

NORTHAMPTON BOROUGH COUNCIL

STANDARDS COMMITTEE

Your attendance is requested at a meeting to be held at the Godwin Room on Thursday, 26 March 2009 at 5:00 pm.

D. Kennedy
Chief Executive

AGENDA

1. APOLOGIES
2. MINUTES
3. DEPUTATIONS / PUBLIC ADDRESSES
4. DECLARATIONS OF INTEREST
5. MATTERS OF URGENCY WHICH BY REASON OF SPECIAL CIRCUMSTANCES THE CHAIR IS OF THE OPINION SHOULD BE CONSIDERED
- 6. STANDARDS BOARD PUBLICATIONS D. Burrows
x 7093
Report of Borough Solicitor (copy herewith)
- 7. R (ON THE APPLICATION OF GARDNER) V HARROGATE BOROUGH COUNCIL (2008) EWHC 2942 (ADMIN)- COMMENT D. Burrows
x 7093
Report of Borough Solicitor (copy herewith)
- 8. R (ON APPLICATION OF MULLANEY) V THE ADJUDICATION PANEL FOR ENGLAND (2009) ALL ER(D) 102 (FEB)- COMMENT D. Burrows
x 7093
Report of Borough Solicitor (copy herewith)
9. STANDARDS COMMITTEE WORKSHOP TO DISCUSS WORK PLAN F.
Fernandes
x 7334
Borough Solicitor to report.
10. EXCLUSION OF PUBLIC AND PRESS
THE CHAIR TO MOVE:
"THAT THE PUBLIC AND PRESS BE EXCLUDED FROM THE REMAINDER OF THE MEETING ON THE GROUNDS THAT THERE IS LIKELY TO BE DISCLOSURE TO THEM OF SUCH CATEGORIES OF EXEMPT INFORMATION AS DEFINED BY SECTION 100(1) OF THE LOCAL GOVERNMENT ACT 1972 AS LISTED AGAINST SUCH ITEMS OF BUSINESS BY REFERENCE TO THE APPROPRIATE PARAGRAPH OF SCHEDULE 12A TO SUCH ACT."

STANDARDS COMMITTEE

26 March 2009

AGENDA STATUS: PUBLIC

Report Title	Standards Board- publications update
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Date of Meeting:	26 March 2009
Directorate:	Chief Executive's
Ward(s)	All

1. Summary

Issue 42 of the Standards Board's 'Bulletin' is attached and comment made on some of its points. The case concerning the Harrogate Borough Council is commented on in a separate report.

2. Recommendations

That members note the contents.

3. Report Background

The key points to note from the Bulletin are:-

3.1 Members should note that further regulations ('the Standards Committee (Further Provisions) Regulations 2009' are being drafted and are expected to be in force in May. Of particular significance is provision in them for the functions of standards committees to be discharged by committees set up by neighbouring authorities; an extension of joint or 'shared service' working, in effect.

3.2 Members should note that the Standards Board website is expected from this month to include another section highlighting examples of good practice from standards committees at other authorities. It will be worth visiting to stimulate discussion in this authority as to how to increase the quality of work and profile of the standards committee.

4. Implications (including financial implications)

4.1 Resources and risk

There are none- apart from, perhaps, the resources needed to arrange training for members on any points arising.

4.2 Legal

None worth mentioning.

4.3 Other implications

If members do not keep reasonably up-to-date with the points in publications such as this one then they may find it harder to perform their tasks on the various sub-committees which are involved in the determination of member-conduct complaints.

5. Background papers)

None

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Welcome to Issue 42 of the Bulletin.

I am pleased to introduce this new-look electronic version of the Bulletin. You can now see at a glance which article you would like to read, choose to print individual articles or the whole issue, and search for any information contained in it on our website.

We have made these changes as part of our commitment to continually improving our communications with you, and as a result of feedback from some of you on the previous format. As always, we welcome your thoughts and ideas – you can contact us at bulletin@standardsboard.gov.uk.

At the start of 2009, we are building up a picture of your work through the online quarterly returns thanks to your continued help. In this Bulletin we summarise some of our findings from these returns and update you on our review of the returns system and our plans for the new annual return.

Many of you will be awaiting new regulations which will allow authorities to form joint standards committees. In this issue, we summarise these regulations, which will also provide the Standards Board with powers to suspend an authority's initial assessment functions and will add to rules governing member dispensations.

In addition, we use this issue to ask authorities to consider their indemnification policies, following concerns raised from members about their authority's current arrangements. We also comment on a recent case in the High Court involving bias in planning decisions and highlight the Adjudication Panel for England's merger with the Tribunal Service.



The Standards Committee (Further Provisions) Regulations 2009

Draft regulations are being prepared which will allow the Standards Board to suspend the initial assessment functions of an authority and will enable authorities to establish joint standards committees. They will also amend the powers of standards committees to grant dispensations to members who would otherwise be unable to take part in authority business because of a prejudicial interest. We expect the

regulations to come into force in May 2009.

Suspension of initial assessment functions

The circumstances in which the Standards Board will intervene are likely to include an authority's failure to have regard to our guidance or comply with our directions, or when the standard committee or monitoring officer fails to carry out their functions properly. The Standards Board might also be invited by the authority or the standards committee to intervene.

When the Standards Board intends to suspend the authority's initial assessment functions, we will notify the authority, give our reasons and ask for any observations. If a direction is made, the authority must publish details of it in a local newspaper and any other publication the Standards Board thinks is appropriate.

Once the reasons for the direction cease to exist, the Standards Board will revoke the direction.

Joint standards committees

Joint standards committees will be able to deal with all or any functions of a standards committee but there can be no concurrent functions. **The Local Government Act 2000** and supporting regulations have effect in that any reference to a standards committee is a reference to a joint standards committee for the purposes of the functions delegated to it.

The terms of reference of the joint committee must include the following:

- the functions they are to have
- the administrative arrangements
- where written allegations should be received for each authority involved in the arrangements
- the number of members and their terms of office
- any allowances they will get
- how to withdraw from the joint arrangement

The finances are to be shared as agreed by the authorities involved and in default of agreement will be decided by an arbitrator appointed by them.

The Standards Board will be producing guidance on joint standards committees which will include a draft constitution or terms of reference incorporating a template for the information required by the regulations.

Dispensations

The ability to get a dispensation remains for instances when more than 50% of the members who would be able to vote are prevented from doing so by the Code of Conduct. A new provision clarifies that members can seek a dispensation where the political balance of the meeting would be upset sufficiently to prejudice the outcome of voting on the issue. This is similar to a provision that has been in existence in Wales for some time.

Annual returns to start in April

The Standards Board will be collecting information from standards committees in the form of an annual return, from April 2009. This information will be on standards committees' activities and on their arrangements for supporting ethical conduct.

Since our last **Bulletin**, we have made much progress in developing the return with findings now collated from our pilot trial with local authorities.

Consultation and piloting

Development of the annual return has been informed by sound research throughout. The first stage was a review of information, including research on ethics and ethical governance, which informed an initial draft. Discussion groups were then held with monitoring officers and with chairs of standards committees to refine our findings from the review. This led to a second draft-version of the annual return, which we piloted with local authorities.

Feedback we have received suggests that local authorities are generally supportive of the annual return and its aims. Those that took part in the pilots have reported that they have found completing the return a useful learning process.

Setting the questions

We are in the process of refining the questions following the feedback. Broadly though, we will be asking about:

- protocols for member/officer relations
- the existence of any mechanisms for dealing with member/member and member/officer disputes
- the chair of the standards committee's relationship with the chief executive, the monitoring officer and the leader
- what the standards committee is doing to promote its work both within the authority and externally
- the general activities of the standards committee, for example providing training

We are also keen for local authorities to use the return to inform us of their achievements in supporting standards.

Next steps

The annual return will take the form of an online questionnaire, similar to the quarterly return. It will be located in the same area of our website as the quarterly return and monitoring officers will be able to access it using the same log in details they use for the quarterly return.

We are testing the online system during March with a view to launching it in late April, after we have collected quarterly returns for the period January to March 2009.

An email announcement containing detailed instructions about how to access and complete the annual return will be sent out to monitoring officers in the near future.

We are now developing an online system for completing the annual return which will be similar to the quarterly return system. We will be testing the online form following final refinement of the questions.

For further information about the return, please contact Hannah Pearson at 0161 817 5417 or hannah.pearson@standardsboard.gov.uk.

Getting indemnification arrangements right

We have recently heard concerns from standards committee members who feel that their authority's current indemnification arrangements are not sufficient. We have also heard that independent members of standards committees have not been included in indemnification arrangements. You may be aware that under the **Local Authorities (Indemnities for Members and Officers) Order 2004**, local authorities can choose whether to indemnify their members.

In our **Role and make-up of standards committees guidance**, we recommend that independent

members of standards committees should be included in an authority's indemnification arrangements.

There are a number of potential risks that authorities may be exposing their members and themselves to, by not providing adequate indemnification. We would therefore urge authorities to consider whether the level of indemnification they currently provide to their members, including independent members of standards committees, is sufficient.

Good practice from the standards and ethics award

Six local authorities have been shortlisted for the *Standards and Ethics* category at the 2009 Local Government Chronicle (LGC) Awards, supported by the Standards Board. The winner will be announced at the awards event held at the Grosvenor House Hotel, London on 25 March.

A new section will be launched on the Standards Board website in March, highlighting the good practice ideas that worked for the shortlisted authorities. We hope that some of these innovative examples will be useful in helping your authority to achieve or maintain high standards.

Bias and the Code of Conduct

R (on the application of Gardner) v Harrogate Borough Council [2008] ALL ER (d) 310 (Nov)

A recent case in the High Court has brought attention to the common law test of bias and planning decisions. The Local Government Ombudsman (LGO) and the Standards Board for England both received complaints about a planning matter. An ethical standards officer from the Standards Board and the LGO both proceeded to investigate the case.

Each of the investigations were designed to draw out relevant evidence for the separate jurisdictions of maladministration (LGO) and of a breach of the Code of Conduct (the Standards Board). The case draws attention to matters which can cause concerns affecting both jurisdictions. However, it also highlights where they part company in practice and in the application of the relevant law. We recommend all monitoring officers and members refer to the concise court decision ([2008] ALL ER (D) 310) for an understanding of this area.

The ethical standards officer did not disagree with the findings of bias affecting maladministration which was the basis of the LGO decision, as he did not consider bias as part of his investigation. Rather the ethical standards officer's investigation was mainly concerned with personal and prejudicial interests and the evidence of close friendship. Conversely, the LGO's investigation was not designed to draw evidence of a breach of the Code.

In the case, Councillor A was granted planning permission on the casting vote of Councillor S. The permission was granted against strong officer advice and major planning policy reasons which did not support granting permission. There was a connection between both councillors and it was the nature of this connection which drew the distinction between the two jurisdictions, the investigations and the relevant law to be applied in both.

For the purposes of the ethical standards officer's investigation, the evidence did not suggest a "close friendship" and therefore no breach of the Code was found. However, the Court said that "It does not follow that there will be no apparent bias if the relationship is less close" (see paragraph 16 of the judgment). So there was apparent bias acknowledging that both councillors were friendly acquaintances.

For more information on the respective roles of the Standards Board and the LGO, their jurisdiction and

investigations of common interest, please see the [memorandum of understanding with the LGO](#).

Bringing standards into focus

From 16 March, standards committee members, monitoring officers, council leaders and chief executives will receive their invitations to the **2009 Annual Assembly of Standards Committees - Bringing standards into focus**. You'll also be able to book online through our website. The event takes place on 12 and 13 October at the ICC, Birmingham.

In response to delegate feedback, this year's Assembly programme is more practical than ever. We're working with a forum of monitoring officers, independent chairs and standards committee members to develop a range of workshops, plenary sessions and advice clinics that give you the opportunity to focus on how you are delivering local standards and share good practice, ideas and innovations.

If you would like to fast-track your booking and receive your invoice before the end of the financial year, please contact Benedict Business Resources on 01483 205432 or email benedictbr@btinternet.com.

'Contribution of standards committees' research project begins

The Standards Board has commissioned new research into the responsibilities and contributions of standards committees.

Standards committees are at the heart of the new local standards framework. They educate and support members in following the highest standards of conduct and ensure that those standards are fully owned locally.

Previous Standards Board research has shown that there is a demand from standards committees for additional guidance on how to undertake some of these responsibilities and what they could be doing.

As a result, we are pleased to have commissioned the *Universities of Hull and Teesside*, who have entered a joint bid for this research. They will collect effective practice examples from standards committees on activities they undertake to ensure high ethical standards.

The researchers will conduct case studies in nine local authorities. These will collect examples of effective practice in the statutory function of standards committees, in their non-statutory roles, and in the wider organisational practices that support standards. We will then collate the effective practice examples into a resource for local authorities and disseminate this nationally.

Work began on this project in January 2009 and we hope to have findings to share in July 2009.

For further information, please contact Hannah Pearson at hannah.pearson@standardsboard.gov.uk or 0161 817 5417.

Standards Board responds to CSPL inquiry

The Standards Board will be responding to the Committee on Standards in Public Life's (CSPL) issues and questions paper titled: *Local Leadership and Public Trust: Openness and Accountability in Local and London Government*.

Our response will focus on a number of key themes raised in the paper. These include:

- accountability in partnerships
- the role of standards committees in ensuring openness and accountability
- trust in accountability frameworks
- the role of regulators

The deadline for submission was 25 February 2009 and our response will be posted on our website shortly.

APE merger to take place

The Tribunals Service and Communities and Local Government have given the go-ahead for the Adjudication Panel's integration into the new unified tribunals' structure.

The move will see the office relocate from Harrogate into serviced premises in Leeds that currently provide administrative support to other tribunals, including Social Security and Child Support.

Staff from the Adjudication Panel will transfer from being employees of the Standards Board to becoming part of the civil service. The President, the Adjudication Panel and its members are scheduled to join the General Regulatory Chamber of the first tier tribunal in January 2010.

Please note that the restructuring will not have an impact upon the service levels provided by the Adjudication Panel – only the contact information should change. Updated contact details will be provided on the Adjudication Panel's website in due course.

Standards Board supports NALC's 'Stepping Stones' conferences

The Standards Board is supporting the National Association of Local Councils' (NALC) one-day conferences. The conferences aim to share good practice and provide regional networking opportunities for councillors and officers in all tiers of local government.

We will be exhibiting at the conferences below, where policy advisers will be on hand to answer questions and provide guidance. You can find us on stand number two.

The dates for these events are:

Tuesday 10 March

The Council Chamber, Congress Centre, London

Wednesday 22 April*

The Oak Tree Conference Centre, Coventry

*Please note: NALC have changed the date of the event in Coventry from 11 February to 22 April.

STANDARDS COMMITTEE

26 March 2009

AGENDA STATUS: PUBLIC

Report Title	'R (on the application of Gardner) v Harrogate Borough Council' [2008] EWHC 2942 (Admin)- comment
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Date of Meeting:	26 March 2009
Directorate:	Chief Executive's
Ward(s)	All

1. Summary

In this report some comments are made about this decision.

2. Recommendations

That members note the report.

3. Report Background

Members are asked to note the following:-

3.1 This was an unusual case in that the leader of the Council, Mr Gardner, was effectively seeking on its behalf a court order quashing one of its planning decisions, following an adverse report by the Local Government Ombudsman in which she found that the grant of permission concerned was procedurally flawed due to apparent bias on the part of the chair of the committee on whose casting vote the permission had been granted. In effect, the Council was a defendant to the claim in name only; resistance to the claim was made only by the interested parties in whose favour the grant of permission had been made. They argued that the Ombudsman had been wrong to find bias and that the Council ought not to take action on her finding.

3.2 The main point of interest, for those concerned with ethical standards matters, is how the Court dealt with the issue of the alleged bias in the light of a separate report, made on behalf of the Standards Board for England following a complaint about the conduct of the committee chair. In that report it was concluded that the chair did not have a 'personal interest' (for the purpose of the Council's code of conduct) and at first sight this contradicted the Ombudsman's own conclusion. The Court went on to consider the differences of approach between maladministration and standards investigations.

4. Implications (including financial implications)

4.1 Resources and risk

There are none- apart from, perhaps, the resources needed to include training for members on any points arising.

4.2 Legal

See points made above.

4.3 Other implications

None worth mentioning.

5. Background papers)

None

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STANDARDS COMMITTEE

26 March 2009

AGENDA STATUS: PUBLIC

Report Title	'R (on the application of Mullaney) v the Adjudication Panel for England' [2009] All ER (D) 102 (Feb)- comment
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Date of Meeting:	26 March 2009
Directorate:	Chief Executive's
Ward(s)	All

1. Summary

In this report some comments are made about this decision.

2. Recommendations

That members note the report.

3. Report Background

3.1 This is a very recent decision of the High Court and provides clarification on, among other things, the test to be applied when deciding whether a member was acting in his or her 'official capacity' at the time of alleged misconduct for the purpose of the code of conduct.

3.2 The facts are interesting. Mr Mullaney and a fellow councillor, concerned about the condition of a listed building owned by a third party, trespassed on his land in order to make a video and then upload it onto the internet. While they were on the land the third party returned, there was a scuffle, someone was injured and, later, an edited version of a video appeared on the 'youtube.com' website. The third party made a complaint to the council's standards committee, then Mr Mullaney appealed to the adjudication panel for England against the committee's decision upholding the complaint and imposing a penalty. Not succeeding, Mr Mullaney then applied for judicial review of the adjudication panel's conclusion as to breach of the code of conduct and the sanction applied. Mr Mullaney's case included the contention that he was not visiting the third party's land and making and uploading the video in his 'official capacity' as a councillor and so the relevant paragraphs of the code of conduct did not apply to him then.

3.3 The Court rejected this contention. It refused to provide a definition or explanation of 'official capacity' but emphasised that the words of the definition to be found in the code were ordinary English words which should be applied straightforwardly by decision-makers, provided that they did so in the context of the facts of the case before them. The Court also found that the most relevant part of the code's definition of 'official capacity' was: "conducts the business of the office to which s/he has been elected or appointed". This required looking at the reasons why, the circumstances in which and the reasons for which the communication in question was made, or the action complained of taken. The Court found support for this approach in statements made by the judge in the 'Ken Livingstone' case, such as: "...official capacity will include anything

done in dealing with staff, when representing the Council, in dealing with constituents' problems and so on".

4. Implications (including financial implications)

4.1 Resources and risk

There are none- apart from, perhaps, the resources needed to include training for members on any points arising.

4.2 Legal

4.2.1 This case is a timely reminder of the importance, when assessing ethical standards complaints, to consider whether the alleged misconduct can be said to have occurred when the member was acting or communicating in his/her 'official capacity'. It is not right to go straight to the question whether the member, based on the available information, can be said to have failed to treat another with respect, to have brought the authority into disrepute and so on.

4.2.2 In many complaints this will not be a significant problem, but where it is in issue members should look at the facts more carefully and adopt the approach advised by the Court in this judgment.

4.3 Other implications

None worth mentioning.

5. Background papers)

None

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