

# NORTH YORKSHIRE COUNTY COUNCIL

## STANDARDS COMMITTEE

2 June 2008

### **New Local Ethical Framework**

#### **1.0 PURPOSE OF REPORT**

- 1.1 To brief Members on developments regarding the locally managed ethical framework.

#### **2.0 BACKGROUND**

- 2.1 The Local Government and Public Involvement in Health Act 2007 amended certain parts of the Local Government Act 2000 affecting the ethical framework. Further legislation and guidance was required to bring the changes to the standards regime into effect.

#### **3.0 LOCAL ETHICAL FRAMEWORK**

- 3.1 The Standards Committee (England) Regulations 2008 came into force on 8 May 2008 and provide for the local receipt, assessment, investigation and determination of complaints by standards committees.
- 3.2 Two supporting Guidance documents have so far been issued, in May 2008, by the Standards Board entitled "Local Assessment of Complaints" and "The Role and Make-Up of Standards Committees". Authorities must have regard to the Guidance in exercising their functions under the local ethical framework. The Standards Board's new Toolkit, containing proforma documentation for each stage of the local assessment process, is also now available on the Board's website at [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk).
- 3.3 Copies of the Regulations and Guidance documents have already been circulated to relevant officers and Members of the Standards Committee. Further copies will be available at the Committee's meeting. A summary of the key parts of the Regulations, containing extracts from the Guidance documents is, however, attached at Appendix 1, for Members' information.
- 3.4 Further guidance and toolkits on local investigation and determination are expected in the near future and will, of course, be circulated to Committee Members once available.
- 3.5 Members will see from the summary that there are some issues for Members' consideration, as detailed below.

#### **Composition of standards committees**

- 3.6 The combined effect of section 53 Local Government Act 2000 (as amended) and Regulation 5 of the 2008 Regulations is that standards committees must have a minimum of three Members (two elected Members and one independent Member) and at least 25% of the membership of the Committee must be independent Members. There is also now a statutory requirement for an independent chair.

- 3.7 In terms of the appointment of independent Members, the Committee will see from the summary at Appendix 1 that one of the requirements for an appointment is that it is advertised in one or more local newspapers and in such other publications or websites as the authority considers appropriate. The new Standards Board Guidance relating to Standards Committees states that “...*the decision on which other publications or websites to use may be something that the authority delegates to the standards committee.*” Such functions are executive functions, therefore the Committee may wish to recommend to the Executive that it delegates all functions in respect of the publication of independent Member vacancies to the Standards Committee and that the Standards Committee then delegates such functions to the Monitoring Officer in consultation with the Chair of the Committee.
- 3.8 That Guidance document also states that the Standards Board recommends “*that the power to assist the recruitment of independent members is delegated to the standards committee by the authority and is included in the committee’s terms of reference. A standards committee may appoint a sub-committee to take on some of its functions, for example, if your standards committee is asked to advise members of the council on the appointment of independent or parish members.*” The Committee may therefore wish to recommend to the Executive that it delegates the power to assist in the recruitment of independent members to the Standards Committee (but not to approve individual appointments). If Members are minded to do so, then the Terms of Reference can be amended as set out below.
- 3.9 Under the new local regime, standards committees now have three separate but distinct roles in relation to complaints about Member conduct:
- receiving and assessing complaints (“assessment sub-committee”);
  - reviewing local assessment decisions (“review sub-committee”); and
  - conducting hearings determining complaints, following investigation (“determination sub-committee”).

Each of the first two roles must be carried out by a sub-committee of the Standards Committee and sub-committees may be appointed to consider investigation reports and hold hearings. Each sub-committee would need at least 3 Members, including at least one elected Member and one independent Member (as each sub-committee must be chaired by an independent Member). No Member who took part in the initial assessment of an allegation could be a member of any review sub-committee considering a review of a decision to take no further action on that allegation.

- 3.10 In terms of effective practice, the Standards Board recommends that there be at least six people as a minimum (three elected Members and three independent Members) on the Committee and that there be consideration of whether more Members are required to ensure cover in the event of conflicts of interest, holidays or sickness.
- 3.11 Obviously this Committee as currently constituted fulfils this recommended minimum. In previous discussions, we have taken the view that the Authority could probably wait to see how the business generated by the changed regime developed. However, in light of the Regulations and guidance, Members are now recommended to consider increasing the size of the Committee, for the following reasons:
- a) the first two stages (assessment and review) of any complaint process would exhaust our ‘pool’ of Committee Members, as there is a bar on Members attending the review sub-committee if they sat on the assessment sub-committee. A Member who was involved in an initial assessment decision, or review decision, can, however, be a Member of the sub-committee which hears and determines the complaint. This is because an assessment decision only relates to whether a complaint discloses something that needs to be investigated. It does not require deliberation of whether the conduct did or did not take place and so no conflict of

interest arises in determining the complaint. We therefore start again, in effect, re selection for the substantive hearing of any complaint;

- b) the Monitoring Officer had anticipated that there might be scope for using the substitute Members of the Standards Committee in the sub-committees, however the recently issued Standards Board Guidance on the Role and Make-Up of Standards Committees “*does not recommend the use of substitutes for Standards Committees (as it is not necessary to ensure political balance)*”;
- c) at the moment, therefore, this Committee has no leeway for sickness, holidays, clashing commitments etc. Although, under the new Regulations, an independent Member of another authority’s standards committee could be appointed temporarily to the Committee to deal with a particular allegation/set of allegations, it would of course be subject to their willingness and availability;

Of some comfort is the fact that although the new Regulations do prescribe time limits for holding a hearing, they also provide a caveat that if it cannot be held within the specified period, it must be held as soon as possible thereafter. This would provide a safety net in the event of difficulty convening a hearing within the timescales due to Members’ availability, although it would obviously be better to try to avoid the difficulties in the first place.

- 3.12 The Committee is currently composed of three Councillors (one from each political group) and three independent Members. Although there is no need for the Standards Committee to be politically balanced, and given that the use of substitute Councillors is not recommended, Members may feel that reflecting the current arrangements by appointing another Councillor from each political group, and recruiting another independent Member, might bring more flexibility to the local regime. The composition of the Committee could be kept under review and changes made if necessary.
- 3.13 Should Members be minded to recommend an increase in the size and composition of the Committee as set out above (or as they otherwise might agree), consequential amendments would need to be made to Article 9.02 of the Constitution, which deals with the composition of the Committee, as follows. Article 9.02 currently states:

#### **9.02 Composition**

The Standards Committee will be composed of three Councillors (who may not include the Leader) and three persons who are not Councillors or Officers of the Council or any other body having a standards committee (the independent members). The independent members will be entitled to vote at meetings and the Committee will be chaired by one of the independent members.

It is recommended that Article 9.02 be amended as follows:

#### **9.02 Composition**

The Standards Committee will be composed of six Councillors (who may not include the Leader) and four persons who are not Councillors or Officers of the Council or any other body having a standards committee (the independent members). The independent members will be entitled to vote at meetings and the Committee will be chaired by one of the independent members.

#### **Temporary Appointment of Independent Members**

- 3.14 As mentioned above, under the new Regulations, independent Members of other authorities’ standards committees can be temporarily appointed to the Committee to consider a particular assessment, review or hearing or for a particular period of time.

The Guidance states “.....For example, it would be appropriate to appoint an independent member of a neighbouring standards committee for a short period in situations where the permanent member is unwell or if there is a conflict of interest. These appointments do not need to be ratified by a majority of the members of the authority, but proper procedures should be in place to appoint independent members on a temporary basis.”

- 3.15 So such temporary appointments of other authority independent Members do not need to comply with the same appointment requirements for fixed term independent Member appointments to the Committee, but a clear procedure needs to be in place for such appointments. It is suggested that the procedure should simply be that power to arrange such temporary appointments be delegated to the Monitoring Officer, in consultation with the Chair of the Committee, after satisfying herself that any such independent Member selected was validly appointed by that other authority. If agreed, this short procedure could be recorded in the Complaints Protocol to be drafted.

### **Appointment of sub-committees**

- 3.16 Given the Committee's various roles within a complaint process and the content of the new legislation and guidance, Members are now recommended to establish:

- a) a Complaint Assessment Sub-Committee;
- b) a Complaint Review Sub-Committee; and
- c) a Complaint Determination Sub-Committee

with fixed membership and chairmanship and appointed substitutes (from the Standards Committee itself) for each. Although the Guidance says that such sub-committees are not required to have, in advance, fixed membership or a fixed chair, the legal position is that the Committee's sub-committees have to be established by the Committee and have Members appointed to them by the Committee. So, if the membership is not fixed now, the Committee would have to meet before each assessment, review or determination to appoint Members to the relevant sub-committee, which is not the most practical way forward.

### **Indemnities for Standards Committee Independent Members**

- 3.17 The Guidance on the Role and Make-Up of Standards Committees states:

*Where independent members are carrying out their statutory duties, they may be protected by their authority's indemnity arrangements under the Local Authorities (Indemnities for Member and Officers) Order 2004. We recommend that all authorities include independent members in their indemnity arrangements.*

The Council's Indemnity Policy for Members and Employees covers Members of the authority as defined by section 101(5) Local Government Act 1972. There is no precise definition of 'a Member' but, by their very nature, independent Members are not members of the authority and are, in effect, co-opted Members. As such, the independent Members on the Council's Standards Committee will not currently be covered by the Council's Indemnity Policy for Members and Employees. Given the new Guidance from the Standards Board, Members of the Committee are requested to recommend to full Council that independent Members on the Council's Standards Committee should be included within the indemnity policy, subject to its terms.

### **Role of the Standards Committee**

- 3.18 The Standards Board Guidance on Local Assessment states that authorities should “consider whether their constitution requires an amendment to reflect the introduction of the local assessment of complaints. The constitution should make it clear that the

*citizen's right is to complain to the local standards committee and not to the Standards Board for England'.*

3.19 The Standards Committee currently has the following Terms of Reference, as set out in Article 9.03 of the Constitution:

- a. promoting and maintaining high standards of conduct by Councillors, co-opted members and church and parent governor representatives;
- b. assisting the Councillors, co-opted members and church and parent governor representatives to observe the Members' Code of Conduct;
- c. advising the Council on the adoption or revision of the Members' Code of Conduct;
- d. monitoring the operation of the Members' Code of Conduct;
- e. advising, training or arranging to train Councillors, co-opted members and church and parent governor representatives on matters relating to the Members' Code of Conduct;
- f. granting dispensations to Councillors, co-opted members and church and parent governor representatives from requirements relating to private and personal interests set out in the Members' Code of Conduct;
- g. dealing with any reports from a case tribunal or interim case tribunal, and any report from the Monitoring Officer on any matter which is referred by an Ethical Standards Officer (*see 12.03 (d)*) to the Monitoring Officer;
- h. dealing with any complaints (other than those which fall to be dealt with by the Standards Board/Ethical Standards Officers) made against individual Members, co-opted members and church and parent governor representatives on the Council and its committees;
- i. a general overview of ethical issues in relation to the Authority, including in particular any investigations undertaken, and reports issued, by the Local Government Ombudsman;
- j. advising the Council on any amendments to its Constitution which might be desirable in the light of issues concerned with ethics and conduct;
- k. considering any allegation that a member of the Council has not performed his/her duties under this Constitution. The Standards Committee will investigate, afford the Member a hearing, and may then advise the Member as to what action they should take. Should the member subsequently fail to take such action, they may be censured by the Standards Committee.

Note: (a) – (e) above are compulsory.

(f) is specified in regulations; and (g) is expected to be so.

(h) – (k) are for local choice.

3.20 Although the following suggested amendments to the Terms of Reference will make it clear that complaints that a Member may have breached the Code of Conduct should be sent to the Standards Committee, Members may feel it would be helpful to make a statement to that effect at the beginning of Article 9 of the Constitution which deals with the Standards Committee generally. Article 9.01 currently reads:

## 9.01 Standards Committee

The Council has established a Standards Committee.

It is suggested that this be amended to read:

## 9.01 Standards Committee

The Council has established a Standards Committee.

The responsibility for receiving and considering complaints that a Member may have breached the Members' Code of Conduct lies with the **standards committees** of local and other relevant public authorities (NOT the Standards Board for England anymore).

What this means is that if a person wishes to complain about the conduct of a Member of North Yorkshire County Council, s/he must submit his/her complaint, in writing, to:

The Standards Committee  
c/o The Monitoring Officer  
North Yorkshire County Council  
County Hall  
NORTHALLERTON  
North Yorkshire  
DL8 2AD

The Standards Committee can only deal with complaints about the behaviour of a Member and cannot deal with complaints about things that are not covered by the Members' Code of Conduct. If a complaint is made to the Committee it must be about why the complainant thinks a Member has **not followed the Code** of Conduct.

The Standards Board (an independent, national body) continues to be a key part of the ethical framework, providing advice and guidance to authorities on the framework and acting as a 'light touch' regulator. The Board may still investigate more serious complaints in particular, limited circumstances.

If a complaint against a Member does **not** involve an alleged breach of the Council's Code of Conduct for Members, then such a complaint should be made to the Chief Executive Officer of North Yorkshire County Council at the address above.

3.21 To take account of the new regime generally, and the Standards Board Guidance documents in particular, it is recommended that the following further amendments be made to the Committee's Terms of Reference, as set out in Article 9.03:

- (a) to (f) to remain the same, save for amending paragraph (d) as follows:

(d) monitoring the operation and effectiveness of the Members' Code of Conduct;

- insert a new paragraph (g) as follows:

(g) receiving and assessing complaints that Councillors, co-opted members and church and parent governor representatives may have breached the Code of Conduct for Members;

- insert a new paragraph (h) as follows:

- (h) reviewing Standards Committee decisions to take no action on a complaint that the Code has been breached, where such review is requested by the complainant;
- insert a new paragraph (i) as follows:
  - (i) determining complaints (other than those being determined by the Standards Board/Adjudication Panel) that Councillors, co-opted members and church and parent governor representatives may have breached the Code of Conduct for Members;
- re-number existing paragraphs (g) onwards accordingly;
- amend existing paragraph (g) (now (j)) as follows:
  - (j) dealing with any reports from a case tribunal or interim case tribunal, any reports to the Committee by an Ethical Standards Officer, and any report from the Monitoring Officer on any matter which is referred by an Ethical Standards Officer (see 12.03 (d)) to the Monitoring Officer;
- delete existing paragraph (h) (now (k)). This is because it relates to complaints referred back to the Committee (for determination by it) by the Standards Board, and this is covered in the new paragraph (i);
- existing paragraphs (i) and (j) (now (k) and (l)) to remain the same;
- amend existing paragraph (k) (now (m)) as follows:
  - (m) dealing with any other complaints about Councillors' conduct, unrelated to the Code of Conduct, referred by the Chief Executive Officer. In such circumstances the Standards Committee may investigate, afford the Member a hearing, and may then advise the Member as to what action they should take. Should the member subsequently fail to take such action, they may be censured by the Standards Committee;

This paragraph has been amended to clarify that all complaints about Members' behaviour *unrelated* to the Code of Conduct are dealt with by the Chief Executive Officer under the Corporate Complaints Procedure, and also to make it clear that the Committee may only become involved in such complaints where the Chief Executive Officer so requests.

- insert a new paragraph (n) as follows:
  - (n) granting exemptions to officers in politically restricted posts to allow them to engage in political activities;

The significance of holding a politically restricted post (as does, for example, the Chief Executive Officer and Monitoring Officer) is that the postholder is disqualified from becoming or remaining a member of a local authority and regulations also set out other restrictions on his/her political activities.

This new Term of Reference is needed because section 202 of the Local Government and Public Involvement in Health Act 2007 (in force on 1 April 2008) amends section 3 of the Local Government and Housing Act 1989, so that the function of granting exemptions from political restriction is transferred from an independent adjudicator appointed by the Secretary of State, to local standards

committees. Further detail will be supplied to the Committee in the future as and when such functions need to be exercised by the Committee.

- assuming Members agreed the relevant recommendation earlier in this report, insert a new paragraph (o) as follows:

- (o) exercising all functions in respect of the publication of Standards Committee independent Member vacancies;

- assuming Members agreed the relevant recommendation earlier in this report, insert a new paragraph (p) as follows:

- (p) assisting in the recruitment of independent members to the Standards Committee (but not approving individual appointments).

- amend the end Note as follows:

Note: (a) – (j) and (n) above are statutory.

All other terms of reference are included through local choice.

3.22 For complete ease of reference, all suggested amendments to Article 9 of the Constitution regarding the Standards Committee, as set out above, are shown by way of tracked changes on the copy attached at Appendix 2.

3.23 A copy of the Terms of Reference, once amended, must be sent to the Standards Board.

### **Role of the Monitoring Officer**

3.24 The implementation of the local assessment regime necessitates some amendments to the functions of the Monitoring Officer as set out in Articles 12.03 (d) and (e) of the Constitution. The current wording is set out below:

- (d) **Receiving reports:** The Monitoring Officer will receive and act on reports made by Ethical Standards Officers and decisions of the case tribunals. *(Note: Ethical Standards Officers are persons appointed by the Standards Board for England to investigate cases of alleged breaches of the Members' Code of Conduct. Case tribunals are bodies appointed by the Adjudication Panel for England to adjudicate on cases referred to them by Ethical Standards Officers).*

- (e) **Conducting investigations:** The Monitoring Officer will conduct investigations into matters referred by Ethical Standards Officers and make reports or recommendations in respect of them to the Standards Committee.

3.25 It is recommended that Articles 12.03 (d) and (e) be amended as follows:

- (d) **Receiving reports:** The Monitoring Officer will receive and act on complaint referrals made by the Standards Committee and any reports made by Ethical Standards Officers and decisions of the case tribunals. *(Note: Ethical Standards Officers are persons appointed by the Standards Board for England to investigate cases of alleged breaches of the Members' Code of Conduct, where these are referred to the Board by local standards committees. Case tribunals are bodies appointed by the Adjudication Panel for England to adjudicate on cases referred to them by standards committees or Ethical Standards Officers).*

- (e) **Conducting investigations:** The Monitoring Officer will conduct investigations into matters referred by the Standards Committee or by Ethical Standards



Officers and make reports or recommendations in respect of them to the Standards Committee.

### **Other Constitutional changes**

3.26 The Guidance on the Role and Make-Up of Standards Committees states:

*The constitution should also include the authority's scheme of delegations of functions. Whistle-blowing policies, any policies and procedures under the Equality Act 2006, and the authority's anti-bullying policy should also be included. It may be helpful to add an A-Z of people in the authority, a list of authority services and the municipal calendar.*

- 3.26.1 The Guidance offers no more assistance in relation to these suggestions. It would not be practical to include such an A-Z for all staff, given the number of Council employees. An A-Z could, perhaps, be included for key people within the authority, although Members may feel this is already covered by Article 12 of the Constitution (entitled "Staff") which sets out details of the Chief Officer posts (but not individuals allocated to them) and the Head of Paid Service (Chief Executive Officer), the Monitoring Officer, Chief Finance Officer posts and Proper Officer functions. It is therefore not recommended that such an A-Z be included in the Constitution.
- 3.26.2 The Council's Schemes of Delegation are already included in the Constitution. Consultation is currently underway with those responsible for the above documents within the Council, to check whether, in their view, the inclusion of such documents is acceptable and appropriate. From the responses to date, it has been acknowledged that if the documents themselves are included, there is the problem of ensuring that when updated, they are also updated in the Constitution. A better solution might be to include, in the Constitution, a reference list of where these documents can be located and from where further information can be obtained.
- 3.26.3 Subject to any further comments those officers consulted may have, Members are requested to recommend to full Council that reference to the existence and location of the Council's Whistleblowing Policies, policies and procedures under the Equality Act 2006, the anti-bullying policy, list of authority services and the municipal calendar be included in the Constitution.

### **Publicity**

- 3.27 There is now a statutory duty on the Council, under the new Regulations, to publish, "in such manner as it considers appropriate", details of the address to which complaints that Members may have breached the Code should be sent, and to keep that information up to date. The Council has already amended its website to comply with this duty and to bring the standards webpages generally up to date. Recommendations have also been made, earlier in this report, to amend the Standards Committee section of the Constitution in this respect.
- 3.28 There is also a statutory duty on the Council to publish, in such manner as it considers appropriate, details of the procedures it will follow in relation to such a complaint. The Council currently has a "Protocol for Determination Hearings", a lengthy and detailed document setting out procedures for officers and Members involved in the determination of complaints that Members have breached the Code of Conduct.
- 3.29 There is now a detailed piece of work to be done by the Monitoring Officer in bringing the Protocol up to date in terms of the new Regulations and emerging Guidance from the Standards Board. The Protocol will need to cover all aspects of dealing with a complaint of a breach of the Code including receipt, assessment, review of assessment, investigation and determination. Not all the necessary guidance and toolkits are yet available from the Standards Board to enable this to be done. It is

therefore recommended that power be delegated to the Monitoring Officer to agree a new Protocol in consultation with the Chair of the Committee, as it is important to try to have an up to date Protocol in place as soon as possible in case of the receipt of a complaint.

3.30 Any Protocol agreed will, of course, be brought to the next meeting of the Committee in September for any comments Members may have. It could then be placed on the Council's website (and publicised in any other ways Members feel appropriate).

3.31 Members are requested to consider how else the Council might publicise its address for complaints, its complaints procedures and the new local standards regime generally, to ensure that the public is aware of the new role of the Standards Committee. The Standards Board expects authorities to be as "imaginative" as possible in publicising the new system and has suggested the following as examples of good practice:

- Advertising in one or more local newspapers
- Article in authority's own newspaper
- Local radio
- An 'Information for Citizens' section on public agenda
- Publicity during Local Democracy Week
- A helpline
- Assistance for people with a disability or whose first language is not English
- Notices in public areas eg
  - libraries
  - authority reception areas
  - Citizens' Advice Bureau

The Council does have a corporate complaints leaflet regarding Member complaints (see paragraph 3.33 below) which is available at all North Yorkshire County Council offices, libraries and on its website. Members of this Committee may wish to consider all publicity aspects in conjunction with the Committee's Communications Strategy Action Plan and in light of the Citizen's Panel Questionnaire full report which indicates further work is required to promote the work and role of the Committee.

3.32 The Standards Board's press office is preparing a toolkit to help local authority press offices deal with media interest in complaint referrals, investigations and hearings. It will include advice on how to publicise the changes in the ethical framework, raise awareness of standards committees' work, and offer help on dealing with enquiries about complaints and investigations. The toolkit will also include Frequently Asked Questions, guidelines, templates for press releases and best practice advice. The toolkit will be issued directly to local authority press offices.

### **Corporate Complaints Leaflet**

3.33 The Council currently has a corporate complaints leaflet regarding Member complaints, entitled "How to make a complaint about a County Councillor". Officers are currently considering whether to incorporate the leaflet into the general Council Complaints' leaflet.

3.34 In order to ensure that any corporate complaints' leaflets reflect the new regime, Members are recommended to agree that the Monitoring Officer be empowered to agree amendments for incorporation in Council leaflets about complaints to reflect the revised regime for the handling of complaints in relation to the Code of Conduct.

## **Jurisdiction and Local assessment criteria**

3.35 The new Standards Board Guidance on Local Assessment states *that “When a matter is referred for investigation or other action, it does not mean that the committee assessing the complaint has made up its mind about the allegation. It simply means that the committee believes the alleged conduct, if proven, may amount to a failure to comply with the Code and that some action should be taken in response to the complaint. The process for dealing with matters at a local level should be the same for all members. It must be fair and be seen to be fair.”*

3.36 The Guidance envisages that authorities may decide that they want the monitoring officer, or another officer, to prepare a short summary of a complaint for the assessment sub-committee to consider. This could, for example, set out the following details:

- whether the complaint is within jurisdiction;
- the paragraphs of the Code of Conduct the complaint might relate to, or the paragraphs the complainant has identified;
- a summary of key aspects of the complaint if it is lengthy or complex;
- any further information that the officer has obtained to assist the assessment sub-committee, eg:
  - obtaining a copy of a declaration of acceptance of office form and an undertaking to observe the Code
  - minutes of meetings
  - a copy of a Member’s entry in the Register of Interests
  - information from Companies House or the Land Registry
  - other easily obtainable documents

Monitoring officers are able to acquire additional factual information which is readily available about allegations before the assessment process begins, if it would assist decision-making. It should not include interviews or investigation. Members are requested to consider whether a short summary of a complaint for the assessment sub-committee to consider, as standard practice, would be helpful.

3.37 The Guidance offers assistance on developing criteria for, and the types of issues to be considered when, assessing complaints. Standards committees need to develop their own criteria, against which they assesses new complaints and decide what action, if any, to take. The criteria should reflect local circumstances and priorities, and be simple, clear, open and ensure fairness to both the complainant and the Member the subject of the complaint. The Guidance particularly states:

*In drawing up assessment criteria, standards committees should bear in mind the importance of ensuring that complainants are confident that complaints about member conduct are taken seriously and dealt with appropriately. They should also consider that deciding to investigate a complaint or to take other action will cost both public money and the officers’ and members’ time. This is an important consideration where the matter is relatively minor.*

*Authorities need to take into account the public benefit in investigating complaints which are less serious, politically motivated, malicious or vexatious. Assessment criteria should be adopted which take this into account so that authorities can be seen to be treating all complaints in a fair and balanced way.*

- 3.38 Assessing all new complaints by established criteria will also protect the Committee Members from accusations of bias. Assessment criteria can be reviewed and amended as necessary but not during consideration of a matter.
- 3.39 Members are now requested to consider local assessment criteria for the authority. A set of criteria, based on the Standards Board Guidance, is attached at Appendix 3 for Members' comments.
- 3.40 The Guidance states that the adopted assessment criteria should be made publicly available. It is recommended that once agreed by the Committee, the criteria be published on the Council's website.

### **Anonymous Complaints**

- 3.41 The Guidance also provides that authorities should publish a statement setting out how complaints received anonymously will be dealt with. *"The assessment sub-committee may decide that an anonymous complaint should only be referred for investigation or some other action if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter. If so, this needs to be included in the standards committee's assessment criteria."*
- 3.42 A provision to this effect has been included in the draft assessment criteria attached at Appendix 3 for Members' comments. If agreed, a suitable statement could be included on the Authority's website and the criteria themselves will be published on the website as set out in paragraph 3.40 above.

### **Monitoring**

- 3.43 The Standards Board will monitor local ethical framework arrangements to enable authorities to feed back on how they are working generally. The Board has implemented an online information return system (which has been the subject of pilot arrangements with certain authorities) requiring authorities to report on complaints received and how they are dealt with. Under the new s66A LGA 2000, authorities will be required to make returns to the Board, for the period(s) specified by it. There will need to be nil returns if there is no activity to report.
- 3.44 The Monitoring Officer has recently received details of the new online returns system from the Board and confirmation that returns should be sent on a quarterly basis. The current reporting quarter is April to June 2008. There is a submission window of ten working days after the end of each quarter in which to submit the return; for example, the submission of the Council's completed return for this quarter will be due in the period 1 to 14 July 2008.

## **4.0 OUTSTANDING PARTS OF FRAMEWORK**

- 4.1 The parts of the Local Government and Public Involvement in Health Act 2007 which will bring about the following changes to the local ethical framework are not yet in force:

### **Application of Code to Members' private conduct**

- 4.2 Section 183 of the 2007 Act amends section 52 of the LGA 2000 by deleting the words "in performing his functions" from the requirement for Members to provide a written undertaking to comply with the Code. It makes further amendments to the 2000 Act regarding the application of the Code to official capacity or otherwise. These amendments, once in force, will allow the application of the Code to cover some conduct by Members in a private capacity, as prescribed in the Code itself. However,

section 183 is not yet in force, so currently the Code still only applies to Members in their official capacity.

### **Joint Standards Committees**

- 4.3 Section 189 of the 2007 Act came into force on 31 January 2008. It inserted a new section 56A into the LGA 2000, which allows the Secretary of State to make regulations under which two or more relevant authorities may establish a joint committee to exercise standards committee functions. The regulations may also prescribe what can and cannot be done through those joint arrangements. No such regulations have yet been made, therefore no such arrangements can yet be entered into.
- 4.4 Members will be kept informed of developments in relation to these outstanding parts of the local framework.

## **5.0 RECOMMENDATIONS**

- 5.1 That Members note the developments in the ethical regime;
- 5.2 That Members recommend to the Executive that all functions in respect of the publication of Standards Committee independent Member vacancies be delegated to the Standards Committee and that Members further agree that following such delegation, those functions be delegated by the Standards Committee to the Monitoring Officer in consultation with the Chair of the Committee;
- 5.3 That Members recommend to the Executive that the power to assist in the recruitment of independent members to the Standards Committee (but not to approve individual appointments) be delegated to the Standards Committee;
- 5.4 That Members recommend to full Council that there be an increase in the size and composition of the Standards Committee as set out in paragraph 3.12 of this report and that consequential amendments be made to Article 9.02 of the Constitution as set out in paragraph 3.13 of this report;
- 5.5 That Members recommend to full Council that the power to arrange temporary appointments of other authorities' standards committees' independent Members to the Standards Committee be delegated to the Monitoring Officer, in consultation with the Chair of the Committee;
- 5.6 That Members establish:
- a) a Complaint Assessment Sub-Committee;
  - b) a Complaint Review Sub-Committee; and
  - c) a Complaint Determination Sub-Committee
- on the basis set out in paragraph 3.16 of this report;
- 5.7 That Members recommend to full Council that independent Members on the Council's Standards Committee should be included within the Council's Indemnity Policy for Members and Employees, subject to its terms;
- 5.8 That Members recommend to full Council that Article 9.01 of the Constitution be amended as set out in paragraph 3.20 of this report;
- 5.9 That Members recommend to full Council that the Committee's Terms of Reference

set out in Article 9.03 of the Constitution be amended as set out in paragraph 3.21 of this report;

- 5.10 That Members recommend to full Council that the Functions of the Monitoring Officer set out in Articles 12.03 (d) and (e) of the Constitution be amended as set out in paragraph 3.25 of this report;
- 5.11 That, subject to any subsequent comments received from those officers responsible for the documents, Members recommend to full Council that reference be made, in the Constitution, to the existence and location of the Council's whistle-blowing policies, anti-bullying policy, policies and procedures under the Equality Act 2006, list of authority services and the municipal calendar, as set out in paragraph 3.26.3 of this report;
- 5.12 That power be delegated to the Monitoring Officer to agree a new Protocol regarding the new local complaints process, in consultation with the Chair of the Committee, and that progress be reported to the next meeting of the Committee;
- 5.13 That Members determine whether any other publicity regarding the implementation of the new locally managed framework should be undertaken and, if so, in what manner;
- 5.14 That the Monitoring Officer be empowered to agree amendments for incorporation in Council leaflets about complaints to reflect the revised regime for the handling of complaints in relation to the Code of Conduct;
- 5.15 That Members determine whether a short summary of a complaint should be prepared for the sub-committee assessing the complaint, as standard practice;
- 5.16 That Members agree local assessment criteria for the Standards Committee, as set out in Appendix 3, and that the criteria be published on the Council's website;
- 5.17 That power be delegated to the Monitoring Officer to complete and submit all necessary complaint information returns to the Standards Board in accordance with the relevant statutory requirements;
- 5.18 That Members consider whether any other steps need to be taken in relation to the issues raised in this report.

CAROLE DUNN

Head of Legal and Committee Services and Monitoring Officer

Author of report: Moira Beighton

Telephone: 01609 532458

Room 15

Background Documents:

Standards Board Bulletins 37 and 38

The Standards Committee (England) Regulations 2008

The Standards Board Guidance "Local Assessment of Complaints"

The Standards Board Guidance "The Role and Make-Up of Standards Committees"

County Hall

NORTHALLERTON

21 May 2008

### **Standards Committee (England) Regulations 2008**

- In force 8 May 2008.
- Regard must be had to the SBE Guidance documents "Local Assessment of Complaints" and "The Role and Make-Up of Standards Committees". Extracts are included in this note in italic type.
- Do not cover joint working between authorities. According to the SBE Guidance, more regulations will follow to allow authorities to work jointly on the assessment, referral, investigation and determination of complaints.
- The Relevant Authorities (Standards Committee) Regulations 2001 and the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 are dis-applied to English authorities by the new Regulations (but continue to apply to police authorities in Wales).

#### **Composition of standards committees (Reg 4)**

- Must include at least two Members of the authority and at least one independent Member (s53 LGA 2000).
- At least 25% must be independent members.
- Only one member can be a member of the executive.
- Must be chaired by an independent Member (s53 LGA 2000 as amended by the Local Government and Public Involvement in Health Act 2007).

#### **Appointments to standards committees (Reg 5)**

- The rules relating to qualification/disqualification for appointment as an independent member are essentially unchanged but additional provisions are added eg advertisements can be placed in other appropriate publications/websites. The appointments are therefore made under s53 Local Government Act 2000 and Regulation 5 of the 2008 Regulations.

So, from 8 May 2008, if anyone wants to be an independent member on the Standards Committee they will need to comply with certain requirements, ie the appointment is:

- a) approved by a majority of the Members of the authority;
  - b) advertised in one or more local newspapers and in such other publications or websites as the authority considers appropriate;
  - c) of a person who:
    - has submitted an application to the authority;
    - is not currently a member or officer of that authority (and hasn't been in the last 5 years);
    - is not a relative or close friend of a member or officer of that authority ("relative" is defined but "close friend" is not. The Standards Board suggests, in the Guidance on Standards Committees, looking at the Case Review 2007 section on defining a close associate);
    - is not currently a member or officer of any other relevant authority.
- A person who is an independent member of one standards committee may be appointed as an independent member of another (unless s/he has within the last 5 years been a member or officer of it or is a relative or close friend of a member/officer of it).

- Where a person appointed as an independent member, becomes a member or officer of an authority, or becomes a relative of a member or officer of that authority, they cease to be a member of the standards committee.
- An independent member of another authority can be appointed for a specific period of time or to deal with a particular allegation/set of allegations.
- Subject to the duty to have regard to the SBE Guidance, the authority may adopt such appointment procedures as it thinks fit.

### **Standards Committee sub-committees (Reg 6)**

- Although s54A LGA 2000 says standards committees can appoint sub-committees, the Regulations and SBE Guidance state that sub-committees must be appointed, each chaired by an independent member, to:
  - carry out initial assessments of allegations under section 57A LGA 2000; and
  - carry out reviews of decisions to take no action under section 57B LGA 2000.

Under the Regulations, sub-committees may be appointed, each chaired by an independent member, to:

- consider monitoring officer investigation reports;
- hold hearings; or
- make findings

but the Guidance states that sub-committees must be appointed to determine a complaint. The rationale for this is that *creating sub-committees will allow the separate functions involved in the handling of cases to be carried out without conflicts of interest.*

- There is no requirement for a sub-committee to have fixed membership or chairmanship.

The Guidance re the Role and Make-Up of the Standards Committee (page 18) states that

*... nothing in the regulations requires a sub-committee of a standards committee to have fixed membership or chairmanship. This allows a standards committee to have a panel of its members that could be drawn on to sit on any particular sub-committee at any time.*

However, the Committee itself would need to appoint members of it to the sub-committee in respect of any particular matter. This is actually confirmed later in the Guidance on page 20:

*All members of sub –committees must be drawn from and appointed by the standards committee.*

### **Validity of proceedings (Reg 7)**

- Quorum for committee/sub-committee meeting is 3.
- At least one elected Member and one independent member (who must be the chair) must be present where a standards committee/sub-committee is convened to:
  - carry out initial assessments of allegations;
  - carry out reviews;
  - consider monitoring officer reports
  - hold hearings
  - make findings.
- No member who took part in the initial assessment of an allegation can be a member of a sub-committee considering a review of a decision to take no further action on that allegation. *Standards committee members involved in a complaint's initial assessment, or in a review of a standards committee's previous decision to take no further action, can take part in any subsequent standards committee hearing.*
- The Guidance states that *"There should be a minimum of three independent members on the standards committee to ensure that there is an independent member available without a*



*conflict of interest for both the assessment and review sub-committees. The standards committee can then effectively carry out these statutory functions, allowing for the situation of one independent member of the standards committee being absent or unavailable.”*

#### **Application of the Local Government Act 1972 (Reg 8)**

- The existing rules about publicity and access to documents apply, except that initial assessment hearings and reviews by standards committee sub-committees are excluded from the scope of Part VA of the LGA 1972 (ie there is no public right of access to those meetings or documents) and the following requirements apply instead:
  - the sub-committee must, having regard to any Guidance, produce a written summary of its consideration of the matter, recording:
    - ❖ the main points considered
    - ❖ conclusions reached
    - ❖ reasons for those conclusions
  - the sub-committee may also disclose the name of any member subject to allegations unless it is not in the public interest or would prejudice any investigation;
  - the written summary must be available for public inspection for 6 years after the meeting.
- Where a committee/sub-committee is convened to:
  - refer a matter to a monitoring officer with a direction for action other than an investigation;
  - receive a matter back from a monitoring officer;
  - receive a matter back from the SBE;
  - consider monitoring officer reports
  - hold hearings
  - make findings

then, as previously, the provisions of Parts 1 to 3 of Schedule 12A to the LGA 1972 shall apply as if, after paragraph 7 of that Schedule, the specified paragraphs 7A-C descriptions of exempt information were included.

#### **Written allegations (Reg 10)**

- Taking account of the Guidance, a standards committee must:
  - publish (as it considers appropriate) details of the address to which written allegations should be sent;
  - take reasonable steps to ensure that the public are kept aware of address details;
  - promptly publish any changes to the details;
  - publish (as it considers appropriate) details of the procedures it will follow re complaint allegations.

*Each authority is required to publish a notice detailing where Code of Conduct complaints should be sent to.... The complaints system may be publicised through:*

- *an authority's website*
- *advertising in one or more local newspapers*
- *an authority's own newspaper or circular*
- *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....*

*Authorities need to think carefully about how publicity for their complaints system is worded. This is to ensure that members of the public are clear about how to complain, who to complain to, and if there may be an alternative to a formal complaint to the standards committee.*

#### **Modification of duty to provide written summaries to members subject to allegations (Reg 11)**

- In this part, references to “standards committee” includes a sub-committee.
- Modifies the duty otherwise applicable to standards committees under section 57C(2) LGA 2000 to give a written summary of an allegation, on receipt of it, to the member complained of where the committee determines that to do so would be contrary to the public interest or would prejudice an investigation. The committee must take account of any Guidance and may take account of any MO or ESO advice.
- A MO can still inform the member that an allegation has been made and the committee can give the member some details which would not be contrary to the public interest or prejudicial.
- Where a standards committee is not required to provide a written summary at the time it receives the allegation, it must take reasonable steps to provide the summary to the subject of the allegation when it is no longer contrary to the public interest or prejudicial; and, in any event, before any hearing is convened to consider any MO/ESO report on the allegation.

#### **Modification of Section 63 of the Local Government Act 2000 (Reg 12)**

- Monitoring officers are prohibited from disclosing information gathered in the course of his/her investigation or information from an ESO, but can disclose this information to carry out their functions under the legislation, or to enable a standards committee, sub-committee or appeals tribunal to do so.

#### **Referral of matters to a monitoring officer for other action (Reg 13)**

- A complaint may be referred to a monitoring officer, after consultation with him/her, by a standards committee or ESO for action other than investigation, eg training, conciliation or anything else that appears appropriate.
- Monitoring officer must give notice of the referral to those involved (ie member complained of, complainant, standards committee or any other authority concerned or any parish council concerned).
- Monitoring officer must submit a written report to the sub-committee/ESO within three months (or as soon as reasonably practicable afterwards), detailing what action has been taken or is proposed. If the standards committee is not satisfied with the action specified in the report, it must give a further direction to the monitoring officer. If it is satisfied, it shall give written notice of that fact to those involved.
- If the ESO is not satisfied, s/he may ask the monitoring officer to publish a statement in at least one local newspaper, giving details of the direction, the reasons for dissatisfaction and the monitoring officer’s response to those reasons. If the ESO is satisfied, s/he shall give written notice of that fact to those involved.

#### **Referral of matters to a monitoring officer for investigation (Reg 14)**

- Where a matter is referred to the monitoring officer for investigation, s/he must (unless otherwise directed by the ESO/standards committee) inform those involved that the matter has been referred for investigation.
- The monitoring officer must have regard to any SBE Guidance and comply with any relevant direction given by the SBE.
- The monitoring officer may:

- make enquiries of anyone and require them to provide information or explanations that s/he thinks necessary/expedient to conduct the investigation;
  - require any of the authorities concerned to provide such advice and assistance as may reasonably be needed, and, except for parish/town councils, to meet the reasonable costs of doing so;
  - require any of the authorities concerned to allow reasonable access to documents they possess as necessary.
- Re a referral from an ESO, the monitoring officer may, at any stage prior to the completion of the investigation, make a written request, with reasons, to the ESO to refer the matter back for investigation. The ESO must respond within 21 days and may direct that the matter be so referred back, or direct the monitoring officer to continue to investigate. No further request to refer back can be made by the monitoring officer re that matter.
  - After completing the investigation, a monitoring officer must:
    - make one of the following findings:
      - ❖ **Failure** - failure to comply with the Code
      - ❖ **No Failure** – no failure to comply with the Code
    - prepare a written report of the investigation, including a statement of findings;
    - send that report to the member complained of;
    - refer the report to the standards committee;
    - refer the report to any other authority (other than a parish council) the member belongs to, if that authority so requests.

#### **Matters referred to monitoring officer after investigation (Reg 15)**

- Where a matter is referred to a monitoring officer by an ESO after investigation, for local determination, the monitoring officer must send a copy of any ESO report to the member complained of and, after s/he has received that copy, the monitoring officer must refer it to the standards committee for consideration under Regulation 17.

#### **References back from the monitoring officer (Reg 16)**

- Re cases referred to a monitoring officer by the standards committee for investigation after an initial assessment, the monitoring officer can refer that matter back to the standards committee if:
  - a) as a result of new evidence/information, the monitoring officer believes that the matter is materially more or less serious than may have seemed apparent to the committee when it made its decision on the initial allegation and the committee would have made a different decision had it been aware of that new evidence/ information; or
  - b) the member complained of has died, is seriously ill or has resigned from the authority concerned, and the monitoring officer believes that it is consequently no longer appropriate to continue the investigation.

In forming an opinion for the purposes of paragraph (a) above, a monitoring officer may take account of —

- the failure of any person to co-operate with an investigation;
  - an allegation that the member concerned has engaged in a further breach of the code of a relevant authority;
  - an allegation that another member has engaged in a related breach of the code of a relevant authority.
- If a matter is so referred back, the sub-committee must make a decision as if the matter had been referred to it for initial assessment. It can remove the ability of the monitoring officer to refer the matter back again.

### Consideration of reports by standards committee (Reg 17)

- Where a monitoring officer refers a report to the standards committee of any authority, that committee must convene to consider the report and make one of the following findings:
  - **Acceptance** – it accepts the monitoring officer’s finding of no failure to comply with the Code;
  - The matter should be considered at a standards committee hearing;
  - The matter should be referred to the Adjudication Panel for England for determination. The committee can only make this finding if it decides that its sanctions would be insufficient were a finding of failure to be made and the Adjudication Panel has agreed to accept the referral. Where a tribunal subsequently decides that a member has breached the code, the member may appeal to the High Court.
- The standards committee must give written notice of a finding of acceptance to the parties involved, including any ESO involved, as soon as possible after making it. It must also publish a notice in at least one local newspaper and, if appropriate, on the website of any authority concerned and any other publication. However, such publication should not take place if the member complained of so requests.

### Hearings by a standards committee (Reg 18)

- Standards committee can conduct a hearing using whatever procedures it considers appropriate in the circumstances, but it must have regard to relevant SBE Guidance.

The Guidance on the Role and Make-Up of Standards Committees states:

*Preliminary matters will often arise in relation to hearings. The chair, with the advice of the monitoring officer, may make initial process decisions in relation to such matters. However, it is important that the hearing committee or sub-committee considers and approves such arrangements. This is because there are no delegation powers for a standards committee in legislation.*

- The hearing must be held within three months of the date on which the monitoring officer received a report from an ESO or the date that a monitoring officer report is completed. If it cannot be held within that period, it must be held as soon as possible thereafter.
- The hearing must not be held until at least 14 days after the monitoring officer sent the report to the member complained of, unless the member agrees to an earlier hearing.
- The member concerned must be given the opportunity to present evidence and make representations at the hearing orally (personally or through a representative) or, if the member chooses, in writing. The representative can be a barrister, solicitor or, with the committee’s consent, anyone else.
- A standards committee may arrange for the attendance of such witnesses as it thinks appropriate and the member concerned may arrange for the attendance of such witnesses as s/he wishes, subject to the committee’s right to limit the number of those witnesses where the number is unreasonable.

NB: I’m not really sure what 18(6) adds, given 18(1)(e)(ii) – isn’t presenting evidence and making representations “representation”? The aim of 18(6) might have been to clarify that a representative can represent the member in all aspects of the hearing but it seems to be duplication of what has gone before.

- If the member concerned received notice of the hearing but fails to attend, the standards committee may make a decision in their absence (unless it is satisfied that there is sufficient reason for the non-attendance) or adjourn the hearing.

- A standards committee may, before the conclusion of the hearing, adjourn it and require the monitoring officer to seek further information or undertake further investigation on any point it specifies, but can only so adjourn once.
- If a standards committee receives a report from an ESO, it may adjourn the hearing at any stage before it concludes and request to refer it back to the ESO for further investigation. It must set out its reasons for doing this. The ESO must respond to the request within 21 days and can accept or refuse it. If the request is refused, the standards committee must continue the hearing within three months or as soon as possible thereafter. No further requests may be made.

#### **Standards committee findings (Reg 19)**

- Following a hearing, a standards committee must make one of the following findings:
  - no failure to comply with the Code;
  - failure to comply with the Code but no action needs to be taken;
  - failure to comply with the Code and that a sanction should be imposed.
- If the member concerned is no longer a member, the committee can only censure that person. Otherwise, it shall impose any one, or a combination, of the following sanctions:
  - Censure;
  - Restriction for up to six months of that member's access to the premises and/or resources of the authority, provided that any such restrictions are reasonable and proportionate to the nature of the breach, and do not unduly restrict the person's ability to perform their functions as a member;
  - Partial suspension for up to six months;
  - Suspension for up to six months;
  - Requirement for a written apology in a form specified by the committee;
  - Requirement to undertake training as specified by the committee;
  - Requirement that the member undertake conciliation as specified by the committee;
  - Partial suspension up to a maximum of six months or until such time as the member submits a written apology in a form specified by the standards committee;
  - Partial suspension of the member for up to six months or until such time as the member undertakes any training or conciliation specified by the committee;
  - Suspension for up to six months or until such time as the member submits a written apology in a form specified by the standards committee;
  - Suspension for up to six months or until such time as that member undertakes such training or conciliation as the committee specifies.
- Normally any sanction imposed must start immediately following its imposition. However, the committee can decide that any sanction will start on any specified date up to six months after its imposition.

#### **Notification of standards committee findings (Reg 20)**

- The notification provisions under the new regulations are similar to the previous ones. All interested parties, including the Standards Board, should be given written notification of a finding along with the reasons for it.

- The standards committee must arrange for a summary of the notice to be published in at least one local newspaper for every authority concerned and, if the committee thinks it appropriate, on its website and any other publication.
- Where the member concerned is found not to have failed to comply with the Code, the notice must state that the committee has found that the member had not failed to comply with the code of conduct of any authority concerned and shall give its reasons for that finding. A summary must not be published anywhere if the member so requests.
- Where the standards committee finds that the member has failed to comply with the Code, the notice must include the right to apply for permission to appeal against the finding or sanction.

### **Appeals (Reg 21)**

- A member found to have breached the Code can seek permission to appeal within 21 days of receiving written notification of the committee's finding and can also apply for the suspension of any sanction imposed until such time as any appeal is decided.
- Any request for appeal must specify:
  - whether the appeal is against the finding, sanction or both;
  - the grounds of the appeal;
  - whether any application for suspension of any sanction is made;
  - whether the member consents to the appeal being conducted by written representations.
- The application for permission to appeal or to suspend a sanction will be decided by the President (or Deputy President) of the Adjudication Panel for England and unless s/he considers that special circumstances render a hearing desirable, in the absence of the parties.
- In deciding whether to give permission to appeal, the President shall have regard to whether, in his/her opinion, there is a reasonable prospect of the appeal being successful (either in whole or in part).
- Permission may be given in relation to the whole or any specified part of the finding or sanction.
- The President shall, within 21 days of receiving the request for permission to appeal, send notice of his/her decision to those involved, including the Standards Board. If permission is refused, the notice must give the reasons.
- Where permission is granted, the conduct of appeals (Reg 22), the composition and procedures of appeals tribunals (Reg 23) are essentially the same as under the previous regulations, eg:
  - Matter is referred to an appeals tribunal;
  - An appeal hearing is held where member does not consent to hearing by written representations (otherwise for the tribunal to decide);
  - The member concerned may appear or be represented by counsel, a solicitor or, subject to the tribunal's consent, any other representative;
  - The standards committee may be represented by any member of it, the monitoring officer, counsel, solicitor or, subject to the tribunal's consent, any other representative;
  - Tribunal shall consist of not less than three members;
  - A member of the Adjudication Panel may not at any time be a member of an appeals tribunal if, within previous five years, s/he has been a member/officer of any of the

authorities concerned or their committee, sub-committee, joint committee or joint sub-committees.

- A member of the Adjudication Panel who is directly or indirectly interested in any matter which is, or is likely to be the subject of an appeal conducted by an appeals tribunal must disclose the interest to the President and may not sit on the tribunal hearing the appeal.
- If the member concerned received notice of the hearing but fails to attend or be represented, the tribunal may make a decision in their absence (unless it is satisfied that there is sufficient reason for the non-attendance) or adjourn the hearing. Before deciding to determine an appeal in the member's absence, the tribunal shall consider any written representations submitted by the member in response to the notice of hearing and any written reply to that notice shall be treated as the member's written representations.

#### **Outcome of appeals (Reg 25)**

- Tribunal must uphold or reject the standards committee's finding or part of finding appealed. It may also allow the appeal regarding a part of the finding.
- Where the tribunal rejects a finding, the committee's decision and any sanction imposed, will cease to have effect from the date of the rejection.
- Where the tribunal upholds a committee finding of a breach of the Code of Conduct but that no sanction should be imposed, it may confirm the committee's decision to impose no sanction or it may impose any sanction which was available to that standards committee.
- Where the tribunal upholds a standards committee's finding, or part of a finding, of a breach of the Code of Conduct, it may confirm any sanction imposed by that committee or substitute any other sanction available to that committee.
- Normally any sanction imposed by the appeals tribunal must start immediately following its imposition. However, a tribunal can decide that any sanction should start on any specified date up to six months after its imposition.
- The tribunal must give written notice of its decision to those involved, including the Standards Board.
- The tribunal must arrange for a summary of its decision to be published in one or more newspapers circulating in the area of the authorities concerned.

MPB

20.5.08

# Article 9 - The Standards Committee

## 9.01 Standards Committee

The Council has established a Standards Committee.

The responsibility for receiving and considering complaints that a Member may have breached the Members' Code of Conduct lies with the **standards committees** of local and other relevant public authorities (NOT the Standards Board for England anymore).

What this means is that if a person wishes to complain about the conduct of a Member of North Yorkshire County Council, s/he must submit his/her complaint, in writing, to:

The Standards Committee  
c/o The Monitoring Officer  
North Yorkshire County Council  
County Hall  
NORTHALLERTON  
North Yorkshire  
DL8 2AD

The Standards Committee can only deal with complaints about the behaviour of a Member and cannot deal with complaints about things that are not covered by the Members' Code of Conduct. If a complaint is made to the Committee it must be about why the complainant thinks a Member has **not followed the Code** of Conduct.

The Standards Board (an independent, national body) continues to be a key part of the ethical framework, providing advice and guidance to authorities on the framework and acting as a 'light touch' regulator. The Board may still investigate more serious complaints in particular, limited circumstances.

If a complaint against a Member does **not** involve an alleged breach of the Council's Code of Conduct for Members, then such a complaint should be made to the Chief Executive Officer of North Yorkshire County Council at the address above.

## 9.02 Composition

The Standards Committee will be composed of six Councillors (who may not include the Leader) and four persons who are not Councillors or Officers of the Council or any other body having a standards committee (the independent members). The independent members will be entitled to vote at meetings and the Committee will be chaired by one of the independent members.

## 9.03 Roles, Terms of Reference and Functions

The Standards Committee will have as its terms of reference, exercising the following roles and functions:

- (a) promoting and maintaining high standards of conduct by Councillors, co-opted members and church and parent governor representatives;
- (b) assisting the Councillors, co-opted members and church and parent governor representatives to observe the Members' Code of Conduct;



- (c) advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) monitoring the operation and effectiveness of the Members' Code of Conduct;
- (e) advising, training or arranging to train Councillors, co-opted members and church and parent governor representatives on matters relating to the Members' Code of Conduct;
- (f) granting dispensations to Councillors, co-opted members and church and parent governor representatives from requirements relating to private and personal interests set out in the Members' Code of Conduct;
- (g) receiving and assessing complaints that Councillors, co-opted members and church and parent governor representatives may have breached the Code of Conduct for Members;
- (h) reviewing Standards Committee decisions to take no action on a complaint that the Code has been breached, where such review is requested by the complainant;
- (i) determining complaints (other than those being determined by the Standards Board/Adjudication Panel) that Councillors, co-opted members and church and parent governor representatives may have breached the Code of Conduct for Members;
- (j) dealing with any reports from a case tribunal or interim case tribunal, any reports to the Committee by an Ethical Standards Officer, and any report from the Monitoring Officer on any matter which is referred by an Ethical Standards Officer (see 12.03 (d)) to the Monitoring Officer;
- (k) a general overview of ethical issues in relation to the Authority, including in particular any investigations undertaken, and reports issued, by the Local Government Ombudsman;

- (l) advising the Council on any amendments to its Constitution which might be desirable in the light of issues concerned with ethics and conduct;
- (m) dealing with any other complaints about Councillors' conduct, unrelated to the Code of Conduct, referred by the Chief Executive Officer. In such circumstances the Standards Committee may investigate, afford the Member a hearing, and may then advise the Member as to what action they should take. Should the member subsequently fail to take such action, they may be censured by the Standards Committee;
- (n) granting exemptions to officers in politically restricted posts to allow them to engage in political activities;
- (o) exercising all functions in respect of the publication of Standards Committee independent Member vacancies;
- (p) assisting in the recruitment of independent members to the Standards Committee (but not approving individual appointments).

(e) *Note: (a) – (j) and (n) above are statutory.  
All other terms of reference are included through local choice.*

#### **9.04 Membership**

Membership of the Standards Committee is set out in Part 3 of this Constitution.

## NORTH YORKSHIRE COUNTY COUNCIL

### STANDARDS COMMITTEE

#### Jurisdiction and Local Assessment Criteria

##### Jurisdiction

Before assessment of a complaint begins, the relevant Standards Committee sub-committee should be satisfied that the complaint meets the following tests:

1. it is a complaint against one or more named Members of the authority or an authority covered by the standards committee;
2. the named Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
3. the complaint, if proven, would be a breach of the Code under which the Member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant must be informed that no further action will be taken in respect of the complaint.

##### Assessment Criteria

###### 1. Sufficient Information

**Has the complainant submitted enough information to satisfy the sub-committee assessing the complaint that the complaint should be referred for investigation or other action?**

If the answer is **no**, the response of the sub-committee should be: "The information provided was insufficient to make a decision as to whether the complaint should be referred for investigation or other action. So unless, or until, further information is received, the sub-committee is taking no further action on this complaint."

###### 2. Current Membership

**Is the complaint about someone who is no longer a Member of the authority, but is a member of another authority? If so, does the sub-committee wish to refer the complaint to the monitoring officer of that other authority?**

If the answer is **yes**: "Where the member is no longer a member of our authority but is a member of another authority, the complaint will be referred to the standards committee of that authority to consider."

###### 3. Prior Investigation/Action

**Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?**

If the answer is **yes**: "The matter of complaint has already been subject to a previous investigation or other action and there is nothing more to be gained by further action being taken."

#### 4. Passage of Time

**Is the complaint about something that happened so long ago that there would be little benefit in taking action now?**

If the answer is **yes**: “The period of time that has passed since the alleged conduct occurred was taken into account when deciding whether this matter should be referred for investigation or further action. It was decided under the circumstances that further action was not warranted.”

#### 5. Triviality

**Is the complaint too trivial to warrant further action?**

If the answer is **yes**: “The matter is not considered to be sufficiently serious to warrant further action.”

#### 6. Underlying Motivation

**Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?**

If the answer is **yes**: “The matter appears to be simply malicious, politically motivated or tit-for-tat, and not sufficiently serious, and it was decided that further action was not warranted”.

#### 7. Anonymous Complaints

The relevant sub-committee may decide that an anonymous complaint should only be referred for investigation or some other action if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

### **Possible decisions**

The sub-committee assessing a complaint is required to reach one of the three following decisions on a complaint about a member’s actions in relation to the Code of Conduct:

- referral of the complaint to the Monitoring Officer of the authority concerned, which under section 57A(3) of the Local Government Act 2000, as amended, may be another authority;
- referral of the complaint to the Standards Board for England;
- no action should be taken in respect of the complaint.

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