Agenda Item 11

Standards Committee
3 November 2009
RP

Memorandum of understanding between Standards for England and the Local Government Ombudsman

Summary

Standards for England and the Local Government Ombudsman have agreed a protocol to deal with their respective and sometimes overlapping jurisdictions.[See Appendix]. Standards for England role is primarily as the lead regulator in connection with breaches of the Code of Conduct and in giving strategic guidance to prevent them. The Ombudsman's role is concerned with investigating complaints of maladministration against certain public authorities.

Recommendation

1.That Committee notes the contents of the memorandum of understanding between Standards for England and the Local Government Ombudsman and considers the implications for the Council.

2. Considers whether any further steps should be taken in connection with the memorandum.

a) Reasons for Recommendation

To promote good governance and public understanding of the differing roles of Standards for England, Standards committees, and the Local Government Ombudsman.

b) Alternative Options

To ask for a more detailed officer report.

c) Risk Considerations

Delay, duplication and misunderstandings about jurisdiction may result if members and officers do not apply the contents of this report and the protocol.

d) Policy and Budgetary Considerations

Consistent with promoting good practice; no additional expenditure anticipated.

e) Date for Review of Decision

March 2011 by Standards Committee and perhaps the relevant Overview and Scrutiny Committee.

1.Background

In May 2008 the role of the Standards Board changed. It no longer receives complaints centrally nor decides whether to refer them for investigation. Instead, a locally based system is now in operation whereby the Standards Committees of local authorities are responsible for in initial assessment, referral, investigation and hearing of complaints.

The Standards Board will continue to investigate the minority of cases which cannot be taken on locally (for reasons such as seriousness, complexity, potential for precedent setting, conflicts of

interest, or impact on the public interest). The Standards Board will also continue to give strategic advice and support on case handling and broader governance issues. In view of the changed role of the Standards Board [now rebadged as Standards for England] the Ombudsman and Standards for England have agreed a memorandum of understanding.

2.Purpose of memorandum

It sets out the respective roles and responsibilities of Standards for England and the Local Government Ombudsman in order to:

• provide guidance to staff about the nature of complaints which will be of interest to each party, how such complaints should be handled and the advice that should be given to complainants;

• assist members of the public to identify the appropriate body to which to make a complaint;

• assist advice agencies to direct complainants to the appropriate body; and

• be available for local authorities and members of those authorities for their information

2. An example of the possible overlap between ombudsman and standards functions

In practice, a complaint about councillor conduct can give rise to allegations of breach of the Code against the individual councillor and a complaint of maladministration against the local authority concerned.

The overlap between Standards Board for England Bulletin Issue 42 gives this example:

“R (on the application of Gardner) v Harrogate Borough Council [2008] ALL ER (d) 310 (Nov)

A recent case in the High Court has brought attention to the common law test of bias and planning decisions. The Local Government Ombudsman (LGO) and the Standards Board for England both received complaints about a planning matter. An ethical standards officer from the Standards Board and the LGO both proceeded to investigate the case. Each of the investigations were designed to draw out relevant evidence for the separate jurisdictions of maladministration (LGO) and of a breach of the Code of Conduct (the Standards Board). The case draws attention to matters which can cause concerns affecting both jurisdictions. However, it also highlights where they part company in practice and in the application of the relevant law. We recommend all monitoring officers and members refer to the concise court decision ([2008] ALL ER (D) 310) for an understanding of this area.

The ethical standards officer did not disagree with the findings of bias affecting maladministration which was the basis of the LGO decision, as he did not consider bias as part of his investigation. Rather the ethical standards officer’s investigation was mainly concerned with personal and prejudicial interests and the evidence of close friendship. Conversely, the LGO’s investigation was not designed to draw evidence of a breach of the Code.

In the case above, Councillor A was granted planning permission on the casting vote of Councillor S. The permission was granted against strong officer advice and major planning policy reasons which did not support granting permission. There was a connection between both councillors and it was the nature of this connection which drew the distinction between the two jurisdictions, the investigations and the relevant law to be applied in both.

For the purposes of the ethical standards officer’s investigation, the evidence did not suggest a “close friendship” and therefore no breach of the Code was found. However, the Court said that “It does not follow that that there will be no apparent bias if the relationship is less close” (see paragraph 16 of the judgment). So there was apparent bias acknowledging that both councillors were friendly acquaintances.”

3. What the Standards Board and Ombudsman will do in practice.

The Standards Board and the Ombudsmen will have regard to the wishes of the complainant when complaints are received by one body, but could also be made to the other. Where either party receives complaints that are within jurisdiction but could also be made to the other party, complainants will be advised that they can also make a complaint to the other party or the local standards committee. If the allegation of member misconduct is not solely determinative of the question of maladministration causing injustice, the Ombudsmen will consider whether, on the facts of each case, they can reach a view without a definitive view of the member conduct.

4. The Local Government Ombudsmen:

• can investigate complaints from members of the public claiming personal injustice as a result of maladministration by or on behalf of a local authority or other body [including the actions of its Standards Committee and/or its Monitoring Officer];
• can investigate actions of members and officers;
• can recommend that an authority provide a remedy (often financial) for the complainant;
• can issue reports and guidance;
• cannot normally investigate a complaint until the authority has had an opportunity to consider it first; and
• cannot determine whether a member has breached the Code of Conduct.

Parish Councils are not included in the Ombudsman's jurisdiction so members of the public cannot get redress for maladministration through the Ombudsman route. This may result in this council receiving complaints of breach of the Code in respect of parish councils which would perhaps be better addressed by the Ombudsman [who has the power to recommend compensation in cases of maladministration causing injustice] if parish councils were to be included in the Ombudsman's jurisdiction.

5. The Standards Committee and the Ombudsman

As stated above, the administration and decision-making processes of the Standards Committee, its sub-committees and the Monitoring Officer may be subject to an Ombudsman complaint, investigation and recommendation for the payment of compensation where there is maladministration causing injustice.

6. Conclusion

Members are invited to consider the contents of the memorandum and decide whether they wish any further action to be taken.

Legal Implications

Include in the report.

Financial Implications

There appears to be no financial implications for the Council.

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