

Cheltenham Borough Council

Standards Committee - 28th September 2007

The Local Filtering of Complaints About Members' Conduct – Potential Resource Requirement and Possible Collaborative Arrangements

Report of the Borough Solicitor

1. Executive Summary and recommendation

- 1.1 The Local Government bill currently passing through parliament contains a number of provisions concerning the ethical framework which exists to regulate the conduct of Members' of local authorities and other public bodies. One of the key changes proposed is the introduction of a new system of dealing with complaints about Members. This new approach is called the 'Local Filter' and, put simply, means that the responsibility for receiving complaints and deciding which should be investigated is to be transferred from the Standards Board for England (SBE), who currently undertake this process, and handed to individual local authorities.
- 1.2 The resource implications of such a change should not be underestimated as running this process of receiving and reviewing complaints will involve an increase in the activity of the Standards Committee through the need for more meetings. This need for more meetings to deal with the local filtering of complaints will have knock on effects on officer time to support the committee in undertaking the process.
- 1.3 In view of the likely requirement for authorities to hold meetings of Standards Committee more regularly and the additional burden this will place on the limited membership of these committees, it is recommended that consideration be given to arrangements which might assist in managing this additional workload. The options are primarily that of increasing the size of membership of the Standards Committee or working with other Standards Committees to jointly manage the operation of the local filter.
- 1.4 In addition to the Local Filter the investigation of complaints themselves is another area of the SBE's work which is increasingly being undertaken by the authorities as the SBE refers a greater number of investigations to local Monitoring Officers. These investigations can involve a significant amount of Officer time and it is important to put in place measures which enable the Council to deal with them in the most cost effective way and without adversely impacting upon normal service levels.
- 1.5 **I therefore recommend that the Standards Committee make the following recommendations to Full Council;**
 - 1.5.1 **To agree in principle the concept of a joint local filter sub-committee as described in Appendix 'A' and to authorise and instruct the Monitoring Officer to pursue such arrangements and report back on progress to the next Full Council;**
 - 1.5.2 **To authorise and instruct the Monitoring Officer to prepare, in parallel, an**

alternative proposal involving an increase in the size of the Standards Committee from 8 to 10 members, as set out in paragraph 2.16, such proposal to be brought before Full Council for approval in the event that attempts to develop a joint local filter sub-committee fail to bear fruit.

1.5.3 To instruct the Monitoring Officer and the Asst. Director Frontline Services, to establish a protocol for the utilisation of Benefits Investigation Staff in the investigation of Complaints of Breaches of the Members' Code of Conduct.

1.6 Summary of implications (note to author - cross reference to body of report where applicable)

1.6.1 Financial

If the Standards Committee were increased in size to ten members, including one additional Co-opted Independent Member, there would be an additional £287 in annual allowances to pay. See paragraph 2.16.

Contact Officer:

1.6.2 Legal

S.5 of the Local Government & Housing Act 1989 imposes a duty upon local authorities to provide sufficient staff, accommodation and other resources to allow the designated Monitoring Officer to perform their duties.

Under the existing legislation the Monitoring Officer's duties include the investigation and reporting of complaints referred from the Standards Board and to provide advice and support to the Standards Committee in order that it can undertake its functions including the holding hearings following investigations into alleged breaches of the code.

From April 2007 the task of receiving, acknowledging, processing and considering, complaints will be transferred to Monitoring Officers and Standards Committees in individual local authorities.

Legal Officer: Quentin Baker

1.6.3 Human Resources

None arising from this report.

2. The Mechanics of the Local Filter

Existing System

2.1 Under the existing system, complaints alleging misconduct by Members must be directed, in the first instance, to the Standards Board for England (SBE), who undertake an initial sifting of complaints to decide whether or not to refer them for investigation, either by one of their own Ethical Standards Officers (ESO) or to the

relevant local Monitoring Officer.

- 2.2** The initial decision is undertaken by an individual officer who considers the information supplied by the complainant and makes an assessment based on a number of criteria such as whether the information, if true, would constitute a breach or whether, although technically a breach, it would not be in the public interest to investigate because it is too trivial or is motivated from animosity between Members or political groups. This process currently takes around 9 days and where complaints are rejected the complainant, the subject of the complaint and the relevant Monitoring Officer are informed by the SBE, but other than that, the matter is not publicised.

Referral for Investigation

- 2.3** Where the decision is taken to refer a complaint for investigation then a further decision is necessary as to whether that investigation should be undertaken by an ESO, or by the relevant Monitoring Officer. The SBE started to refer investigations to Monitoring Officers in 2005 and has been steadily increasing the numbers of such referrals so that currently approximately 65% of all investigations are referred to Monitoring Officers for them to investigate and report to their Standards Committee. The SBE has indicated that it expects the level of referrals to increase further.

Third Option

- 2.4** In addition to the options of referring or not referring for investigation there is a third option open at this stage which is that of making a direction that some other course of action be followed, the most obvious example of this would be a direction to mediate. However, very few directions to take alternative action have been issued to date, possibly because such directions are only advisory as there is no sanction for non-compliance. Under the new system this third option will be available to the local standards committee when conducting the filter and the indications are that its use will be promoted by the SBE. Again, this will inevitably entail resources to support activity such as mediation which can be highly time consuming.

New System from April 2008

- 2.5** From April 2008 a new system will be implemented where all complaints about breaches of the Members' code of conduct will be, in the first instance, directed to the relevant Monitoring Officer, as opposed to the SBE. The Monitoring Officer will then be required to report the complaint, without delay, to the Standards Committee or a Sub-Committee thereof. The committee will be charged with making the initial filter decision currently undertaken by an officer of the SBE, i.e. whether to refer, reject or direct other action. This decision must be made solely on the strength of the information submitted.
- 2.6** As well as the initial filter decision, Standards Committees will be required to undertake reviews of these decisions where a complainant is unhappy because their complaint has been rejected. The rules will require that none of those Members who undertook the initial decision may take part in its review. This is a further practical complication in that it will mean more meetings to be arranged although the pool of eligible members on which to draw will be smaller.

Expected Increase in Number of Referrals for Investigation

- 2.7** Another expected outcome from the transfer of the decision making process is the increase in the percentage of complaints received which are subsequently referred for investigation. The rationale underlying this proposition is that the single officer undertaking the process completely independent from the authority is able to be

much more robust in their decision making as they are more distant from the actual complainant and complained about. A pilot study conducted by the SBE has provided evidence which supports this expectation. Experience over the past few years has shown an increasing percentage of complaints being rejected by the SBE at this first stage and many complainants and indeed Members of Standards Committees and Monitoring Officers have been surprised by the nature of matters being rejected. It is thought unlikely that, at least in the initial few years of operation, Standards Committees will act as robustly as the SBE. As a consequence the number of complaints referred for investigation is expected to increase.

Strategies for Limiting the Impact of an Increased Number of Investigations

- 2.8** As the SBE has, over the past two years, gradually increased the numbers of investigations referred to Monitoring Officers, experience has shown that even the most straight forward of investigations can be an extremely time consuming process if one is to ensure fairness to both sides. As a result, a number of approaches are emerging amongst local authorities which avoid utilising the relatively expensive resource of the Monitoring Officer in the leg work of an investigation. The first option is that of outsourcing the investigation to one of the growing number of ex SBE employees who are undertaking these investigations. The second is that of establishing a protocol whereby other staff, such as Benefit Investigators, are utilised for the investigation aspect. There are pros and cons of each approach but it is perhaps sensible to try and establish the potential to use either depending upon the particular circumstances. In a straightforward case which happened to coincide with a slack period for the Benefits Investigation team then option two may be preferable whereas if the investigation is complex or sensitive then option one is likely to be preferred.

Exploration of Collaborative Arrangements for the Local Filter

- 2.9** Given the existing timescales for turnaround of these decisions of 9 working days, this process will be challenging simply in terms of the practicalities of calling meetings. The logistical problems arising from this are currently being given much consideration by Myself and fellow Monitoring Officers and CBC is taking part in a pilot project looking at the possibility of working in collaboration with other Standards Committees within Gloucestershire to establish a rota of hearings on a monthly basis which could undertake this initial sift thereby spreading the burden of this new process.
- 2.10** The model is set out in diagrammatic format at appendix 'A', and involves the establishment of a Local Filter Joint Committee solely for the purpose of undertaking the local filter process. The administration of the joint committee would be shared by the participating authorities in order to spread the burden of the new process. The resource impact associated with such an approach will be that arising from staffing the sub-committee when hosting a meeting. I estimate the number of meetings hosted under such an approach would average at around two or three per annum. Under joint arrangements, I do not foresee the necessity to increase the size of the Standards Committee.

Utilising the Existing Committee

- 2.11** The alternative to a joint arrangement is that of having our own Standards Committee scheduled to meet on a monthly basis to be cancelled if no complaints need to be considered. In terms of the numbers of complaints we are likely to be dealing with I can only go on the basis of historical data which shows that over the last two years the number of complaints made to the SBE about CBC councillors has averaged

around eleven per annum. Whilst most, if not all of these are rejected, currently by the SBE, under the new arrangements a meeting will be required to undertake that process.

- 2.12** If we base our predictions on past experience this suggests that we will receive approximately 11 complaints per year, all of which must be reported to the Standards Committee for consideration. For each complaint, a report will need to be prepared by the Monitoring Officer or their Deputy. The Standards Board estimate that the initial assessment of individual complaints by the Monitoring Officer will take, on average, 2½ hours. On the basis of eleven complaints per year this means 27½ hours work which is approximately 4-5 days of officer time.
- 2.13** Turning to the Local Filter meetings to consider the complaints received, Cheltenham Standards Committee benefited from taking part in a pilot of the local filter, involving a number of standards committees from around the country, in which 12 specimen cases were considered by the committee in order to give an indication of how the process would work when dealt with by committees as opposed to individual officers of the SBE. The results of the pilot suggest that consideration of individual complaints takes between 30 minutes to an hour. In my report I make the assumption that complaints will be bunched as opposed to evenly distributed throughout the year. On that basis I conclude that 6 meetings will be required taking on average 1½ hours each, (9 hours meetings). These meetings will be in addition to the ordinary meetings of the Standards Committee which occur quarterly.
- 2.14** In addition to these Local Filter meetings there are likely to be a number of meetings required for the review of the initial local filter decisions as the regulations provide for a right of review for the complainant where their complaint is rejected at the initial local filter stage. It must be noted that none of the people taking part in the initial filter of a complaint will be able to take part in its review. I have estimated a requirement for approximately 3 review meetings per annum (3 hours).
- 2.15** The actual calling of the meetings themselves will also involve work on the part of officers from the DSU who will be required to attend and take minutes of the deliberations. I would estimate at least 7½ hours officer time would be involved in supporting each of these meetings including the meeting itself, giving a total of 67.5 hours per year DSU officer time. The Monitoring Officer, or their Deputy, will also need to be in attendance to advise the committee, (11 hours).
- 2.16** The Standards Committee currently has eight members. I would suggest that this size of committee can realistically only be divided into two sub-committees. Given the restraints imposed by the regulations, which will require that no sub-committee member may hear the review of an earlier local filter decision in which they took part, I recommend that the committee would need to be increased in size to 10 members, the additional two being one co-opted independent and one parish member. This would have resource implications amounting to the payment of one additional allowance for the co-opted independent member, currently £287 p/a. There are also implications arising from the staff attending the committees and the notional cost of the venue although these are more difficult to quantify in basic financial terms.

3. Implications for Resource Requirements Without Collaboration

3.1 Below I list what I consider to be the likely impact upon resource requirement arising from the introduction of these new statutory responsibilities on the basis of Cheltenham going it alone.

- i. Officer time involved in administering the process of receiving and reporting

complaints;

a) MO/Deputy MO time 38.5 hrs per annum

b) DSU officers 67.5 hrs per annum

ii. Increased number of meetings of the Standards Committee (sub-committee) to consider complaints and to conduct reviews of initial decisions;

9 initial filter meetings @ 1 1/2hrs, and 3 review meetings @ 1 hr

iii. Increased likelihood of investigation;

Unquantifiable but would involve officer time in conducting any investigation.

iv. Officer time/financial resource required to implement alternative action such as mediation.

Unquantifiable

3.2 Turning to specifics identified I would suggest that point i above could be covered from existing resources subject to the situation being reviewed after six months operation of the local filter.

3.3 Point I and ii will involve additional DSU officer time in scheduling and clerking the meetings and Monitoring Officer time in preparing reports and attending meetings. I estimate that, in the absence of any joint sub-committee arrangement, there will be 9 additional sub committee meetings per year of approximately 1 1/2 hour each and 3 review sub-committees of 1 hr each.

3.4 In respect of point iii, I recommend that a protocol should be agreed between the Monitoring Officer and the Head of Benefits Team establishing the principle of sharing officer time for investigations.

3.5 The impact associated with point iv, is difficult to quantify at this stage and I suggest it is reviewed, together with point i and ii, at six months after implementation.

Background Papers

Contact Officer Quentin Baker, Asst. Director (Legal & Democratic),
01242, 264155

Quentin.Baker@cheltenham.gov.uk

Accountability N/A

Scrutiny Function N/A