

STANDARDS COMMITTEE		
Report Title	THE FUTURE OF THE STANDARDS REGIME	
Key Decision		Item No. 6
Ward		
Contributors		
Class	Part 1	Date: 9 NOVEMBER 2010

## 1 Summary

This report brings to the attention of the Committee the Coalition Government's stated intention to abolish the existing statutory ethical framework applying to local government, and asks the Committee for its comments.

## 2 Purpose

The purpose of the report is to ask the Committee whether a response to the proposals to abolish the current ethical regime ought to be made and if so what that ought to be.

## 3 Recommendation

That the Committee note the proposals and make any comments it deems appropriate.

## 4 Background

### A national code of conduct

- 4.1 The national code of conduct was in place long before the current regime was put in place by the Local Government Act 2000, (the 2000 Act) under Part III of which it is now a statutory duty for all local authorities to have a code of conduct which at a very minimum incorporates all those elements set out in the Local Authorities (Model code of conduct) Order 2007. Lewisham's Member Code of Conduct has long reflected (and often exceeded) the statutory requirements.
- 4.2 The current Member Code of Conduct is attached to the Constitution and incorporates all the necessary statutory elements, a number of local protocols (e.g. on member/officer relations) and guidance issued by Standards for England. All members of the Council are under a statutory duty to undertake in writing to abide by the Member Code of Conduct in force from time to time, and failure to do so will mean that a casual vacancy arises.

## A standards committee

- 4.3 Under Part III of the 2000 Act it is also a statutory requirement for local authorities to appoint and maintain a Standards Committee, incorporating independent membership and chaired by one of the independent members. Its terms of reference must include such matters as the promotion of the highest standards of ethical conduct, the local investigation of complaints and consideration of whether dispensations ought to be granted to members with a prejudicial interest in circumstances permitted under the Act.

## Standards for England

- 4.4 Also established under Part III of the 2000 Act, the national body, Standards for England was charged with the investigation of all written complaints of breach of the Code of Conduct, unless it decided that it would be more appropriate for the complaint to be heard locally and referred it back to the relevant Standards Committee for investigation. Latterly its role was changed to that of strategic advisor on ethical matters, with investigations only to be handled by Standards for England if it was inappropriate for them to be handled locally, for example, if the allegation was extremely serious and the local Standards Committee's power to impose sanctions insufficient.

## Arrangements prior to the existing regime

- 4.5 There is a history in Lewisham of paying close attention to the ethical framework and of keeping its profile high both before and since the introduction of the existing regime. Prior to the current arrangements, there was no equivalent body to Standards for England; no requirement for a Standards Committee, and the only sanctions formally available to the Council in respect of a breach of the national member code of conduct was censure. Any alleged breach, which if proven would be a crime would be referred to the police, but there was no legal provision for other formal sanction or investigation.

## **5 The Coalition Government's proposals**

- 5.1 In the Queens Speech in May this year, the commitment to abolish the Standards Board regime was heralded. Because it has its existence rooted in the 2000 Act, new primary legislation would be required to abolish Standards for England, the requirement for a national code of conduct and standards committees. It is anticipated that whatever changes there are to be will be incorporated in the planned Decentralisation and Localism Bill which is due to be published later this year.
- 5.2 Though the Government is in discussion with the Local Government Association about what might go into a new model member code of conduct, it is only when the Bill is published that there will be clarity about what new proposals are intended. In the absence of the Bill, only ministerial statements of intention and speculation inform us about what changes there will actually

be.

- 5.3 So far there have been statements to the effect that the intention is to do away with “frivolous and expensive complaints”, with Andrew Stunell MP stating on 20<sup>th</sup> September (see Appendix 1) that the Government intends to abolish the entire standards regime. Instead he states that “the Government is legislating to make serious misconduct a criminal offence to be dealt with through the courts.”

## **6 Monitoring Officer comments**

- 6.1 Members of the Committee will be aware that there have been a number of criticisms of the existing ethical regime, and some members of the Committee will have experienced them at first hand by participation in the pre-assessment process. These include that:-
- (a) as the Standards for England annual reports for 2008-2010 show, less than 50% of approximately 6000 complaints resulted in further action being taken.
  - (b) cost and resources taken up by relatively minor matters can be disproportionate
  - (c) the process for handling complaints is prescriptive with a requirement for pre-assessment, rights of review and subsequent hearing, even in relation to relatively minor complaints and can be disproportionate
  - (d) there is little discretion for relatively minor complaints to be resolved by the monitoring officer (e.g. by way of apology) without the full process of investigation and referral to the Standards Committee process
  - (e) Delays by Standards for England in completing investigations and resolving matters referred to them.
- 6.2 By contrast, a number of features of the existing system are commendable including:-
- (a) a national code which is compulsory provides consistency for members across the country and the requirement to sign up to observe it provides focus on ethical matters
  - (b) the participation of Standards Committee members who are independent of the Council in the investigation of complaints is likely to inspire confidence in the public that their complaints are taken seriously.
  - (c) Its compulsory statutory basis gives it gravitas.
  - (d) It can handle complaints of breach which are more than frivolous, but less than criminal on a local basis. For example, serious bullying of officers by a member can be dealt with through local Standards Committees who can

impose sanctions.

(e) Statutory protections for the Monitoring Officer (e.g. special provisions relating to disciplinary matters) avoid undue pressure in relation to their advice on ethical matters

(f) Applications for dispensation can be dealt with locally as opposed to by a central adjudicator

6.3 The Monitoring Officer would endorse the retention of a national model code of conduct as a minimum for all authorities with discretion to local authorities to localise it to fit their own circumstances provided that the minimum statutory requirements are met. This would provide consistency and would require all Councils to adopt minimum standards within a single framework, whilst retaining local discretion to embellish the statutory minimum.

6.4 It would also be advisable for the model code to deal with matters which fall short of a criminal act, but may nonetheless be serious matters for a local authority. Putting undue pressure on officers to change professional advice for example should be very serious indeed but may not fall within the definition of the criminal offence which is likely to be introduced by the new legislation. Discretion also need to be preserved to handle matters which might amount to a criminal act, no prosecution ensues (for example because of lack of police resources).

6.5 Any loosening of the system to enable local authorities to put in place their own arrangements for handling complaints would be most welcome, giving authorities autonomy to add to the statutory regime (whatever that may be in due course). However, were the new law to state that the pared down statutory provisions were definitive and prescriptive without any local discretion, the Monitoring Officer suggests that that would be a retrograde step.

6.6 The Head of Paid Service, Chief Finance Officer and Monitoring Officer should retain their personal statutory duties and protections to enable them to carry out the sometimes difficult job of handling complaints without fear of recrimination.

## **7 Other responses**

Members will see by way of information, attached at Appendix 2 correspondence between CLG and the Chair of the Standards Committee of the London Borough of Merton as well as a proposed response from the London Chairs of Standards Committees. The Committee is asked to consider whether it wishes to endorse the proposed response from London Chairs, or to make separate representations to CLG now and if so what those comments might be.

## **8 Legal implications**

- 8.1 Unless and until the law changes the existing code of conduct and standards regime exists and complaints will be handled in accordance with the statutory procedure reflected in Lewisham's local procedures. Standards for England have confirmed that they will continue with what is statutorily required of them, but are winding down certain activities such as the requirement on local authorities to make returns to them. They are also reducing their staff complement and will take this into account in deciding whether to accept cases referred to them.
- 8.2 In establishing any new arrangements in due course, the Council will be under a duty to seek to achieve best value in accordance with the Local Government Act 1999, and to ensure that any investigations under them are carried out with due regard to the right to a fair hearing set out in Article 6 of the European Convention on Human Rights, as reflected in the Human Rights Act 1998.
- 8.3 Members attention is drawn to the question of personal interests, details of which are set out in Item 1 on this agenda, and consider whether they have a personal interest in this matter and if so whether it prevents them from participation in consideration of the report.

## **9 Financial implications**

There are no financial implications associated with this report at present, though there may be when new provisions are introduced. These will be reported to the Council when it comes to make decisions about any new arrangements it has to put in place to reflect any new legislation.

## **10 Crime and disorder implications**

There are no specific implications save those identified in the report save to say that the entire ethical framework is designed to encourage the highest standards of behaviour and to prevent breaches which in some cases could amount to criminal activity. The proposals to create a new criminal offence are reflected in so far as they are known in the body of the report.

## **11 Equalities and environmental implications**

There are no specific implications.