

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER H170

TO: STANDARDS COMMITTEE

DATE OF MEETING: 23 January 2009

THE STANDARDS BOARD FOR ENGLAND BULLETIN (ISSUE 41)

1. PURPOSE OF REPORT

To receive the latest bulletin published by the Standards Board for England.

2. RECOMMENDATION TO COUNCIL

That the content of this report be noted.

The Committee is able to resolve this matter.

3. FINANCIAL IMPLICATIONS

3.1 None.

4. RISK MANAGEMENT

Not applicable to this report.

5. KEY INFORMATION

CONSULTATION ON PROPOSALS FOR CHANGES TO THE CODE

- 5.1 Some clarification to the possible introduction of an Officers Code of Conduct is provided on page 2 of 'Bulletin 41'. In particular, it is suggested that the model code will adopt a two-tier approach with the first tier broadly applying to all local government officers. The first tier will contain general obligations similar to those in Part 1 of the Members Code. These are the duties not to (i) breach equality enactments (ii) bully any person (iii) intimidate a complainant or witness (iv) disclose confidential information (v) prevent access to information to which there is legal entitlement (vi) bring their office or position into disrepute (vii) use their position improperly and (viii) misuse the council's resources.
- 5.2 The second tier will either apply to officers who have delegated functions or officers holding politically restricted posts and will include obligations to register and declare interests.
- 5.3 The Standards Board strongly supports application of an Officer Code for parish/town council staff although it is unclear whether this would be limited to the first tier.

COMMITTEE REFERRALS FOR 'OTHER ACTION'

- 5.4 As members will be aware, upon assessing a complaint under the Code of Conduct one of the options available to the sub-committee is to refer the complaint to the Monitoring Officer for 'other action' i.e. action other than investigation. The form of the other action is largely in the discretion of the sub-committee, but regard must be had to Standards Board guidance.
- 5.5 Page 3 of the Bulletin summarises points arising from a workshop at the last Annual Assembly of Standards Committees which considered the advantages of other alternative action. This contains some helpful pointers, namely:
- In making a referral for other action, the sub-committee must be satisfied that even if the specific allegation had occurred as alleged, it would not be in the public interest to investigate with a view to sanction.
 - The sub-committee must be satisfied that the other action could assist the proper functioning of the council.
 - There should be no conclusions drawn as to whether the member has complied with the Code.
 - Other action may be appropriate where there is poor understanding of the Code or where there has been a breakdown in relationships within a council to such an extent that it becomes difficult to conduct the business of the council.
 - It will need to be clear what the purpose of the alternative action is and that this is not to determine whether there has been a breach of the Code.
 - The sub-committee should not suggest an apology as a form of alternative action.

ADJOURNING LOCAL ASSESSMENT DECISIONS

- 5.6 Page 6 of the Bulletin provides feedback on the Standards Board consultation on whether an assessment sub-committee should be able to adjourn consideration of a complaint pending the Monitoring Officer checking whether the member will co-operate if the complaint is referred for other action. This related particularly to mediation which is dependent upon member co-operation.
- 5.7 A response to the consultation was sent on behalf of the Committee on 11 September 2008, details of which were reported to Committee on 24 October 2008 (report H140). The response, in summary, was that whilst deferring a decision may work in some instances, a preferable and simpler approach would be for the Monitoring Officer to check the councillor's willingness to co-operate in the initial notification letter. This would avoid delay and the need for the sub-committee to re-convene. It would also avoid issues of the sub-committee being perceived to have pre-determined the outcome of assessment.
- 5.8 Members will note that of the 29 respondents, 14 were opposed to the concept of adjournment and 8 in favour. There is no indication of whether other solutions, such as that proposed by the Committee, will be considered although fresh guidance on other action and adjournments are proposed for 2009.

REFERRALS TO THE ADJUDICATION PANEL

- 5.9 The Standards Committee (England) Regulations 2008 provide that one of the options available to the Standards Committee upon considering a Monitoring Officer report of the outcome of an investigation is to refer the matter to the Adjudication Panel for determination. The Adjudication Panel is an independent judicial tribunal. Guidance has now been issued by the Adjudication Panel on the circumstances in which it will accept a reference from a Standards Committee. A copy of the Guidance is attached as Appendix 2.
- 5.10 Members will note that the primary consideration in making a referral to the Adjudication Panel is whether its powers of sanction (i.e. up to 6 months suspension) would be inadequate if a breach of the Code has occurred.
- 5.11 The President or Deputy President of the Adjudication Panel must agree to accept the referral and the Guidance states that a view as to whether a referral would be accepted may be obtained in advance of the Committee consideration.
- 5.12 In circumstances where it appears that a complaint may be appropriate for referral to either the Standards Board for investigation or the Adjudication Panel for determination, the Monitoring Officer will secure a view on the likelihood of acceptance in advance of the Committee meeting.

6. **APPENDICES**

[Appendix 1 – Standards Board for England Bulletin 41 \(December 2008\).](#)

[Appendix 2 – The Adjudication Panel for England – Guidance on Regulation 17\(1\)\(c\).](#)

7. **BACKGROUND PAPERS REFERRED TO:**

None.

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