

Hoey Ainscough Associates Ltd, in association with Weightmans LLP, present

STANDARDS: ONE YEAR ON

A conference for monitoring officers 1 Oct 2013

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CASE HANDLING DISCUSSION PAPER

Background

The Localism Act standards arrangements have now been in place for just over a year. We have worked with a large number of councils over that period, both in looking at their processes in theory and in helping them with advice on live cases in practice.

This paper reflects our experience of some of the good and bad practice we have seen over that time and raises some points for discussion as to whether it reflects your experience and how you might ensure your processes meet your requirements.

Assessment of complaints

Comments

- Most councils have delegated this decision to the monitoring officer though a small minority have retained a sub-committee to make the decision
- Most MOs consult the Independent Person before reaching a decision even though this is not a legal requirement
- Most MOs who have had the power delegated to them have the power to refer sensitive/high profile cases to a committee – some procedures lay out circumstances, some simply say it is at the MO's discretion
- Most councils have built in three possible outcomes – no further action; investigate; or 'informal resolution'. We have seen one procedure with a 'fourth option' as allowed under the legislation – a finding of breach without investigation.
- Most councils see informal resolution as the preferred route, with some councils saying to us that they expect to investigate nothing or hardly anything
- Informal resolution tends to be just that – more formal mediation between parties is rarely envisaged or budgeted for
- Most councils notify the subject member once a complaint is received, though a few will only tell the member once the assessment decision has been made
- Where the subject member is notified, some councils do it simply 'for information' but others explicitly invite comments before an assessment decision is reached
- The number of complaints does not on the face of it appear to have diminished nor does the type of complaints – some councils report more than in previous years; some fewer; and some about the same
- More cases are being 'filtered out' at this stage and there seem to be far fewer investigations taking place

Issues

- Where does your council sit against this picture?
- Do you feel your arrangements for filtering cases are working well?
- Where your IP is being consulted, have there been differences of opinion? If so how have these been resolved?
- What sorts of cases have been referred on to the standards committee to take the decision and have they shared your conclusion?
- Where you are telling/not telling the member up front have there been any advantages/disadvantages to this?
- Is informal resolution working well at this point? Are there times when it hasn't worked? Or cases where it is inappropriate?
- Are you treating parish cases the same or are they more/less likely to go down a particular route?

'Other action'

Comments

- 'Other action' (i.e. not investigating) seems to be most popular route for case handling
- Some councils have it twice in their procedures – once at the initial decision-making stage and then again, after investigation, if it seems a better route than holding a hearing
- In some councils, the complainant is given a say on whether this route is acceptable. This is particularly so when it is considered as an option post-investigation
- In most councils, the IP's views are also sought on the acceptability of this route
- This course often involves working with senior figures in the political group to find a resolution or goes in parallel with party disciplinary action
- Standards committees tend not to be consulted before this course is pursued

Issues

- Where does your council sit against this picture?
- How effective is other action proving to be?
- Where the views of the complainant or IP are being sought, do they have a 'veto' or are they merely being consulted? How have you dealt with differences of opinions?
- What if the resolution by 'other action' doesn't work or the subject member refuses to cooperate – are you then taking cases to the next stage or closing them down?
- What role have the political groups played in your council in terms of dealing with their own members? Has this course of action been effective where you have an independent councillor?
- Has this course of action proved effective for dealing with parish cases?
- Is the use of other action sufficiently transparent for the public/media? Does it need to be?

Investigations

Comments

- Fewer cases going for formal investigation but there is still a significant number
- Presumption against investigation is partly driven by costs and partly by perception that sanctions are ineffective at the end of the process
- Some councils have said to us informally they don't intend to investigate anything
- Where cases are investigated they naturally tend to be the more serious matters Some processes have two forms of investigation – a quick 'desktop' investigation where views are simply sought from the complainant and subject member; or a more in-depth investigation
- Pressure from councils to minimise costs and do cases more quickly than in the past
- Similar mixture to previously of cases being done in-house or outsourced
- There are few cases of the police looking at DPI cases, but there are some, though none seem to have led to a councillor being formally charged

Issues

- How does your authority look against this picture?
- What types of cases have been investigated?
- Where matters are being investigated, how are you managing expectations and balancing the issues of being cheaper and quicker against the appearance that you are only dealing with more serious matters?

Standards committees and hearings

Comments

- Nearly all councils refer matters to a committee for hearing. We have seen one procedure where the MO can also issue a sanction without reference to the committee at an early stage
- It is a mixed picture as to whether there is a dedicated standards committee or whether the function is performed by a wider committee such as audit and governance
- It is a mixed picture as to whether the committee conforms with political proportionality rules or whether the political proportionality rules have been waived by council to ensure all-party representation
- Some standards committees also have kept 'independent members' although this is not true for the majority of committees. Similarly some have kept parish representatives on.
- The independent standards committee members tend not to be the IPs though they are in a handful of cases and in a handful of cases, the committee is chaired by an independent
- Standards committees have struggled with access to information provisions and some have resorted to having closed hearings which has led to difficulties with the media
- Councils have typically included a similar range of sanctions in their provisions – censure, removal from committee/appointment, withdrawal of resources/access/contact with certain officers. In nearly all cases all sanctions are subject to ratification by full council and/or the political group
- Parishes are struggling to understand that the standards committee is making the finding of fact but is simply making recommendations to them as to sanction and it is for the parish council to sanction

- There have been some cases of parishes wanting tougher sanctions than those recommended and facing legal challenge on their powers
- There has been a big increase in media/public campaigns to get councils to 'sack' members or force members to resign following a finding of censure or an apology
- There has been increased media concerns about the transparency and/or 'politicisation' of the process

Issues

- How does your council compare to the above?
- Why did you keep/not keep independent representation on the committee?
- Where you have independent members, is this proving worthwhile?
- Have sanctions proved effective?
- How have you dealt with 'serial offenders'/parish sanctions?
- Has the issue of hearings in public/private been an issue?
- Has media handling been an issue?

The independent person

Comments

- Most councils have only one or two IPs – usually a lead and substitute - with one IP allocated per case. A minority of councils have several and either work on a rotating principle or allocate them different roles in the process.
- A lot of councils kept an old 'independent member', often working in parallel with a new person as part of transition
- The 'one year cut-off' imposed in regulations last year if they were reappointed after a certain date led to some confusion and was widely seen as unjust
- Most IPs are not on the standards committee
- Most councils involve their IP throughout the process, though a few only involve them where the law requires it
- Some councils allow the complainant equal access as the subject member to the views of the IP.
- IPs generally struggle to know what views they are expected to give to the subject member without being seen to become their advocate or get drawn into the dispute or else simply duplicating the role of the MO.

Issues

- How does your council compare to this picture?
- Has the role of the IP been effective during the year?
- Do you/they have a clear understanding of the role and their relationship to the MO and standards committee?
- How has their role of giving views to the subject member worked in practice?
- Has the complainant been given equal access? What have been the advantages/disadvantages of that approach?