

TITLE OF REPORT: Quarterly Standards Update

REPORT OF: Mike Barker, Strategic Director, Corporate Services and Governance

Purpose of the Report

1. To provide a quarterly update to the Standards and Audit Committee highlighting national and local standards issues.
 2. To ensure Members are aware of national reviews and consultations which may be relevant to their role.
 3. To identify whether further training is required for Members.
-

National Association of Local Councils

1. The National Association of Local Councils (NALC) and Society of Local Councils Clerks (SLCC) have written to the Ministry of Housing, Communities and Local Government, the Committee on Standards in Public Life and the Local Government Association to highlight concerns regarding a recent legal judgement "The Ledbury Case" [R (Harvey) v Ledbury Town Council [2018] EWHC 1151 (Admin) May 2018].
2. The judgement will make it more difficult for local (parish and town) councils to resolve disputes between councillors and their employees.
3. This decision confines most complaints about councillors to the code of conduct process. Employees will now (generally) not be able to use their councils' grievance procedures if the subject of their grievance is a complaint about a Councillor.
4. This is likely to lead to more principal authority involvement in local council matters and place additional burdens on monitoring officers. It is also likely that matters which previously would have been dealt with within a council will take substantively longer when dealt with by a principal authority.
5. This decision will impact on the corporate well-being of councils, and NALC and SLCC have therefore called for urgent talks to try and find a sensible way forward to ensure quick and fair resolution of disputes.
6. The letter and case report can be found at:
<https://www.nalc.gov.uk/news/entry/1040-nalc-urgres-goverment-talks>

Disclosure and Barring Service (DBS)

7. The Disclosure and Barring Service has published guidance for local authorities and regulatory bodies regarding the duty and power to refer a person to the DBS. The guide is not intended to provide legal advice and should there be any queries regarding the duty/power to refer, legal advice should be sought.

Duty to refer

8. Local authorities are under a legal duty to refer where they are the regulated activity provider and they have withdrawn permission for a person to engage in a regulated activity, because the person has either:
 - harmed or poses a risk of harm to a child or vulnerable adult, or
 - satisfied the harm test, or
 - received a caution or conviction for a relevant offence.
 - his also applies if the local authority would or might have withdrawn permission for a person to engage in regulated activity if the person has not otherwise ceased to engage in regulated activity. This includes situations where the person was re-deployed to a non regulated activity role or resigned or retired
9. The duty to refer applies regardless of whether another body has made a referral in relation to the same person.
10. An example:

A local authority investigation identified that a care worker employed by them has verbally and emotionally abused service users. The member of staff resigned shortly after allegations were made. It was concluded that had the care worker not left they would have dismissed them from the role.

Power to refer

11. A Local authority may exercise the power to refer when it is acting in a role other than as a regulated provider, for example when undertaking a safeguarding role. The Local Authority may provide any relevant information to the DBS that they have about the person being referred if both of the following two conditions are met:

Condition 1: the organisation thinks a person has either:

- harmed or poses a risk of harm to a child or vulnerable adult;
- satisfied the harm test; or
- received a caution or conviction for a relevant offence

Condition 2: the organisation thinks that:

- the person they are referring is or has been, or might in the future be working in regulated activity; and
- the DBS may consider it appropriate for the person to be included in a barred list

12. If a local authority or regulatory body identifies that a person has met the above criteria, it has the power to refer to the DBS.
13. When an organisation is considering exercising the power to refer, it should make sure that the referral is compliant with the General Data Protection Regulation 2016, Data Protection Act 2018 and human rights legislation. The organisation should seek legal advice if necessary.

14. Whenever a local authority refers a person to the DBS, they must consider whether they are doing so under the duty to refer or their power to refer.
15. An example:

Following a child protection investigation, a local authority finds that a parent has harmed a child. The local authority is also aware that the parent is employed by a private day care nursery.
16. Further details can be found at:
<https://www.gov.uk/government/publications/dbs-barring-referrals-local-authority-referral-duty-and-power>

Committee on Standards in Public Life

17. Intimidation in Public Life: A Review by the Committee on Standards in Public Life

The reports of intimidation experienced by those in public life has increased in recent years, tragically culminating in the murder of MP Jo Cox. The Committee undertook a review in 2017 and has made a number of recommendations for government, social media companies, political parties, the police, broadcast and print media, and MPs and Parliamentary candidates themselves. The report was presented to Parliament in December 2017.
18. In Chapter 4 the Committee considered the implications for Local Government, specifically the requirement for candidates standing in local elections to publish their home address. This was found to enable intimidatory behaviour and was a factor is discouraging individuals from standing as a candidate. The Committee recommended the Government should bring forward legislation to remove the requirement for candidates standing as local councillors to have their home addresses published on the ballot paper. Returning Officers should not disclose the home addresses to those attending an election count
19. The Chapter went on to consider situations in which local councillors were told to declare their home addresses as part of a declaration of pecuniary interests, but were not informed about the sensitive interests provisions in the Localism Act 2011, which prevents the publication of the details of an interest where the councillor and Monitoring Officer agree that it could lead to intimidation or violence against the councillor or their family. This meant that their addresses were in the public domain. The Committee recommended that Local Authority Monitoring Officers ensure that members required to declare pecuniary interests are aware of the sensitive interests provisions in the Localism Act 2011.
20. The Continuing Importance of Ethical Standards for Public Service Providers Report 2018

On 10 May 2018 the Committee published their eighteenth report “The Continuing Importance of Ethical Standards for Public Service Providers”
21. The report acts as a follow up to the Committee’s 2014 Report dealing with “Ethical Standards in Public Services”, in which recommendations were made which could reinforce the Seven Principles of Public Life.
22. The Seven Principles are:
 1. **Selflessness**

Holders of public office should act solely in terms of the public interest
 2. **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material

benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

3. Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

4. Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

5. Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

6. Honesty

Holders of public office should be truthful.

7. Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

23. The report noted that in most areas there has been little progress in implementing the Committee's recommendations. A further set of recommendations has been made to the Minister for the Constitution, the Cabinet Office, HM Treasury and Civil Service Learning and all government departments, their permanent secretaries and boards as well as to those in professions who scrutinise government spending and accounts.

24. The report can be found at:

<https://www.gov.uk/government/publications/the-continuing-importance-of-ethical-standards-for-public-service-providers>

25. The local government ethical standards review

26. The Committee has noted the progress of the local government ethical standards review.

27. The Committee works to expand knowledge of, and adherence to, the Seven Principles of Public Life, set out in the 1995 report into the Committee on Standards in Public Life. In doing so the Committee ensures the integration of the principles into Codes of Conduct for all work of those in public life and delivering public services. The Committee provides independent scrutiny of those in public life to ascertain the extent to which they are true to the requirements of the Seven Principles. Finally, the Committee introduces and ingrains standards into the fabric of public life*.

(*Taken from the speech of Dr Jane Martin CBE, Committee Member, to the National Association of Local Council's annual conference, October 2017)

28. In January 2018 the Committee commenced the review with the following terms of reference:

- examine the structures, processes and practices in local government in England for:
 - maintaining codes of conduct for local councillors
 - investigating alleged breaches fairly and with due process
 - enforcing codes and imposing sanctions for misconduct
 - declaring interests and managing conflicts of interest

- whistleblowing
 - assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government
 - make any recommendations for how they can be improved
 - note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation
29. It is reported that the review is making good progress with a series of round table discussions involving key stakeholders. Themes which have emerged include variations in codes of conduct, the need for flexibility in resolving standards issues and management of complex relationships.
30. The emerging themes can be found at:
<https://www.gov.uk/government/collections/local-government-ethical-standards>
31. The transcript of the Committee on Standards in Public Life meeting in May 2018 which focused on the outcome of the round table discussions can also be found at:
<https://www.gov.uk/government/collections/local-government-ethical-standards>
32. It is not clear from the transcript what will happen in the next phase of the review, however there will be an overview in the next Quarterly Review.

Councillor workbook on effective councillor/officer relationships

33. The Local Government Association has published this 28 page workbook to provide councillors with a foundation for effective working with officers. The book contains a useful reminder of some of the keys skills, approaches and tactics that make for effective council/officer relationships. It also provides tips and techniques on how to deal with difficult situations. Councillors are advised to consider the workbook alongside the protocol on councillor/officer relations at page 235 of the Constitution and the Code of Conduct at page 175.
34. The workbook can be found at:
https://www.local.gov.uk/sites/default/files/documents/11.116%20A%20councillor%27s%20workbook%20on%20councillor_x3A_officer%20relationships_v02.pdf

Future Updates

A Standards Update will be provided on a quarterly basis to the Standards and Audit Committee.

It is noted that the content of the Update will vary depending on the local and national picture that that time.

Contact: Angela Simmons-Mather Ext: 2662