

Standards Committee – 6th October 2014

Sanctions under the Arrangements for Dealing with Complaints

Summary of report:

This is a report reminding the committee of the sanctions available for dealing with breaches of the Council Code of Conduct, and outlining potential limitations in terms of sanctions following the implementation of the standards regime following the implementation of the Localism Act 2011.

Background papers:

None

Recommendation:

1. To note the content of the report.

1.0 Background

1.1 The new standards regime came into effect following the implementation of the Localism Act 2011. The council's new local code of conduct and arrangements for dealing with complaints about elected member behaviour was approved by Council on the 25th June 2012, and the council code of conduct was updated on the 16th June 2014.

1.2 The sanctions available to the Standards Committee as set out between paras 8.1 and 8.8 of the arrangements for dealing with complaints are set out below:

- Publish its findings in respect of member's conduct;
- Report its findings to council for information;
- Recommend to member's group leaders (or in the case of un-grouped members, recommend to council or committee that he/she be removed from any or all committees or sub-committees of the council;
- Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular portfolio responsibilities;
- Instruct the Monitoring Officer to arrange training for the member;
- Remove the Member from all outside appointments to which he/she has been appointed or nominated by the authority;
- Withdraw facilities provided to the member by the Council such as a computer, website, and/or email and internet access, or

- Exclude the member from the Council's offices or other premises with the exception of meeting rooms as necessary for attending Council, Committee, and Sub-Committee meetings.

1.3 The Arrangements confirm that there is no power to suspend or disqualify the member or withdraw the member's basic allowance or special responsibility allowance. This has led to debate as to whether or not there is sufficient sanction to deal with potentially serious member misconduct particularly as one of the principle aims of the standards regime is to maintain public confidence in local democracy. This was a concern from the outset of the implementation of the new standards regime as evidence in research conducted by Teesside University in July 2012 by Professor Michael Macaulay, Dr.G.Hicky and N.Norjaham in a national survey of 200 Monitoring Officers, which amongst other things found as follows:

“General Perceptions of the new regime

2.1 General discontent

General perceptions of the new standards framework were, overwhelmingly, negative. Previous studies had indicated that although not without its flaws, the standards framework fulfilled an important role (Macaulay et al, 2010), and that in particular it had boosted public confidence in local government (Cowell et al, 2011).

- 85%** of respondents are not satisfied with the new framework
- 67%** of respondents feel that the new framework is a step in the wrong direction for standards of conduct in local government
- Only 21%** of respondents agreed or strongly agreed that the new framework offered a more proportionate set of responses (when compared to the previous framework) to standards of conduct
- 68%** of respondents disagreed or strongly disagreed that the new framework would allow poor standards of conduct to be dealt with adequately

2.2 No positive impact on public confidence and trust

The new survey revealed a broad concern that the new standards framework will not have a positive impact on the public:

- 77%** of respondents disagreed or strongly disagreed that the new framework will improve public confidence in local government standards of conduct
- 62%** of respondents agreed or strongly agreed that the new framework will not promote public trust

2.3 Areas for concern

A number of specific issues were identified as potential risk areas:

- Just **17%** of respondents agreed or strongly agreed that the new framework is sufficient to protect members and officers from bullying
- **88%** of respondents disagreed or strongly disagreed that the new framework provides an adequate array of sanctions for misconduct and poor standards of behaviour. This perception was expanded upon by a number of respondents, for example:

“Inevitably the amount of effort one puts into an investigation is impacted upon by the sanctions available at the end. Proper full scale investigations are going to be fairly unusual and only deployed for the more serious breaches of the code. The aim is to deal with the majority of the remainder, robustly where they are trivial and efficiently where they are not”

“There is a danger that the whole regime will fall into disrepute if members of the public who have complained are dissatisfied with the outcome because no real sanctions are available”

In addition some respondents were concerned about the possible perverse incentives that the new framework might generate:

“It will provide an incentive to try to resolve allegations informally or at the earliest possible stage of a formal process. However, there could be a perverse opposite incentive for some complainants to press allegations because the extent of “damage” which might be done to a member will be limited. The problem area will be behavioural allegations which in fact are more serious because critics will be able to point to the potential cost and effort of investigation for little perceived outcome”

Respondents also identified concerns over the new code of conduct; the role of the Monitoring Officer; the fate of the standards committee; and also the new offence of disclosure of pecuniary interests.”

1.4 These concerns were later mirrored by the Committee for Standards in Public Life which made the following comments in the CSPL Annual Report 2012-13:

“Local government standards

38. Under the Localism Act 2011 the new local government standards regime came into effect on 1 July 2012. The Committee welcomed the introduction of a mandatory requirement for local authorities to adopt a local code of conduct based on the Seven Principles of Public Life and the intention to encourage a greater sense of local responsibility for standards and to reduce the number of vexatious complaints.

39. While we recognise that the new system needs time to properly bed in, we do, however, have certain concerns:

Due to the emphasis on local ownership of standards we would expect the new regime, like the previous one, to function well in those areas where party leaders are prepared to provide the necessary leadership and example. It is likely to do less well where such leadership is inadequate. History suggests that problems are most likely in areas with monolithic political cultures and correspondingly little political challenge, where partisan rivalry is most bitter and tit-for-tat accusations most common, or in those predominantly rural areas with significant numbers of independent members without the benefit of party discipline.

Under the previous arrangements local authorities and an independent tribunal had the power to suspend members for varying periods of time as a sanction against poor behaviour. The only sanctions now available, apart from through the use of a political party's internal discipline procedures are censure or criminal prosecution for deliberately withholding or misrepresenting a financial interest. We do not think these are sufficient. The last few years have seen a number of examples of inappropriate behaviour which would not pass the strict tests required to warrant a criminal prosecution, but which deserves a sanction stronger than simple censure. While censure may carry opprobrium in the political arena it is often considered unacceptably lenient by the public relative to other areas of their experience. Coercion of other members or officers is one category of offence with which it will be difficult to deal adequately under the new arrangements.

Under the previous arrangements allegations about poor behaviour were determined by standards committees independently chaired by individuals who were not themselves members of the local authority. Under the new arrangements every local authority must appoint at least one independent person whose views it will seek, and take into account, before making its decision on an allegation that it has decided to investigate. We doubt that this will be sufficient to provide assurance that justice is being done and, equally important, that it is seen to be done.

In the transition to the new system local authorities may have lacked proper time to prepare. In early June 2012 we wrote to all local authorities in England to ask about their preparations for implementing the new regime which came into force on 1 July 2012. The Committee was concerned that so late in the day, nearly half of those who responded had yet to adopt a new code and around four fifths had yet to appoint an independent person. The fact that the Regulations and Order which took effect from 1 July were laid only on 6 June cannot have helped their preparations.

40. While inevitably there have been various teething problems with the new regime, the Committee will continue to monitor the implementation and its effectiveness, particularly in relation to public confidence that any wrongdoing is tackled promptly and transparently in the absence of any external investigation and scrutiny."

1.5 Locally the new regime so far has offered greater flexibility to deal with lesser misconduct. However it puts a burden on the monitoring officer's and group leaders' ability to command the respect of members, and the absence of statutory

sanctions means that there is only limited action which can be taken against the serious and serial offender although this has yet to be tested locally. It also has to be said that the role of the Independent Person has operated well in Walsall and has provided independence and robust challenge to the complaint process. In addition politicians have to date put standards before political allegiance in considering matters.

- 1.6 There have been cases recently, not in Walsall, where councillors have been convicted of housing benefit fraud; or there have been findings by a standards committee that a councillor has committed serious acts of sexual discrimination against staff and misused council equipment by telephoning adult sex-chat lines. In such cases members of the public may not understand the law that the council can only investigate an elected member when they are acting in their capacity as a councillor, or may believe that the punishment applied does not fit the seriousness of the breach, either will lead to a lack of confidence in the standards regime.
- 1.7 It also has to be acknowledged criminal sanctions were put in place in relation to elected members failure to declare or register disclosable pecuniary interests under the Localism Act 2011, and that under the Local Government Act 1972, s80 elected members can be disqualified from holding office he/she has within five years before the day of election or since his election been convicted in the United Kingdom, the Channel Islands or the Isle of Man of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine.

2.0 Resource and legal considerations:

- 2.1 None directly related to this report.

3.0 Performance and Risk Management issues:

- 3.1 Performance and risk management are a feature of all council functions. It is important that council policies and procedures are reviewed and updated on a regular basis. If the council fails to do this there is an increased risk that the council will be subject to legal challenge or litigation.
- 3.2 In terms of performance it is important that both Elected Members have a clear framework of standards to follow in delivering services to the community. These frameworks provide accountability and transparency in respect of the way in which the council delivers services. It is important in maintaining public confidence in local democracy that effective sanctions are in place to deal with breaches of the council code of conduct.

4.0 Equality Implications:

4.1 In maintaining up to date policies and procedures the council will ensure that services are delivered fairly in an open and transparent manner. There are specific requirements in both codes that elected members and officers observe equalities. It is important that complaints are dealt with in a fair and transparent manner.

5.0 Consultation:

5.1 Consultation has been carried out with the Standards Committee, comprising the council's Independent Member.

Author:

Tony Cox
Head of Legal and Democratic Services
☎ 01922 654822
✉ coxt@walsall.gov.uk