

## CHELTENHAM BOROUGH COUNCIL STANDARDS COMMITTEE

ANNUAL REPORT APRIL 2010- MARCH 2011

**Rough Draft**

My Report this year, my fourth, is rather different from previous ones. We have been less busy than in recent years, which makes for less for me to say, but the imminent demise of Standards for England, the national supervising body, and changes to be imposed on the standards régime throughout the country give you, the Council, something to think about and discuss. But first to the mundane.

**Membership**

There have been several changes, although the independents (i.e. non Borough or Parish Councillors) have remained. Sadly, there has been one death, of Parish Councillor Barrie Lewis, to whom I tender posthumous thanks for his service. Local elections and Cabinet appointments account for other changes, but if I can single out one departure it is that of Parish Councillor Stuart Fowler who had served four years and whose time was therefore deemed to be up. This was not a statutory requirement but "accepted practice". While there is obvious merit in having a steady turnover in any committee, my feeling is that, if a Standards Committee is to continue to exist, Councillors should be able to serve more than four years. With the relatively few cases in this locality that actually come before us, gaining experience is a slow process, and so just as legs are comfortably under the table they are currently required to walk away. I therefore regard Councillor Fowler's departure as regrettably premature; he served the Committee admirably and was a much valued voice of sense and wisdom.

**Visits**

Previously it has been the custom for independent members to pay occasional random visits to your meetings and to those of the five parish councils. This past year we have put a brake on that, in order to consider further the role of Committee members in attending meetings and being clear to avoid potential conflicts of interest should a complaint arise from any occurrence at such a meeting. This matter will need to be considered afresh once the future of the conduct regime and the role (if any) of a Standards Committee in relation to Parish Councillor conduct has been clarified.

**Birmingham Conference**

At this point I usually have a few remarks on this national event in October, where one can learn how others are doing it and be told how one should do it. However, it was cancelled last year as Standards for England started to wind down.

**Meetings and scrutiny of new legislation**

We shall have met the usual four times by the end of this month.

The new Code of Conduct that was hovering below the horizon at the time of my Report last year has remained there and is now not expected ever to emerge. The most significant document we considered was the Draft Protocol for Member/Officer Relations. It was fundamentally in good shape, but fresh eyes can nearly always detect something slightly awry, and we did suggest a few minor "tweaks". I understand that it is now in force. By the time this Report is issued we shall also have reviewed the Code of Conduct for Employees in the light of a Report from the Monitoring Officer.

**Complaints**

There have been only a few referred to us this past year, and again none of them was of such a serious nature that we felt it necessary to refer it to Standards for England. The Standards Committee upheld two investigating officer reports recommending "no breach". One complaint was reported to a full hearing and one breach of the Code of Conduct was identified.

**Training**

The Monitoring Officer gave us an extensive and comprehensive session, primarily aimed at those relatively new to the Committee, but equally valuable to older hands who thought they knew it all. She also conducted a training session for all members of one of the Parish Councils. This training was undertaken in accordance with a decision of a Standards Sub-Committee following the

consideration of a number of complaints relating to a member of the Parish Council and was well attended and generated positive feedback.

### **The Future**

As Private Fraser would have said: "We're all doomed". Actually not necessarily, but very probably. The Government plan, as mentioned previously, is to abolish the national body Standards for England. The legislation is some way off being passed but it may well happen before the end of this year. Standards for England seem resigned to their own extinction and, although still handling cases referred to them, they are shedding staff and have ceased to issue Bulletins. But until they disappear we carry on as usual. However, there will then be a choice to be made. You can disband us and do without a Standards Committee entirely, or you can establish another, differently constituted one.

Until about ten years ago you did not have a Standards Committee and I do not think many in this council area felt terribly deprived. And if you reverted to that I doubt that there would be a major outcry. It would save a bit of money and in this period of financial strain, it could perhaps be sold as a justifiable cut. However, if you continue to have a Standards Committee, one interpretation of what little has been released so far is that its membership may have to be confined to Councillors, and its powers, especially on the penalties it can impose (which are not presently that great anyway), will be even more limited. The expression "Paper Tiger" comes to mind. At risk of being thought biased on this, the absence of independent members such as myself (who lives outside your boundaries and can view your affairs with detachment) may not play well with the public, for self-policing is not generally seen as the best form of policing.

It is not clear how much autonomy a local Standards Committee will be given. Although a "local" code of conduct is envisaged, having already set down limits on what penalties can be meted out under it, and having restricted the membership of the committee, one wonders how far central government will allow local councils to decide what goes into their own Code of Conduct. Local is a word with ill-defined boundaries, and can mean what Government wants it to mean. I attach a summary produced by the Standards Board for England on the issues for Standards arising from the Localism Bill.

In short, there is a tricky decision to be made, not now but later this year. I would suggest that we all wait until there is more detail available about the Government's intentions. The current Standards Committee will, I am sure, be willing to provide a recommendation to the Council on action to be taken once the anticipated legislation has emerged.

### **Conclusion**

This may well be my final Report. It has been an interesting and mostly enjoyable experience to have been a member and then Chairman of your Standards Committee. But it has had its frustrations when a complaint has had to be dealt with. The procedure was imposed from above, had to be followed, and could prove lengthy, expensive, and possibly out of proportion to the gravity of the real or perceived wrongdoing. So if you get the chance, streamline it!

Finally, my thanks to the Monitoring Officer, Sara Freckleton, the Democratic Services Manager, Rosalind Reeves, and the other officers who oil the wheels of the Standards Committee so efficiently.

## Localism Bill A brief summary of Chapter 5: Standards

1. The main provisions for the abolition of the standards regime are contained in Chapter 5 of the Localism Bill introduced into Parliament on 14 December 2010. Further provisions are set out in Schedules 4 and 24.

2. The Bill abolishes the standards regime overseen by the Standards Board for England, including the Model Code of Conduct for members of relevant local authorities in England and their standards committees. The abolition arrangements also affect the First-tier Tribunal (Local Government Standards in England) under the jurisdiction of the Ministry of Justice because the Tribunal will receive no further cases after those that it is already dealing with on the abolition date have been determined.

3. Authorities will be under a duty to promote high standards of conduct. The new arrangements for standards to help them comply with this duty will in part be voluntary, and in part mandatory, with criminal sanctions where certain interests are concerned. The Bill also makes provision for transitional arrangements regarding the Standards Board and ongoing cases.

4. The Standards Board for England will no longer exist and none of its functions will transfer to any other body. There will no longer be a requirement for relevant authorities to adopt a code of conduct for their members or to appoint standards committees, and there will be no mandatory enforceable code of conduct for members that they have to undertake to follow when they take up office (i.e. elected or appointed).

5. The relevant authorities that will be affected by the abolition of the current regime and the new arrangements cover 'relevant authorities'. These include authorities other than local councils - for example, police authorities in England and Wales until they are abolished (subject to the current Police Reform and Social Responsibility Bill being passed by Parliament). Relevant authorities will continue to include Parish Councils, but they will be responsible for their own standards instead of the relevant district or county authority.

6. Matters relating to standards will be the function, i.e. responsibility, of the relevant authorities but no function can be delegated to an executive (sometimes referred to locally as a cabinet), and the adoption of a voluntary code must be done by the authority as a whole.

7. There will still be a requirement, expressed as a duty, to promote high standards of conduct, but this will now be the function of the authority and not standards committees.

8. The duty and any voluntary arrangements adopted by an authority still only apply to members of authorities who can vote. This means that voting co-opted members will be covered by any new arrangements, but non-voting co-opted members will not.

9. Relevant authorities can create a voluntary code either by revising an existing code or adopting a code to replace an existing one. Because the code is voluntary, an authority can also withdraw an existing code without replacement. The authority can publicise what it has done about the code as it sees fit.

10. Where an authority has adopted a code, it can put in place any procedure it wishes to deal with complaints and take any action it sees fit, although this may exclude suspension or disqualification as these sanctions are expressly forbidden by provisions relating to how the council deals with failure to register or declare interests.

11. The arrangements regarding interests and criminal sanctions will be dealt with by way of Regulations issued by the Secretary of State, and the main requirement to maintain a register will remain with the monitoring officer for authorities which have monitoring officers. Although the Bill allows a specified person in parish councils to be responsible for maintaining a register, it may be that the regulations could specify that this responsibility will remain with monitoring officers for parish councils in their area.

12. The Regulations will be able to specify –

- The interests to be registered
- The requirements for disclosure
- Participation in decision-making
- Dispensations
- Sanctions (but these cannot include suspension or disqualification) and
- Access and publicity arrangements for a register.

13. Prosecutions in relation to interests can only be brought with the consent of the DPP. Offences can only be dealt with in the Magistrates Court, and will relate to:

- a failure to register without reasonable excuse;
- a failure to disclose without reasonable excuse; and
- taking part in relevant authority business (which could be wider than taking part in formal meetings).

13. Sanctions available to the court on conviction are

- A fine, the current maximum for which is £5,000
- Disqualification for up to 5 years from any relevant authority or from standing or becoming a member.

The time limit for prosecutions is 12 months from when the prosecutor decides there is sufficient evidence to support a case, but no later than 3 years from when the offence occurred.

14. The transitional provisions will be made by secondary legislation and are referred to mainly in Part 2 of Schedule 4. Part 1 consists of amendments of specific legislation which mentions the Standards Board. Transitional provisions refer to property and assets of the Standards Board and arrangements for cases.

15. There is still much to be made clear on how some of these matters are to be dealt with in practice and how they link with existing legislation and the general law, particularly in relation to misconduct cases decided before the LGA 2000 came into force.