

BROMSGROVE DISTRICT COUNCIL

STANDARDS COMMITTEE

18TH OCTOBER 2007

LOCAL FILTERING

Responsible Portfolio Holder	Councillor Smith
Responsible Head of Service	Claire Felton – Head of Legal, Equalities and Democratic Services

1. SUMMARY

- 1.1 The Local Government and Public Involvement in Health (LGPIH) Bill will introduce local filtering of complaints of breaches by councillors of the Code of Conduct.

2. RECOMMENDATION

- 2.1 That the Committee considers and makes recommendations in relation to the various options for local filtering and in relation to any corresponding revisions to the Constitution (in terms of the composition of the Standards Committee and terms of reference for the Committee/sub-committees) upon which Members will be consulted

3. BACKGROUND

- 3.1 The LGPIH Bill will, when enacted, change the way in which complaints against councillors are considered.
- 3.2 Currently, all complaints about breaches of the Code of Conduct are referred to the Standards Board for England (SBE). The Standards Board then decides if the complaint appears to disclose a failure to observe the Code of Conduct and if so whether it should be investigated. The SBE may refer the investigation to either an Ethical Standards Officer (in the case of serious matters) or to the relevant principal authority for local determination.
- 3.3 It is proposed by the LGIPH Bill that all complaints will be referred to the principal authority's Standards Committee which will decide if the complaint appears to disclose a failure to observe the Code of Conduct and if so whether it should be investigated, and it is this process which is known as "local filtering".
- 3.4 In addition, Standards Committees are also likely to be required to conduct a review of its decisions not to refer a complaint for investigation (such reviews are triggered by a complainant).

- 3.5 It is anticipated that this part of the LGIPH Bill will come into force in April or May 2008. The SBE will in due course issue guidance to Standards Committees on the criteria to be applied in determining whether a complaint should be investigated.
- 3.6 The purpose of this report is to request the Standards Committee to consider how the local filtering might be carried out, and whether the constitution of the Standards Committee might need to be altered as a result. It will be for each principal authority to decide what system is most appropriate for that authority.
- 3.7 Options are set out below.
- 3.8 Option 1 – Whole Committee Filtering
Filtering is carried out by the full Standards Committee. The same Committee would also hear any final determination of the complaint. Officers advise against this option as the members will only have heard one side of the complaint, possibly a persuasive, over-exaggerated complaint, which will remain unchallenged for months and may affect their judgement, or there may be a public perception (or more likely a perception by the Member who is the subject of the complaint) that their judgment has been affected.
- 3.9 Option 2 – Sub-Committees
Two sub-committees are formed. One sub-committee would filter complaints and the other would hear the final determination; officers would ensure members would be given equal opportunities to both filter and deal with final determinations. It is suggested that the membership for the sub-committees would not be fixed and would remain flexible.
Advantages: filtering remains “in-house” and impartiality is retained. It will also be more convenient from an administrative point of view.
Practical considerations: the current Standards Committee may not contain a large enough pool of trained members to enable this to occur, and consideration should be given to enlarging the committee. In particular, the rules relating to the proportion of independent members and the requirement for a parish member to be present need to be considered. A statutory requirement for a parish member to be present whenever a parish matter is being considered will be applied to sub-committees dealing with parish matters; if so, the number of parish members would have to be increased to two, with a nominated substitute. Members should consider what the number of members for those sub-committees should be, and if 3 (as for Licensing Sub-Committee meetings, by way of example) what the appropriate quorum should be. Depending on the quorum, it might be prudent to consider whether there should be reserve members.
- 3.10 Members should also consider the role of the Chairman and whether the Chairman should participate in filtering, or whether the Chairman should always chair all final determinations. Members need to be aware that the LGIPH Act is likely to make it a requirement that the Chairman of the

Standards Committee and its sub-committees is an independent member (the requirement relating to sub-committees was omitted in the original draft but is expected to be included in the committee stages of the Bill), so if Members consider that the Chairman should participate in filtering, another independent member will have to be designated as the Chairman for the final determinations.

Joint Working

- 3.11 The Act will enable principal authorities to work jointly, for either filtering or final determinations. This could operate in a number of ways.

Option 3 – Filtering by neighbouring authority

- 3.12 Filtering could be carried out by a neighbouring authority.

Advantages: this would demonstrate complete impartiality. The final determination would be dealt with by this authority's full Standards Committee, enabling all members to participate in the final hearing. It also demonstrates the Council's ability to work jointly and in partnership with other authorities.

Disadvantages: Members who are the subject of the complaint may not be comfortable with the prospect of complaints being aired before another authority's members.

- 3.13 Option 4 – Joint filtering

A joint committee comprising a small number of members from two or more authorities could deal with filtering of complaints against Members of both authorities and parish councils within their districts.

Advantages: a degree of impartiality would be demonstrated. Again, the ability of this Council to work in partnership with other authorities would be demonstrated. Officer resources could be shared.

Disadvantages: those members who dealt with the filtering should not participate in the final determination.

- 3.14 Reviews – Whole Committee Filtering

It would not be good practice nor in the spirit of the rules of natural justice for a decision not to investigate a complaint to be reviewed by the same group of people which took the decision. For the review to be fair and indeed to be seen to be fair, it should be conducted by a different body of individuals. Therefore, whole-committee filtering would present a practical difficulty as all members of the Standards Committee would have taken the initial decision and would therefore be disqualified from conducting the review.

- 3.15 Reviews - Sub-Committee Filtering

The sub-committee which carried out the filtering should not undertake the review. The sub-committee earmarked to carry out the final determination might undertake the review but the risks of prejudice highlighted in paragraph 3.8 above exist.

3.16 Reviews – Separate Review Sub-Committee

Instead of dividing the Committee into 2 sub-committees as suggested in paragraph 3.9 above, the Committee could instead be divided into 3 sub-committees, enabling one pool of members to be entirely independent and able to carry out an independent review. This would require an increase in the membership of the Standards Committee.

3.17 Reviews – Joint Working

An arrangement with a neighbouring authority might be reached whereby reviews are conducted by the neighbouring authority's Standards Committee.

3.18 Changes to the Constitution

The Council is to consider a number of changes to the Constitution in the early part of 2008, to include a number of other issues arising from the LGIPH Act. It is intended that members will be consulted on all these issues and will be encouraged to feed into the review process. The Standards Committee is being requested to formulate proposals upon which members will be consulted.

4. FINANCIAL IMPLICATIONS

4.1 The changes being introduced by the LGIPH Bill will have financial implications. Members will recall that the pilot studies have demonstrated that local filtering results in a significant increase in the number of cases being referred for local determination. The Monitoring Officer does not have sufficient resources to manage the additional workload which is anticipated will arise as a result of both local filtering and the additional investigations. A budget bid will be made by the Monitoring Officer for an additional post, or alternatively for funds from which the outsourcing of investigations can be financed.

4.2 However, there are no significant financial implications arising from those issues under consideration in this report.

5. LEGAL IMPLICATIONS

5.1 These are set out in the body of the report.

6. COUNCIL OBJECTIVES

6.1 Current Council Objective – Improvement, priority – Reputation.

7. RISK MANAGEMENT

7.1 The main risks associated with the details included in this report are:

- If the Council does not conduct the filtering, hearings and reviews in a fair, open, transparent and lawful manner it exposes itself to the risk of

challenge by way of judicial review and the consequential costs and potential loss of reputation.

- If the Council is perceived as failing to conduct the filtering, hearings and reviews in a fair, open, transparent, lawful and competent manner the Standards Board for England has the power to take over those functions

7.2 These risks are being managed as follows:

- *Risk of judicial review and risk of intervention by Standards Board for England:*

Risk Register: *Legal, Equalities and Democratic Services*

Key Objective Ref No: 3

Key Objective: Effective ethical governance

8. **CUSTOMER IMPLICATIONS**

8.1 None.

9. **EQUALITIES AND DIVERSITY IMPLICATIONS**

9.1 None.

10. **OTHER IMPLICATIONS**

Procurement Issues	None
Personnel Implications	None
Governance/Performance Management	Governance – the Council is required to establish a process which is lawful, open and transparent. There are no performance management issues.
Community Safety including Section 17 of Crime and Disorder Act 1998	None
Policy	None
Environmental	None

11. OTHERS CONSULTED ON THE REPORT

Portfolio Holder	No
Chief Executive	No
Corporate Director (Services)	No
Assistant Chief Executive	No
Head of Service	Yes
Head of Financial Services	No
Head of Legal, Equalities & Democratic Services	Yes
Head of Organisational Development & HR	No
Corporate Procurement Team	No

12. APPENDICES

None.

13. BACKGROUND PAPERS

The Local Government and Involvement in Public Health Bill.

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