

STANDARDS COMMITTEE

LOCAL ASSESSMENT OF COMPLAINTS 23rd MAY 2008

Report of the Monitoring Officer

PURPOSE OF REPORT

To advise the Committee of Regulations that have been made to deal with the local assessment of complaints under the Local Government Act 2000 as amended by the Local Government and Public Involvement in Health Act 2007, and guidance issued by the Standards Board for England, and to enable the Committee to consider its procedures and criteria for the local assessment of complaints.

This report is public

RECOMMENDATIONS

- (1) That the Guidance from the Standards Board be noted and adopted.**
- (2) That the Committee consider its arrangements for publicising the new arrangements.**
- (3) That the Committee authorise the Monitoring Officer, in consultation with the Chairman to finalise the format of the complaints form.**
- (4) That the Committee's Assessment Procedure and Assessment Criteria be considered for approval, and in particular that the Committee consider whether or not it wishes the Monitoring Officer to notify a subject member of a complaint prior to the meeting of the Assessment Sub-Committee, and whether the Review Sub-Committee should consider a complaint afresh, substituting its own view for that of the Assessment Sub-Committee**
- (5) That the Head of Democratic Services or her representative be authorised to convene ad hoc Assessment and Review Sub-committees, each of three members, on the principles as set out in the draft Procedure, to deal with the initial assessment of allegations and subsequent requests for review.**
- (6) That at its next meeting the Committee review its Hearing Procedures and consider whether it is appropriate to introduce a new Protocol to replace the superseded "Protocol on Publicity for and Notification of Allegations of Breach of Code of Conduct made to the Standards Board"**

1.0 Introduction

- 1.1 The Local Government and Public Involvement in Health Act 2007 made amendments to the provisions of the Local Government Act 2000 relating to the conduct of local authority members, and in particular the arrangements for dealing with allegations of breach of the Code of Conduct. Under the 2007 Act, a written allegation of failure to comply with the Code of Conduct is to be made to the Standards Committee, rather than to the Standards Board for England as previously. The Standards Committee must refer the allegation to the Monitoring Officer or to the Standards Board, or decide that no action should be taken in respect of the allegation. Where there is a decision to take no action, the complainant has a right to request a review of this decision.
- 1.2 Whilst the 2007 Act sets out the general framework of the new arrangements, the detail is set out in the Standards Committee (England) Regulations 2008, which were laid before Parliament on the 17th April 2008, and came into force on the 8th May 2008. The Regulations implemented the new regime with effect from the 8th May 2008. The Regulations themselves require local authorities to have regard, in a number of areas, to guidance issued by the Standards Board. Such guidance was issued on the 2nd May 2008, and a copy is appended to this report for Members' information.
- 1.3 There are a number of issues, arising from the Regulations and guidance, on which the Committee is required to make decisions or establish procedures, and these are set out below.

2.0 Proposal Details

Publicity

- 2.1 The Standards Committee is required to publish details of the address to which allegations of failure to comply with the Code of Conduct are to be sent. This is to ensure that members of the public are aware of the change of responsibility for handling Code complaints. The Standards Board has issued a template notice, and their guidance provides that the complaints system may be published through an authority's website, advertising in one or more local newspapers or an authority's own newspaper or circular, or notices in public areas such as local libraries or authority reception areas. It is important that the public notice reaches as many people as possible so that members of the public know how to complain if necessary. In view of the fact that the new regime was implemented on the 8th May, the Monitoring Officer arranged for the template notice to be placed on the Council's website from the 6th May. The address given for complaints was The Standards Committee, c/o Mrs Sarah Taylor Monitoring Officer, Town Hall, Lancaster LA1 1PJ.
- 2.2 The notice will remain on the website, and notices can be placed in Council reception areas and in the public libraries. Unfortunately the timing of the Regulations and guidance meant that it was not possible to publish a notice in the June edition of the Council's newspaper "Your District Council Matters", although preliminary information on the new regime was included in the February edition. The next edition will not be published until October. The cost of a public notice in the local newspapers would be in the region of £600, and it is questionable how many people read public notices. The Committee is asked to consider how it would wish to publicise the new arrangements.

Complaints Forms and Procedures

- 2.3 The guidance suggests that there are two main ways in which authorities can set up procedures for the submission of complaints that a member may have breached the Code of Conduct. Authorities may choose to integrate the making of Code complaints into the existing complaints framework, so that when a complaint is received it can be analysed to decide which of the complaints processes is most appropriate, and the authority can then advise the complainant accordingly. Alternatively, authorities may choose to develop a separate process for Code complaints so that the process is distinct from other complaints.
- 2.4 The Monitoring Officer's preference would be to develop a separate process. The Standards Board has developed a template complaints form, which can be completed online, and the Monitoring Officer considers that it would be preferable to use this form which is for Conduct complaints only. This means that the Monitoring Officer will receive such complaints promptly and be able to ensure that the prescribed timescales are met. As the Council may be receiving complaints about parish councillors, it would not be appropriate for these to be received as part of the Council's general complaints procedure. That is not to say that the two procedures will not be integrated. Complaints officers throughout the Council have already been alerted to the need to advise the Monitoring Officer if they receive a complaint which appears to include a Conduct complaint. Some complaints may inevitably need to be considered through more than one of the Council's complaints processes.
- 2.5 A copy of the complaints form, based on the Standards Board's template is appended to this report for the Committee's approval. The Committee may wish to authorise the Monitoring Officer, in consultation with the Chairman, to finalise the form.

Assessment Procedures and Criteria

- 2.6 The Committee is also required to publish details of the procedures it will follow in relation to any written allegation received. In complying with these requirements, the Committee must take account of the guidance issued by the Standards Board. The Monitoring Officer has prepared for the Committee's consideration the draft Assessment Procedure which is appended to this report. This follows the Standards Board guidance, and the Committee is asked to approve the document either with or without amendment. It is anticipated that the Procedure, together with the Assessment Criteria will then be published on the Council's website, and that copies will be kept at Customer Service Receptions and provided on request. Copies will also be provided whenever a complaint form is requested.
- 2.7 There are a number of issues contained in the draft procedure that require the Committee's specific consideration, and these are set out below.
- 2.8 The Regulations require the Committee to appoint sub-committees to deal with the initial assessment of allegations of breach of the Code of Conduct, and with any subsequent request for review of the initial assessment. Such Assessment and Review sub-committees must be chaired by an independent member, and no member who has taken part in the initial assessment of an allegation may participate in a review in respect of that allegation. A sub-committee shall not be quorate unless at least three members are present. One member of the City Council must always be present, and, if the allegation relates to a parish councillor, a parish representative must also be present. The Regulations do not prescribe the size of the sub-committees. Members may feel that three is the appropriate size, and indeed it

seems that the Standards Board envisages that that would be the case. However, if any Member did not attend, the meeting would be inquorate and unable to proceed. Rather than establishing fixed sub-committees with named members, it is recommended that the Committee authorise the Head of Democratic Services or her representative to convene ad hoc sub-committees of three, to include an independent member as chairman, and one city councillor, and, where the complaint relates to a parish council, one parish representative. Advice is being sought from the Standards Board as to whether or not it is good practice to include a parish member for a city council complaint. The sub-committees would be convened so far as possible on a rotational basis, giving all members of the Committee in turn an opportunity to participate, but based on the availability of members, and based also on the principle that so far as possible where an allegation is made by and/or relates to a city councillor, the city councillor on the sub-committee is not of the same Group as the subject of and/or the maker of the complaint.

- 2.9 An Assessment or Review Sub-committee meeting is not required to be open to the public, and the normal rules about publication of agendas and minutes do not apply. However, the sub-committee must produce a summary of its consideration, which must be prepared having regard to guidance issued by the Standards Board. The summary will be open to public inspection for a period of six years.
- 2.10 The issue of whether or not a subject member should be notified of a complaint before the Assessment Sub-Committee meets is a difficult one. The Regulations are far from clear on this. The guidance states that the Monitoring Officer has the discretion to take the administrative step of acknowledging receipt of a complaint and telling the subject member that a complaint has been made about them. The notification could say that a complaint has been made, and state the name of the complainant (unless the complainant has requested confidentiality – a request that would be considered by the Assessment Sub-Committee), the relevant paragraphs of the Code that may have been breached and the date of the Assessment Sub-Committee meeting. A written summary of the allegation can only be provided to a subject member once the Assessment Sub-Committee has met. Because of this, and the fact that the Assessment Sub-Committee meeting is held in private, there seems to the Monitoring Officer to be little to be gained from telling the subject member about the existence of the complaint at that stage, and indeed it seems that this would only cause anxiety to the subject member. However, the Committee's views on this are sought, and will be incorporated in the Procedure document.
- 2.11 It should also be noted at this stage that the Council's existing "Protocol on Publicity for and Notification of Allegations of Breach of Code of Conduct made to the Standards Board" have been superseded by the implementation of the new arrangements, and it may be appropriate at a later stage to consider whether any replacement protocol is necessary.
- 2.12 When an Assessment Sub-Committee considers an allegation, it may refer the allegation to the Monitoring Officer, refer the allegation to the Standards Board, or decide that no action should be taken in respect of the allegation. In referring an allegation to the Monitoring Officer, this may be for investigation, or with a direction to take other steps. These steps are arranging for the member who is the subject of the allegation to attend a training course, arranging for the member and the complainant to engage in a process of conciliation or such other steps (apart from investigation) as appear appropriate to the sub-committee. The Standards Board has advised that Standards Committees should establish criteria for the assessment process, and a draft for the Committee's consideration is appended to the draft Assessment Procedure .

- 2.13 When an Assessment Sub-Committee decides that no action should be taken in respect of an allegation, the person who made the complaint may make a request for that decision to be reviewed, and this request must be considered by a differently constituted sub-committee. The legislation does not indicate whether the review should be by way of re-consideration, with the sub-committee considering the allegation afresh and substituting its own decision for that of the Assessment Sub-Committee, or whether it should only change the previous decision if it was unreasonable in law or the correct procedures were not followed or if the complainant has provided compelling new information in their review request. The guidance from the Standards Board states that the Review Sub-Committee should apply the same criteria used for initial assessment. This suggests that the Sub-Committee is in effect considering the matter afresh, and the Monitoring Officer would suggest that this might be a simpler approach to adopt, rather than confining the review to the more difficult concept of whether the decision of the Assessment Sub-Committee was unreasonable in law. However, the Committee's views are sought on this, for inclusion in the Procedure. Further advice is being sought from the Standards Board as to what is intended.

Investigations and Hearings

- 2.14 As Members will be aware, the Committee already has in place procedures in respect of investigations and hearings. If a complaint is referred by the Assessment Sub-Committee for investigation, the procedure for the investigation and hearing is largely unchanged by the new Regulations. However, the Monitoring Officer will review the existing procedures against the new Regulations, and report to the next meeting of the Committee on any changes that may be necessary. At this stage, however, it was felt more important to have the assessment and review procedure in place.
- 2.15 With regard to hearings, one issue that the Committee may wish to consider is the size of the hearing sub-committee. At present it comprises five members of the Committee, and members may wish to consider whether to maintain this number, or whether the Assessment, Review and Hearing Sub-Committees should all be of the same size.

3.0 Details of Consultation

- 3.1 The report has been prepared by the Monitoring Officer on the basis of the Standards Committee guidance. Advice has also been sought from the Standards Board on specific issues. On the 22nd May 2008 the Monitoring Officer will be attending a meeting of Lancashire Monitoring Officers to discuss how they are approaching the Assessment Procedures and Criteria, and any information from that discussion will be reported orally at the meeting.

4.0 Options and Options Analysis (including risk assessment)

- 4.1 It is a statutory requirement that the Committee has Assessment Procedures and Criteria in place, which follow the Standards Board's guidance. It is therefore necessary for the Committee to approve a procedures and criteria document, but it is open to the Committee to amend the attached draft document, provided that any amendments are consistent with Standards Board guidance. The report highlights the areas of the draft document that require the Committee's particular consideration.

5.0 Conclusion

- 5.1 The Committee is asked to consider the report and the matters listed in the Recommendations.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None arising from this report.

FINANCIAL IMPLICATIONS

The only specific expenditure arising from this report would occur if the Committee was minded to publish a notice in the local newspapers. The estimated cost would be in the region of £600. The Standards Committee has no budget for this, but the cost could be met from the Council's existing advertising budget.

The new arrangements are a statutory requirement, and it remains to be seen what the resource implications will be. Since the implementation of the Local Government Act 2000, there have been very few complaints made to the Standards Board about the conduct of our city and parish councillors. If this continues, then there should be no financial implications. However, if more complaints are received, there will be resource implications for the Monitoring Officer, Legal Services, and Democratic Services, in terms of servicing meetings and carrying out investigations or training and conciliation, and additional demands on Member time. If the Sub-Committees are required to meet on a regular basis, the Independent Remuneration Panel may need to consider in due course whether any additional special responsibility allowances are required. At this stage, however, the implications cannot be quantified.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments to add.

LEGAL IMPLICATIONS

The report sets out the requirements of the relevant Regulations.

MONITORING OFFICER'S COMMENTS

The report has been prepared by the Monitoring Officer in her capacity as adviser to the Standards Committee.

BACKGROUND PAPERS

None

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