



Report of the Assistant Chief Executive (Corporate Governance)

Standards Committee

Date: 22nd April 2010

Subject: Standards for England's review of the local standards framework

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

1. The purpose of this report is to summarise the results of the recent review of the proportionality and effectiveness of the local standards framework carried out by Standards for England.
2. This review has drawn upon previous research, specially commissioned research by the University of Teesside, and consultation with key organisations, some Monitoring Officers and Standards Committee Members. Members will recall that on 16th December 2009, the Standards Committee agreed that officers should forward the results of the Leeds City Council questionnaire on local assessment to Standards for England for them to consider as part of their ongoing review. The letter sent by the Chair of the Standards Committee is attached as Appendix 2.
3. Standards for England have developed a series of recommendations to try and address issues within the standards framework. Their key recommendations include:
 - More streamlined local assessment – arrangements to more easily dismiss trivial and less serious complaints, saving on time, money and burdensome process.
 - An enhanced role for independent chairs and vice chairs – in the assessment of complaints and the progress of investigations.
 - A new power for standards committees to be able to halt investigations.
 - A commitment to greater transparency for members who are the subject of complaints.
4. Members of the Standards Committee are asked to note the contents of this report, and to consider whether to forward any additional comments on the recommendations made by Standards for England to Communities and Local Government.

1.0 Purpose Of This Report

1.1 The purpose of this report is to summarise the results of the recent review of the proportionality and effectiveness of the local standards framework carried out by Standards for England.

2.0 Background Information

2.1 Standards for England have recently conducted a review of the proportionality and effectiveness of the local standards framework in order to make recommendations for improvement to Communities and Local Government.

2.2 This review has drawn upon previous research, specially commissioned research by the University of Teesside, and consultation with key organisations, some Monitoring Officers and Standards Committee Members. Members will recall that on 16th December 2009, the Standards Committee agreed that officers should forward the results of the Leeds City Council questionnaire on local assessment to Standards for England for them to consider as part of their ongoing review.

2.3 As a result of this review, Standards for England believe that the new local standards framework is working, but that there are concerns about some aspects of the process including its timeliness, cost and fairness to all.

2.4 Standards for England have developed a series of recommendations to try and address these issues. Their key recommendations include:

- More streamlined local assessment – arrangements to more easily dismiss trivial and less serious complaints, saving on time, money and burdensome process.
- An enhanced role for independent chairs and vice chairs – in the assessment of complaints and the progress of investigations, with a counterbalancing extra power for the national regulator to investigate and if necessary remove poor performing or partisan chairs.
- A new power for standards committees to be able to halt investigations, if they have good reasons.
- A commitment to greater transparency for members who are the subject of complaints.
- The need to develop an approach which allows better understanding and management of costs associated with the operation of the framework.

2.5 The full review report is attached as Appendix 1 to this report

3.0 Main Issues

3.1 Standards for England wish to base the standards framework around eight design principles. These are:

1. The framework should be fair. All involved should feel their views are heard.
2. The framework should be swift. It should permit the majority of allegations to be dealt with promptly.
3. The framework should be local. Local authorities should take ownership of their own standards arrangements.

4. The framework should be free from political bias. For the framework to have credibility key decisions and judgements need to be made by individuals who are, and are seen to be, free from political bias.
5. The framework should be clear and transparent. Processes, costs and outcomes should be readily understood by members, officers and the general public so that all can make judgements about the proportionality and effectiveness of the framework.
6. The framework should strike a balance between the twin tasks of promoting principles and enforcing rules. It should have access to a range of remedies and sanctions which reflect the seriousness of the particular failings of standards.
7. The framework should give the public confidence that poor behaviour will be uncovered and dealt with appropriately.
8. The framework should be cost effective. All of the above should be provided at a reasonable cost, proportionate to the benefits to accrue from improved standards.

3.2 The recommendations in the report also seek to address the following specific criticisms of the current framework:

- It's too easy to get on the investigative track and too hard to get off it;
- The framework is too cumbersome;
- Trivial complaints clog up the system; and
- Members should know as soon as possible when they have been the subject of a complaint.

3.3 The recommendations made by Standards for England as a result of their review are outlined in detail, along with the arguments for and against these recommendations, on pages 15 to 27 of the review report (attached as appendix 1), however this report draws out the potential implications of these proposals for Leeds City Council in particular.

Implications for the Assessment and Review Sub-Committee

3.4 As Members of the Standards Committee will be aware, any complaint which is received about the behaviour of a Member which specifies, or appears to specify, that it is in relation to the Code of Conduct, must be forwarded to the Assessment Sub-Committee for them to decide whether the complaint is a potential breach of the Code of Conduct, and if so what action should be taken. The Assessment Sub-Committee must consider each complaint within an average of 20 working days, and therefore meetings are scheduled on a monthly basis. The Assessment Sub-Committee is made up of four Members, including two Leeds City Councillors, one Parish Member, and an Independent Member (who must Chair the meeting).

3.5 The first recommendation made by Standards for England is that Monitoring Officers should receive all allegations and make a decision about whether or not they are within the remit of the Code of Conduct. This would mean that the Assessment Sub-Committee would no longer need to meet on a regular basis.

3.6 Instead the Monitoring Officer would be able to answer the following questions without reference to the Chair or to the Sub-Committee:

- Is the complaint about the conduct of one or more named Members of Leeds City Council or a Parish or Town Council in the Leeds area?
- Was the named Member an elected Councillor (or co-opted Member) at the time of the alleged conduct and was the Code of Conduct in force at the time?
- Does the complaint reveal a potential breach of the Code of Conduct?

3.7 During this municipal year the Assessment Sub-Committee has met to consider 11 complaints, 7 of which did not pass the above tests and so did not progress beyond Step 1 of the flowchart.

3.8 If the Monitoring Officer were to agree that the complaint reveals a potential breach of the Member's Code of Conduct, she would have to refer the complaint to the Chair for further consideration. The Chair would then have the individual authority, acting with the advice of the Monitoring Officer, to take one of the following decisions:

- To take no further action – (effectively determining that the behaviour complained about is not sufficiently serious, if proved, to warrant any sanction);
- To refer for local investigation;
- To refer to SfE for investigation;
- To refer to the Monitoring Officer for other action; or
- To refer to the Standards Committee to seek their advice in choosing one of the previous four options.

The Standards Committee Chair would have to provide written reasons for each decision.

3.9 These proposals would place more responsibility on the Chair of the Standards Committee as an individual in dealing with complaints, and there would be far less involvement from the other Members of the Standards Committee. Also the Council would have to appoint a Vice Chair from the other Independent Members on the Standards Committee, so that the Vice Chair could fulfil this role should the Chair be unavailable or has a conflict of interest, and may consider setting up reciprocal arrangements with other local authorities so that Chairs can assess each other's allegations.

3.10 Such reciprocal arrangements may not be widely supported in Leeds where the Independent Members are encouraged to undergo thorough training on the role of a City Councillor, and how different Committees function. Some Leeds City Councillors may not be content with complaints against them being dealt with by Independent Members from other authorities who may not be so familiar with their role and responsibilities.

3.11 However, Standards for England do suggest a wider role for the Standards Committee to undertake retrospective periodic reviews of the Chair's decisions to ensure consistency and quality. This is coupled with two other recommendations, firstly that Standards for England should ensure that basic training is provided to Standards Committee Chairs to enable them to fulfil this new role, and secondly that Standards for England should have the power to investigate allegations that the Chair or Vice Chair of a Standards Committee is not acting impartially, or is performing poorly. If there was sufficient evidence then Standards for England should be able to remove these Members from the Standards Committee.

- 3.12 Finally, Standards for England recommend that the automatic right to a review of an Assessment Sub-Committee's decision should be removed. Instead there should be a discretionary right to a review which could be undertaken by the Standards Committee, a Sub-Committee, or by an Independent Member not involved in the original decision, or someone from another local authority.
- 3.13 Standards for England have decided that the automatic right for review is not necessary as the national statistics show that only one in 20 requests leads to a reversal of the decision to take no action. In Leeds there have been no decisions to reverse the Assessment Sub-Committee's decision since the start of local assessment.

Implications for investigations, the Consideration and Hearings Sub-Committees

- 3.14 Standards for England are proposing that the Monitoring Officer should be able to recommend to the full Standards Committee that an investigation is stopped for whatever reason and at whatever stage. At the moment the Monitoring Officer would have to call a meeting of the Assessment Sub-Committee to consider such a request, and requests can only be made under specific circumstances.
- 3.15 Standards for England also suggest removing the role of the Consideration Sub-Committee altogether. Instead the Chair or Vice Chair, advised by the Monitoring Officer, would decide whether to accept an investigator's finding of no breach, and whether the case should go to a local hearing or to the First-Tier Tribunal. So far the Assessment Sub-Committee and the newly created Consideration Sub-Committee has been required to meet four times to consider final investigation reports.
- 3.16 Currently during the pre-hearing process, some decisions can be taken by the Monitoring Officer in consultation with the Chair of the Standards Committee, and some decisions are reserved to the Hearings Sub-Committee, which either must be decided during a pre-hearing meeting or at the start of the hearing. Standards for England propose that the Chair or the Vice-Chair should have a greater role in case management and make pre-hearing decisions (such as deadlines for responses to documents, deciding which witnesses should be called to give evidence and dealing with applications for an adjournment) with the advice of the Monitoring Officer. This would mean that the other Members of the Hearings Sub-Committee would not be required prior to the hearing itself.

Dealing with trivial complaints

- 3.17 Standards for England have considered various options for dealing with serial, trivial complainants, which include imposing sanctions on trivial complainants, referring such complainants to Standards for England, and, where the complaint is found to be unjustified, asking the complainant to pay costs. However, Standards for England concluded that these options may deter genuine complaints and put off people who are concerned about costs. Instead they have recommended that Chairs should be more robust in their decision notices and highlight when they believe an allegation to have been trivial.

Enhancing Members' right to know about complaints

- 3.18 As outlined in the attached report, present legislation does not allow the Monitoring Officer to notify a Member that a complaint has been made about them, and the

details of that complaint. This function can only be carried out by the Standards Committee which introduces a delay into the process, as to do so they have to meet. This is why Members do not receive the full details of the complaint against them until they receive the Assessment Sub-Committee's Decision Notice.

- 3.19 Standards for England acknowledge that this situation is unsatisfactory for Members who are the subject of a complaint as the complaint may be publicised by the complainant, and it is contrary to the design principle of transparency.
- 3.20 In order to address this, Standards for England propose that on receipt of an allegation the Monitoring Officer should inform the Member that they have been the subject of a complaint and the details of the complaint, unless there are compelling circumstances not to (for example, a risk of prejudicing an investigation by intimidation of witnesses or destroying or compromising evidence).
- 3.21 In Leeds this is the issue possibly of most concern to Members whenever the local assessment process has been reviewed. This ongoing concern was reflected in the letter sent to the Chair of the Board of Standards for England by the Chair of the Standards Committee in February 2010 (attached as Appendix 2).

Publishing notices following an investigation

- 3.22 Currently, the Regulations require that the decision about the outcome of an investigation or hearing has to be published in a local newspaper in most cases. However this is very costly for local authorities, with public notices costing around £1000.
- 3.23 Standards for England instead propose that local authorities should no longer be required to publish decision notices in the local newspaper, and instead should be placed on the Council's website.
- 3.24 At the moment the Standards Committee could still choose to put such notices on the Council's website, in addition to putting it in the newspaper.

4.0 Implications For Council Policy And Governance

- 4.1 Members of the Standards Committee will note that there will be implications for the Standards Committee's procedures arising from many of Standards for England's recommendations, including the proposal to remove the automatic right for review, the delegation of additional powers to the Chair. Members will also note that there would be a requirement for the Standards Committee to appoint a vice-chair if these recommendations are accepted by Communities and Local Government.
- 4.2 If some of these proposals were implemented the local standards framework would become clearer and faster. This would improve the perception of the local standards framework both externally, and within the Council.
- 4.3 However, enhancing the role of the Independent Chair of the Standards Committee may have both positive and negative effects. Whilst it would show that the framework is free from political bias and might improve credibility with the public, it may also reduce credibility with Members, who would have less ownership of the process and would no longer be judged by their peers.

5.0 Legal And Resource Implications

- 5.1 The majority of the recommendations made by Standards for England as a result of this review require legislative or regulatory change. These required changes are listed in detail in Appendix 1 to the review report (pages 28 to 33 of the attached report).
- 5.2 There are positive resource implications to some of the recommendations, including reducing the number of Sub-Committee meetings which need to be held, no longer requiring local authorities to publish their investigation decisions in the local newspaper, and allowing Standards Committees to stop investigations at any point.

6.0 Conclusions

- 6.1 The proposals made by Standards for England have been developed around a set of design principles and to address certain issues with the local standards framework, as set out in paragraph 3.2.
- 6.2 The implications of their proposals for Leeds City Council are outlined in the main issues section of this report.
- 6.3 The proposals from Standards for England which require legislative change will now be considered by Communities and Local Government. Some other recommendations simply require a change in emphasis in Standards for England's work and guidance. However, Standards for England has decided to wait for the views of the government before determining the next steps.

7.0 Recommendations

- 7.1 Members of the Standards Committee are asked to:
- note the contents of this report; and
 - consider whether to forward any additional comments on the proposals made by Standards for England to Communities and Local Government.

Background Documents

"Local Standards 2.0 – the proportionality upgrade? A review of the local standards framework", Standards for England, March 2010

Minutes of the Standards Committee, 16th December 2009