

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER: **J53**

TO: STANDARDS COMMITTEE

DATE OF MEETING: 10 July 2009

THE STANDARDS BOARD FOR ENGLAND BULLETIN NO. 43 & THE ANNUAL RETURN FOR STANDARDS COMMITTEES

1. PURPOSE OF REPORT

- 1.1 To receive Bulletin 43 from the Standards Board for England and to give consideration to the performance measures contained in the annual return for standards committees.

2. RECOMMENDATIONS

- 2.1 To identify any initiatives or procedures that the Committee would wish to pursue in line with the questions contained in the Annual Return and/or the examples of good practice provided by those Standards Committees shortlisted for the “Standards and Ethics” Award.

The Committee is able to resolve this matter

3. FINANCIAL IMPLICATIONS

- 3.1 None directly arising from this report although measures identified by members for action could have financial implications which would need to be quantified.

4. RISK MANAGEMENT

- 4.1 This report is most closely linked with the Council’s Significant Business Risk No. 4 (Governance). Key risks are set out below:

Risk Description	Likelihood	Seriousness or Impact	Mitigation Measures
The Committee does not keep abreast of changes influencing its functions.	Low	Marginal	Reports from the Standards Board considered at regular intervals.
Weak annual assessments	Low	Negligible	Consideration of new initiatives

5. KEY INFORMATION

PRIVATE CAPACITY

- 5.1 Members will note that the changes to primary legislation required to enable the Code to be applied in certain circumstances to private conduct, are yet to be implemented and is not now likely to happen until a new Code becomes operative. In the meantime, the determination of whether a member's conduct is within their official capacity and the Code is therefore engaged, continues to be an area in which there is uncertainty.

ANNUAL RETURN

- 5.2 In addition to the quarterly returns providing statistical information on the assessment of complaints and reviews that must be submitted electronically to the Standards Board, the Council is also required to file an electronic annual return on the workings of the Standards Committee. This is a statutory requirement that was introduced at the same time as local assessment in May 2008. It is the first year that the annual return has applied and covers the period 1 April 2008 to 31 March 2009. The deadline for submission of the return was 15 May 2009 and the Monitoring Officer can confirm that Babergh's return was submitted following consultation with the Chairman of the Committee on 21 April 2009.
- 5.3 Local Authorities were not given advance notice of the areas to be covered by the annual return. Overall, positive responses and examples could be provided, but members may feel that there are areas for improvement or development. Conversely, there are some areas in which it would not wish to become involved. The Table below, summarises the categories and responses. At Appendix 2, there are examples of good practice supplied by entrants to the Standards Board 'Standards and Ethics Award' referred to in *Bulletin 43* and which may be of assistance in the Committee's consideration of this item.

5.4

Question	Answer
1. <u>Standards Committee Meetings</u> How often has the Committee met? How often has it met to undertake training?	5 times 4 times
2. <u>Annual Report</u> Does the Committee produce an annual report? Is it received by full Council, sent to all members and senior officers? How is it publicised?	Yes to all Available on the Council's website along with all Committee and Council reports

Question	Answer
<p>3. <u>Promoting Standards</u></p> <p>What else does the Committee do to communicate its role and the importance of high standards internally within the council to members and officers?</p> <p>What else has it done to promote confidence in local democracy to the public?</p> <p>Has the Committee considered how it will monitor & ensure high standards when the council works in partnership with other organisations? If, 'yes' provide examples?</p>	<p>Attendance by co-opted members at random committee meetings to observe proceedings and report back to Standards Committee with any ethical issues identified being actioned.</p> <p>Letter from Chairman to chairmen and political leaders after Annual Council to remind members of role of Committee and the help and training it can provide.</p> <p>County-wide leaflet on complaints regime in public buildings.</p> <p>Information on website.</p> <p>Article in 'Babergh Matters!'</p> <p>Yes, attendance by members at training seminar covering this topic by IDeA</p>
<p>4. <u>Training</u></p> <p>Has the Committee assessed the training and development needs of members on standards of conduct? What needs were identified? List all training undertaken.</p>	<p>Yes, training for parish councillors/clerks.</p>
<p>5. <u>Leadership</u></p> <p>How often has the Chairman of the Committee met the CEO, Leader and Political Leaders to discuss ethical issues?</p> <p>How often has the Chairman been invited to address Full Council?</p> <p>Does the Committee or its Chairman have regular access to the MO? How often?</p> <p>Does the MO sit on Management Team or have access to MT?</p>	<p>No meetings.</p> <p>Once - presentation of annual report.</p> <p>Usually weekly discussions between MO and Chairman and/or meet/email contact</p> <p>MO receives all MT papers</p>

Question	Answer
<p>Has an executive member been given portfolio responsibility for standards?</p>	<p>No, Babergh does not operate executive arrangements with portfolio holders.</p>
<p>6. <u>Complaints</u></p> <p>Can the public access information on making a complaint on the Council's website?</p> <p>What else has been done to publicise the complaints process?</p> <p>Has feedback been sought from those involved in the complaints process about their satisfaction with the process?</p> <p>How does the Council communicate the outcome of investigations to members, officers, the public?</p>	<p>Yes.</p> <p>Complaints leaflets in reception. Article in 'Babergh Matters!'. County-wide leaflet.</p> <p>No.</p> <p>Standing item on Committee agenda with statistical information on complaints. No investigations in past year. Outcome would be reported to the Committee & public notice in local newspaper if a finding of breach. Annual report provides broad details of complaints.</p>
<p>7. <u>Member/Officer Relations</u></p> <p>Does the Council have a Member/Officer Protocol? How is it communicated to members & officers? How is it reviewed? Is training on importance of high ethical standards included in the induction of new members/officers?</p> <p>Is there an informal mechanism for dealing with member/officer and member/member disputes?</p>	<p>Yes. On Council's intranet, within the Constitution and updates notified to members/officers by email. Reviewed by Audit/Standards Committee every 3-4 years. All new members receive training.</p> <p>MO and/or Management Team address some complaints informally unless individual wishes to refer complaint to Committee.</p>
<p>8. <u>Registering Member Interests</u></p> <p>Is the Register of Interests on the Council's website?</p> <p>Is the Register of Gifts and Hospitality on the Council's website?</p> <p>What does the Committee do to signal to members the importance of declaring interests and completing Registers of Interests & Hospitality?</p>	<p>Yes</p> <p>No</p> <p>Included within training to members. Annual reminder by email regarding the Registers.</p>

Question	Answer
<p>9. <u>Officer Conduct</u></p> <p>Does the council have a code for senior officers?</p> <p>Does the council compile a list of senior officer's interests?</p> <p>Does the council have a Register Gifts and Hospitality for senior officers? Is the Register on the council's website?</p>	<p>Yes. Employees' Code of Conduct for all staff.</p> <p>No</p> <p>Yes, the Register is for all staff. It is not on the website.</p>

6. **APPENDICES**

- (a) *Bulletin 43* published by the Standards Board for England – Appendix 1
- (b) Examples of good practice by Standards Committees – Appendix 2

7. **BACKGROUND PAPERS REFERRED TO:**

None.

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Guidance on Other Action

We have received a number of enquiries highlighting several issues about 'other action' since local assessment began in May 2008.

Consequently, we have produced further guidance on the topic in order to clarify our position on when other action is appropriate and what other action might constitute.

We know this is an issue many monitoring officers feel strongly about and we hope our guidance clarifies our position further. The guidance has been developed with help from monitoring officers. We are grateful to all the monitoring officers who attended our recent seminar on other action – held in Camden Town Hall on 16 March 2009 – for their valuable contribution.

The guidance discusses what other action is, what it can involve, when it is appropriate, and what to do if it isn't successful. It also addresses the role of the monitoring officer, adjournment of assessment committee meetings, and explains why other action closes the opportunity to investigate. We intend to publish this guidance on our website in May and we will notify all monitoring officers when it is available.

Application of the Code to private capacity

We have recently received a number of queries on whether or not the application of the 2007 Code of Conduct is still affected by the decision of Collins J. in *Ken Livingstone v Adjudication Panel for England* [2006] EWHC 2533 (Admin).

The 2006 ruling decided that Section 52 of the Local Government Act 2000 required members to comply with the Code in their official capacity only, and that it did not extend to their private conduct.

In issuing his judgement in the Livingstone case, Collins J invited Parliament to be explicit about whether it wanted private conduct to be covered by the members' Code. Parliament took this opportunity and passed the Local Government and Public Involvement in Health Act 2007.

Section 183(4) of the 2007 Act, removes the words "in performing his functions" from Section 52(1)(a) of the 2000 Act, to enable the Code to cover some conduct in a private capacity.

At present, Section 183(4) of the 2007 Act is only in force in Wales; so in England, the Code still does not cover members at any time in their private capacity. We understand that the government's intention is that these amendments will become effective at the same time as the new Code becomes operative.

The Livingstone case is also still relevant to gaining an understanding of official capacity. When drafting the 2007 Code, Parliament incorporated some of the judge's reasoning in the Livingstone case. Official capacity in the Code is construed as

- conducting the business of your authority or office, or
- acting, claiming to act, or giving the impression that you are acting as a representative of your authority.

So, it is our view that the reasoning in Livingstone is still relevant to a proper interpretation and understanding of official capacity, because it helps to interpret what is meant by the two phrases above that define official capacity.

Review of online monitoring system – an update

In February 2009, we conducted the third part of the Standards Board's online monitoring system review, and we promised those that participated that we would let you know the results. The review forms part of a programme of work to assess how well the new system is working.

We conducted an online survey with a random sample of monitoring officers, or those nominated to make the online submission. Once again, comments from respondents were positive about the online form.

There were several helpful suggestions made about how the form could be improved further. There were also suggestions offered on how we could improve the form user guide. All suggestions have been fed back to our internal development team. We would like to thank all those who participated.

For the fourth phase of the review, we will again be emailing out surveys to 50 randomly selected authorities (excluding those that have already participated in previous questionnaires) to hear about their experiences of the Quarter 4 submission. In addition to this, we will be surveying another sample about their experiences in completing the Standards Board's annual return form.

If you have any questions about this review or future reviews of the system, please contact Cara Afzal, Deputy Research and Monitoring Manager on 0161 817 5414 or email cara.afzal@standardsboard.gov.uk

Annual return arrives!

On 20 April we launched our online [annual return questionnaire](#).

While the focus of the quarterly return is to collect case related data, the annual return provides standards committees with the opportunity to tell us about their activities and arrangements for promoting and supporting high standards of ethical conduct.

Introduced via email to monitoring officers of principal authorities, it works in a similar way to the quarterly return. Monitoring officers log onto the form using a secure password and are then guided through a series of questions about the following topics:

- activities of standards committees
- the role of leaders in promoting high standards training
- communicating the complaints process and outcomes
- member-officer relations
- communicating the register of member interests
- officer conduct

The sections can be completed in any order and answers can be saved for editing at a later stage. We have built in this function as we appreciate that monitoring officers may not have all the required information to hand when they begin completing the return.

The information we collect from annual returns will be used to improve performance, champion the work of standards committees, and to ensure that we have an effective overview of local standards frameworks. In particular we will:

- Collect notable practice examples of standards committee activities which we can then disseminate. These activities and the local authorities that provide them will be showcased in our Annual Review document in a section about the local standards framework.
- Identify gaps in the local standards framework. An overview of the local standards framework will enable us to identify strengths and weaknesses of local arrangements. In turn, this will allow us to mitigate some risks by prompting where we should be producing guidance or seeking policy changes in response to emerging national trends. It will also help us to identify those authorities who could be experiencing difficulties and may require support and advice.

The annual return is a larger questionnaire than the quarterly, so we have allocated a four-week submission window during which standards committees can submit their return. Feedback from our pilot of the return indicates that it should take around two hours to complete in full. The deadline for submitting completed returns is Friday 15 May.

Conservative local government conference

On 27 and 28 February, the Standards Board exhibited at the Conservative Councillors' Association Local Government Conference in Leeds. The conference was attended by council leaders, executive members, councillors and members of the shadow cabinet, as well as key stakeholders in local government, candidates and party activists.

The Conservative representative on our Board, Councillor Sir Ron Watson CBE, and policy advisers from the Standards Board were on hand to answer questions, and get feedback on our work and the work of local standards committees. Over 40 delegates visited our exhibition stand to ask questions, raise concerns, and to share information about how the assessment of complaints is working locally.

The Conservative Party published their Green Paper Control Shift shortly before the conference, so we were interested to hear delegates' views about the local standards framework. The vast majority of delegates who visited our exhibition stand supported the need for the Code of Conduct and for the Standards Board to continue to provide the national and independent oversight. We spoke to councillors and standards committee members from authorities across the country who told us that local arrangements were working well. Another popular comment made to us at the conference was support for an officers' code.

We will also be exhibiting at the Local Government Association (LGA) Annual Conference and Exhibition, 30 June – 2 July 2009, Liberal Democrats Annual Conference, 19 - 23 September 2009, Labour Annual Conference, 27 September – 1 October 2009 and the Conservative Annual Conference, 5 – 8 October 2009.

Rossendale council wins Standards and Ethics award

We are pleased to announce that Rossendale Borough Council won in the Standards and Ethics category at the LGC Awards 2009.

The Standards Board supports the award and we were impressed by the way Rossendale's standards agenda has made a real difference. A strong, visible standards campaign, with the strapline 'Serious About Standards', helped Rossendale to achieve a substantially improved rating in its corporate assessment. It has also seen resident satisfaction improve by 8% and an increased turn out at local elections.

Dr Robert Chilton, Chairman of the Standards Board, said: "We were very impressed with Rossendale Council's commitment to high ethical standards. The award gives credit to their hard work and innovation and for tackling some difficult challenges to strengthen public confidence in local democracy."

For examples of good practice and interviews from all six authorities, please click [here](#).