

## **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 of 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