelor, Mrs DP Roberts and RT Summerfield and K Barrand (Cambridgeshire Association of Local Councils) were in attendance, by invitation.

Apologies for absence were received from Councillor NN Cathcart and Mr D Kelleway.

1. INTRODUCTIONS AND APOLOGIES

The Chairman, on behalf of the Committee, congratulated Ms G Butcher, Ms M Good and Mr E Revell on their appointment as Independent members of the Standards Committee and welcomed them to their first meeting.

2. DECLARATIONS OF INTEREST

Councillor A Riley declared a personal interest in Item 15 as one of the members referred to in the case reports.

3. APPOINTMENT OF VICE-CHAIRMAN

The Committee, at its August 2006 meeting, had been asked to consider whether it would be necessary, in light of coming legislation making it mandatory to have an independent Chairman, also to have an independent Vice-Chairman. The Deputy Monitoring Officer explained that it was already mandatory in Wales to have both an independent Chairman and Vice-Chairman. The Monitoring Officer advised that independent members did not need to declare an interest in the matter.

An independent Vice-Chairman was seen as a logical extension of having an independent Chairman, which would strengthen the focus and enhance the credibility of the Committee amongst residents by being seen to be distinct from the political aspects of the Council. On a show of hands the Committee **AGREED** that it supported the principle of an independent Vice-Chairman.

Some members of the Committee expressed concern that the background and experience of the newly-appointed independent members were unknown to them, and the Committee **AGREED** to appoint a Vice-Chairman *pro tem* to serve until the February 2007 Committee meeting.

Councillor RF Bryant proposed, seconded jointly by Mrs GM Everson and Mr M Farrar, that Mr P Brindle serve as Vice-Chairman *pro tem*. Councillor A Riley proposed, seconded by Councillor Mrs CA Hunt, that Councillor Mrs VM Trueman continue to serve as Vice-Chairman *pro tem*. A vote was taken and it was **AGREED** that Mr P Brindle serve as Vice-Chairman *pro tem*.

Mr Brindle thanked the committee and he and the Chairman individually thanked Councillor Mrs Trueman for her diligent service as Vice-Chairman.

4. MINUTES OF PREVIOUS MEETING

The Chairman was authorised to sign as a correct record the minutes of the meeting of 9 August 2006.

In response to a query from Mrs GM Everson, it was confirmed that district councillors who were not Committee members could speak at meetings with the agreement of the Chairman, but that members of the public could not.

5. PROCEDURE FOR LOCAL INVESTIGATION OF REFERRED COMPLAINTS

At the last meeting of the Standards Committee it had been agreed that the procedure for local investigations be referred to an extra-ordinary meeting but, when this had proven impossible to schedule, the procedure had been brought to this meeting. The Deputy Monitoring Officer thanked Councillor A Riley and Mr M Farrar for their comments and hard work reviewing this and the local hearing procedure, explaining that many of their comments had been incorporated into the revised draft. The Standards Committee currently had a remit to conduct an investigation locally only after an Ethical Standards Officer (ESO) referred a case, but in the future the Standards Committee would be managing all complaints. Two local investigations so far had been completed following the Standards Board for England (SBE) guidance, but a local procedure would draw together in one document both the SBE guidance and all relevant legislation.

At the request of the Standards Committee, the Deputy Monitoring Officer had written to the Chief Executive of the SBE, David Prince, and this letter and the response were included in the agenda. Attention was drawn to Mr Prince's comments that "proposals are currently being developed to transfer the responsibility for the initial filtering of allegations to standards committees", which the Chairman clarified as referring to upcoming draft legislation and statutory instruments. Members also considered Mr Prince's statement that "all reports which conclude that there has been a breach of the code of conduct will therefore require a hearing...", which seemed to curtail the authority of ESOs and which would have serious financial consequences for the District Council. The Deputy Monitoring Officer undertook to respond to Mr Prince seeking clarification of his statement about proposals being developed and to express the Standards Committee's surprise at the removal of the right of an ESO to determine that no action be taken. It was agreed that a draft of her letter would first be circulated to Standards Committee members.

The Chairman explained that the move to increase the number of local investigations had arisen from the 2004 review of the investigatory process, through which the majority of Standards Committees and Monitoring Officers requested the ability to conduct local investigations, rather than a change in policy by the SBE made purely for financial

reasons. The Chairman had raised with the Chief Executive in October 2005 the likely financial implications and the Standards Committee would be submitting a Business Plan to determine a budget to cover the likely workload, but there was no guarantee that a budget could be established.

There was no immediate urgency to adopt a local investigations procedure, as the existing SBE guidance could continue to be followed. Other than officer time already spent looking at a local procedure, there were no financial implications for deferring a decision until after the new legislation expected in early 2008. However, the Monitoring Officer confirmed that the nationally-issued SBE guidance was easy to follow, but lacked local insight into the role of parish councils. Councillor Riley proposed, seconded by Councillor Mrs CA Hunt, that a decision on a procedure for local investigation of referred complaints be **DEFERRED** until the new legislation had been published and further information from the SBE had been received. On a show of hands the proposal was **DEFEATED**.

The Deputy Monitoring Officer then addressed policy areas highlighted by Committee members:

The Final Report, paragraphs 6(b)(i) and (ii) of the draft procedure

This information was current law and could not be overruled, although aspects of it probably would be addressed in the forthcoming legislation.

Role of Investigating Officer / Monitoring Officer, paragraph 2(a) of the draft procedure

The Monitoring Officer could pass the investigation job to an "Investigating Officer", the job title of which was not derived from statute, but which covered the role. Although a delegation process existed, there were questions about resourcing and budgetary implications about appointing an outside firm. It was not necessary for the Investigating Officer to be legally trained and officers were consulting with other local authorities about their experiences with various organisations which provided investigatory services.

Withholding Name of Complainant

There were differing opinions on offering anonymity to the complainant: it could prevent a complainant from potential intimidation and harassment, but could disadvantage the subject member, making it difficult to prepare a defence and identify relevant witnesses. The Deputy Monitoring Officer clarified that the identity of the complainant could be kept anonymous only until certain safeguards were established to protect all parties, for example, ensuring that both parties did not attend the same meetings.

Response Time for Subject Member

There was general agreement that the subject member should have thirty days to respond to the Investigating Officer in writing, the previous timeframe of fourteen days being felt too short.

Conclusion

The Standards Committee, with ten in favour and two against, **RECOMMENDED TO COUNCIL** that the Procedure for Local Investigations of Referred Complaints be adopted and included in the Constitution, subject to the following amendments:

- (a) Introduction and Summary, second sentence: "This procedure ~~applies~~ **will apply** to the investigation of allegations of breaches of the authority's Code of Conduct ~~for Members for both district and parish councils~~ **by elected and co-opted members of the authority and to breaches of the Parish Council Code of Conduct by parish councillors, and the word 'Councillor' is to be taken to refer to all such persons.**"
- (b) Paragraph 2(b)(ii): "The identity of the person making the allegation (unless **on the rare occasion at the outset of the investigation where** identification of the

- complainant might prejudice the investigation or put the complainant at risk, ***this grant of anonymity being subject to constant review***”;
- (c) Paragraph 2(f): “In notifying the Councillor of receipt of the allegation, the Monitoring Officer shall request the Councillor to respond to the Investigating Officer within ~~44~~ **30** days of notification...”
 - (d) Paragraph 3(d): “Following notification ***of the allegation*** to the Councillor...”;
 - (e) Paragraph 3(f)(iii), additional sentence: “***All interviews will be tape-recorded.***”;
 - (f) Paragraph 3(g): “...~~such fees or allowances as he considers to be appropriate~~ all costs incurred, fees and professional charges subject to the maxima set by the authority”.
 - (g) The word “member” replaced with “councillor” throughout; and
 - (h) The word “shall” replaced with “will” throughout.

On behalf of the Standards Committee, the Chairman thanked the Deputy Monitoring Officer for the diligent and professional way in which she produced the draft procedure and associated report.

6. PROCEDURE FOR LOCAL STANDARDS HEARINGS

This local hearings procedure, like the local investigations procedure, had been referred to an extra-ordinary meeting of Standards Committee which had proven impossible to schedule and therefore the procedure was referred to this meeting. The Deputy Monitoring Officer explained that the Council had a local hearings procedure enshrined in the Constitution, but that this procedure had not been reviewed since the Constitution was written in 2001 and now required updating to incorporate more recent legislation. The draft procedure combined into one document the relevant legislation with Standards Board for England (SBE) guidance.

The Deputy Monitoring Officer, correcting a statement made by Councillor Mrs VM Trueman, confirmed that the previous Monitoring Officer had attended only as a witness at the first local hearing and had not fulfilled any other role during the pre-hearing process and subsequently; the Deputy Monitoring Officer had served as Monitoring Officer throughout that particular case.

The Democratic Services Officer agreed that she or her colleagues would present a pre-hearing process summary report if required.

With no members voting against, the Standards Committee **RECOMMENDED TO COUNCIL** that the revised Procedure for Local Standards Hearings be adopted, replacing the existing Local Standards Hearings Procedure at Part 5 Section M of the Constitution, subject to the following amendments:

- (i) Paragraph 1(a), first sentence: “***‘Councillor’ is to be taken to refer to the elected or co-opted member of the authority or to the parish councillor*** who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise.”;
- (j) Paragraph 1(b), final sentence: “...(which may be the Monitoring Officer, ~~and~~ ***or*** his or her nominated representative).”;
- (k) Paragraph 9(b), first sentence: “The Chairman will ask the ~~legal adviser~~ ***Monitoring Officer*** or the Democratic Services Officer to present his report...”;
- (l) Paragraph 9(b), footnote 9: add “***continued overleaf***”;
- (m) Paragraph 9(c)(iii), final line: “...the Standards Committee ***should*** seek the advice of the Investigating Officer or the witness.”; and
- (n) To remove the division between the procedure following an ESO’s report and those which follow a local investigation.

Mr M Farrar requested that the Standards Committee at its next ordinary meeting review the membership of the Parish Council Standards Sub-Committee, acknowledging that the Sub-Committee had not met for four years due to lack of business.

7. **ELTISLEY PARISH COUNCIL: REQUEST FOR DISPENSATION**

The Committee had received a request for a dispensation from a recently co-opted member of Eltisley Parish Council who lived at Caxton End, Eltisley. At its May 2006 meeting the Committee previously had granted a dispensation to other Eltisley Parish Councillors who lived at Caxton End. The Chairman acknowledged some members' views that these requests rested upon hypothetical cases and could be construed by some as a waste of officer time and taxpayers' money, but defended the Monitoring Officer's advice to parish councils as being in line with the current legislation and the Committee being statute-bound to receive dispensation requests. The Monitoring Officer explained that he had a responsibility to all district and parish councillors to advise on the rules and that it was up to the councillors themselves to decide how to act upon the advice.

The Deputy Monitoring Officer confirmed that the forthcoming Code of Conduct review probably would amend these issues and it was noted that the Committee had received only three dispensation requests in four years.

The Standards Committee **AGREED**

- (a) to grant a dispensation to Mr John Pettifor of Eltisley Parish Council from any item concerning Caxton End, Eltisley, the dispensation to be in place initially until May 2007 and then reviewed by the Standards Committee; and
- (b) to require Parish Councillor Pettifor to declare an interest in matters in which he has been granted this dispensation and to declare the existence of this dispensation.

8. **CROXTON PARISH COUNCIL: REQUEST FOR A DISPENSATION**

The Committee considered this request in conjunction with the request from Eltisley Parish Council and **AGREED** to grant a dispensation to Mr A Lintott, Mr S Ingram and Mrs N Spenser from any item concerning High Street, Croxton, and to require Parish Councillors Lintott, Ingram and Spenser to declare an interest in matters in which they have been granted this dispensation and to declare the existence of this dispensation.

9. **WHISTLEBLOWING POLICY**

Cabinet had considered and supported the Whistleblowing Policy at its 14 September 2006 meeting, but had referred it back to the Standards Committee for comment on two changes:

- (a) the Internal Audit Manager's becoming the first point of contact, rather than the Monitoring Officer; and
- (b) the re-wording of paragraph 3.1 to include a reference to Members.

Councillor SM Edwards reassured members that the Council currently was tendering to appoint the internal auditors for a three- or four-year appointment, therefore the Internal Audit Manager would not be changing frequently.

The Standards Committee approved the two changes previously made and **RECOMMENDED TO CABINET** that the revised Whistleblowing Policy be adopted as Council policy, subject to:

- (a) the inclusion of an additional example at paragraph 2.5: "discrimination against or favouritism towards clients, customers or members of staff";

- (b) the Standards Committee being involved in the re-launch of the policy.

The Chairman noted that the policy, as drafted, preserved the Standards Committee's responsibility of overview (Paragraphs 12.1 and 12.2 of the policy) and thanked those members and officers on the working group who had prepared the revised policy.

10. APPOINTMENT OF INDEPENDENT MEMBERS TO THE STANDARDS COMMITTEE

The Council report on the appointment of independent members was included in the agenda for information. The Deputy Monitoring Officer drew attention to the best practice guidance which had been distributed at the Fifth Annual Assembly of Standards Committees in October and which followed closely the procedure of the recent appointments exercise.

Mrs GM Everson and the Chairman regretted that a number of e-mails sent by committee colleagues and others prior to the interview process had, by implication, impugned the integrity and fairness of the interview panel members. The Chairman urged such individuals to consider the words that they use and the impact that they might have.

The Standards Committee **AGREED** to establish an Appointments Procedure Task and Finish Group to consider the manner in which independent and parish members were appointed to the Standards Committee and to make recommendations to the Committee, the membership to be:

- Ms G Butcher;
- Mrs GM Everson;
- Mr E Revell;
- Councillor A Riley; and
- Councillor Mrs VM Trueman.

11. BRIDGING THE GAP: STANDARDS BOARD FOR ENGLAND FIFTH ANNUAL ASSEMBLY, BIRMINGHAM, 16-17 OCTOBER 2006

Due to the high demand for places at the Fifth Annual Assembly of Standards Committees, and limited Council resources, only the Deputy Monitoring Officer had been able to attend. Copies of all the papers issued were available to members for collection and for download from the Standards Committee's website.

Key points from the conference were:

- the revised Code of Conduct would be issued for consultation within the next few weeks with a consultation deadline of the end of December 2006. An extraordinary meeting of Standards Committee would be arranged, almost certainly at short notice, to which all members were urged to attend. Parliamentary approval was expected in January or February 2007 with the revised Code of Conduct in place in time for May elections and all local authorities would be expected to adopt it shortly afterwards;
- the Standards Board for England would be holding a series of twelve roadshows across the country in 2007 to re-launch the Code of Conduct and would be issuing a new training DVD;
- the Standards Board for England was lobbying the government for resources and the percentage of funds available to County and Metropolitan authorities was disproportionately high for the smaller number of cases involving their members compared to those involving District or Parish Councillors;
- guidance was expected on a local filtering process for complaints; and
- there was a perceived conflict of interest between the Standards Committee receiving notification of all complaints and also conducting hearings, which could

be settled by establishment of separate sub-committees to filter and hear cases.

The Standards Committee's first newsletter would be published shortly. It would include a general advice page addressing the most common areas of concern raised by parish councillors and would invite questions, including anonymous questions, from district and parish councillors seeking guidance on planning issues, the Code of Conduct, declaring interests, etc.

The Standards Committee **NOTED** the comments made by the Deputy Monitoring Officer.

12. OPERATION OF MEMBERS' CODE

The Chairman read the following statement: "In the light of recent comments by elected members in the press, and in e-mails circulated to elected members, officers and others in this authority, I feel that it is important that clarification be given in relation to the Members Code of Conduct, particularly those elements of the statutory framework which deal with 'Personal Interests'; 'Prejudicial Interests', 'Pre-Determination' and 'Bias'.

"Part of the role of the Standards Committee is to actively promote and maintain the highest standards of conduct by members and co-opted members of the authority, and, to monitor and advise the Council of the operation of the Members Code. Implicit in this obligation is the requirement placed upon us, as a Committee, to ensure that errors of interpretation are promptly corrected. References to 'gagging orders' and the like, which have no basis in fact or practice, are particularly unhelpful and present a distorted and inaccurate picture to colleagues and local people.

"At my request, the Monitoring Officer has prepared a note which sets out the legal position, a copy of which has been given to all committee colleagues. It will also form part of the Minutes of this meeting. I would urge all elected members, and others, to read it. I draw particular attention to the final paragraph in which the Monitoring Officer confirms that he is always willing to provide advice and assistance to Members and Officers on issues related to interpretation of the Code, should such individuals be unsure of the extent to which the statutory framework applies to them."

Copies of the statement and the Monitoring Officer's note were circulated and published in the 9 November 2006 SCDC Councillors' Weekly Bulletin. The Monitoring Officer explained that the legal team found they often had to advise on the same issues and, while he acknowledged that some members did not like the Code of Conduct and found it restrictive, he asked that it be understood that he was bound by statutory requirements as Monitoring Officer to give specific advice and to take specific actions. He could advise on the Code of Conduct, but it was up to members to decide how to act upon that advice. Members who breached their obligations under the Code of Conduct, to which they agreed upon election, risked bringing additional difficulties to the entire Council, for example, if a significant piece of work were to be set aside by the courts because action by an elected member had been considered to be in breach of the Code and thereby maladministration.

The Monitoring Officer clarified that rules of pre-determination and bias were not statutory but created by judges; he cautioned that courts were taking action of "anxious scrutiny" and were quick to intervene where they feel there could be implications of pre-determination and bias. He encouraged members to contact him if they wanted further details of the cases summarised in his note.

The Standards Committee **NOTED** the statement of the Chairman and the note of the Monitoring Officer.

13. ADVICE TO, AND TRAINING OF, DISTRICT AND PARISH COUNCIL MEMBERS IN RELATION TO THE MEMBERS' CODE

Following consultation with, and the agreement of, the Resources, Staffing, Information & Customer Services Portfolio Holder, the Deputy Monitoring Officer had engaged Peter Keith-Lucas of Bevan Brittan Solicitors to conduct Code of Conduct and Standards Committee training sessions. The training schedule had been revised to hold both sessions each on Tuesday 30 January 2007 and Thursday 1 February 2007 to better enable members to attend. Members were encouraged to contact the Democratic Services Officer on or before 8 December 2006 to confirm their attendance as the remaining places would be offered for sale to other authorities: South Cambridgeshire District Councillors could not turn up on the day without previously booking a place.

The Code of Conduct training would cover the revised Code of Conduct, including new issues such as:

- a new definition of interests;
- a new category of interest: "public service interest";
- allowing disclosure of confidential information if it can be determined that it was in the public interest to do so;
- amended guidance on disrepute if the alleged behaviour was conducted outside of official council business;
- a new definition of bullying; and
- an amended requirement for elected members to report breaches.

The Chairman urged Committee members to attend one or the other of the Standards Committee training sessions, which were mandatory for participation in local investigations and hearings.

The Standards Committee **AGREED** the revised training session dates.

14. FEEDBACK FROM PARISH COUNCILS

None received.

15. CASE TRIBUNAL REPORTS AND REFERENCES MADE TO ETHICAL STANDARDS OFFICERS

The Deputy Monitoring Officer outlined recent case summaries and, in keeping with the Standards Committee's usual practice, names and other identifying details were not mentioned. The Monitoring Officer reported that he recently had completed two local investigations involving parish councillors; it was likely that one would be recommended to go forward to a panel hearing.

The Standards Committee **AGREED** the format of, and amount of detail included in, the written report.

16. OPERATION OF NATIONAL CODES OF CONDUCT AND OTHER STATUTORY FUNCTIONS OF THE MONITORING OFFICER

This item had been covered under "Operation of Members' Code" above.

17. THE HANDLING OF COMPLAINTS AND INVESTIGATIONS BY THE OMBUDSMAN

Nothing to report.

18. DATES OF NEXT MEETINGS

The Standards Committee, noting that the 14 February 2007 meeting would fall during half-term, **AGREED** that its February meeting be re-scheduled for Thursday 22 February 2007 before full Council.

The Committee **NOTED** the dates of future meetings:

- Wednesday 16 May 2007
- Wednesday 8 August 2007
- Wednesday 14 November 2007

Members were reminded that an extra-ordinary meeting of Standards Committee would be scheduled at very short notice and encouraged to check their e-mails regularly for notification of possible dates.

The Meeting ended at 1.20 p.m.
