

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

1 September 2008

Local Ethical Framework Developments

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. Most of the changes have now taken effect but a few are outstanding. Further legislation will be required to bring them into play.
- 2.2 At its last meeting, the Committee considered certain issues relating to the implementation of the new local ethical framework and determined various recommendations to the Executive on 8 July and full Council on 23 July 2008. All the Committee's recommendations were approved by those bodies respectively.

3.0 DEVELOPMENTS

Local Determination of Complaints

- 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 Members have been informed of, and provided with copies of, the earlier Standards Board Guidance documents for the different complaint stages. The Standards Board has now issued the final part of its suite of Guidance documents, relating to local "Standards Committee Determinations". The Guidance document details each stage of the complaint determination process and offers suggestions for effective practice. Authorities must have regard to the Guidance in exercising their functions under the local ethical framework.
- 3.3 The Standards Board has also produced a new Determinations Toolkit, containing proforma documentation for the determination stage of the local complaints process, which is available on the Board's website at www.standardsboard.gov.uk.
- 3.4 Now that all the Standards Board Guidance and Toolkits are available, work has commenced to re-draft the Committee's Protocol for the Determination of Complaints, in the light of the new local ethical framework. Members will be kept informed of progress.
- 3.5 There is one issue mentioned in the Standards Committee Determinations Guidance, relating to Members' Allowances, upon which Members' views are required:

Members' Allowances Scheme

- 3.6 Page 17 of the Guidance sets out the effect of a Member being suspended for breaching the Members' Code of Conduct. One of the implications is that, in the Standards Board's view, Members should not receive their Council Allowance for the period of suspension. The Guidance says:

Full Suspensions

Under Regulation 4(3) of the Local Authorities (Members Allowances) Regulations 2003, councils may specify in their member allowance schemes that:

"Where a member is suspended or partially suspended from his responsibilities or duties as a member of an authority in accordance with part III of the Local Government Act 2000 or regulations made under that Part, the part of basic allowance payable to him in respect of the period for which he is suspended or partially suspended may be withheld by the authority."

It is recommended that members should not receive their allowance while under suspension because they are not performing their role as a member. But, the decision to withhold a member's allowance is ultimately at the discretion of the individual authority....

Partial Suspensions

... While members who are fully suspended cannot take part in any formal business of the authority during the period of suspension, members who are partially suspended are restricted only from certain activities or business....

A partial suspension enables the committee to tailor a sanction to the particular breach, while still allowing the member to carry out other functions....

... Again we recommend that members should not receive allowances relating to areas in which they are suspended from for the duration of their suspension.

- 3.7 Similarly, the 2003 Regulations provide that the parts of special responsibility allowance, co-optees allowance and travelling and subsistence allowance payable in respect of the responsibility/duties from which the Member is suspended/partially suspended may also be withheld. There is no provision to withhold dependants' carers' allowance.
- 3.8 The Regulations also state that a Members' Allowances Scheme can provide that where payment of any allowance has already been made in respect of any period during which a Member is suspended/partially suspended under Part III, ceases to be a member of the authority or is in any other way not entitled to receive the allowance in respect of that period, the authority may require that part of the allowance as relates to any such period be repaid to the authority.
- 3.9 At present, the County Council's Members' Allowances Scheme makes no provision for the withholding of such allowances during suspension or repayment of them in the circumstances set out above. As the Scheme currently stands, therefore, no allowances could be withheld or be required to be repaid at present: amendments would have to be made to the Scheme, under the prescribed statutory process, before that could be done.
- 3.10 The Committee is requested to consider whether it wishes to make representations in this regard regarding the Council's Members' Allowances Scheme, in particular:

- a) whether the Council should have the ability to withhold any part of a Member's basic allowance, special responsibility allowance, co-optees allowance or travel and subsistence allowance payable for any period where, or in respect of duties from which, s/he is suspended or partially suspended under Part III of the Local Government Act 2000; and
- b) whether the Council should have the ability to require repayment of any allowance (or part thereof) already paid in respect of any period during which the Member concerned is suspended or partially suspended under Part III, ceases to be a member of the authority or is in any other way not entitled to receive the allowance in respect of that period.

Size and composition of Standards Committee

- 3.11 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. Given the content of the new Regulations and Guidance, the Committee recommended, and the Council subsequently agreed, that the size of the Standards Committee should be increased by appointing another Councillor from each political group and recruiting another independent Member.
- 3.12 On 23 July 2008, full Council appointed Councillor Jeffels, Councillor Seymour and Councillor Snowball to the Standards Committee. They are warmly welcomed to the Committee and we look forward to working with them to further implement the new local ethical framework.
- 3.13 The proposed recruitment process for the additional independent Member is the subject of a separate report to the meeting.

Composition of Sub-Committees

- 3.14 At its last meeting the Committee established:
 - a) a Complaint Assessment Sub-Committee;
 - b) a Complaint Review Sub-Committee; and
 - c) a Complaint Determination Sub-Committee

and recommended that officers suggest membership of those Sub-Committees in line with Members' comments. Suggested membership of each Sub-Committee is therefore attached at Appendix 1 for the Committee's approval. It must be remembered that no Member who takes part in the initial assessment of an allegation can be a member of the Review Sub-Committee reviewing a decision to take no further action on that allegation.

- 3.15 It is proposed that the longest serving Members on the Committee be allocated seats on the Sub-Committees, in view of their experience of standards matters, and that the remaining Committee Members act as substitutes. Membership of the Sub-Committees can be reviewed in the future, as the new Committee Members' experience of the local ethical framework increases. In all likelihood, substitute Members are likely to be called upon to serve upon the Sub-Committees in any event, to cover issues such as holidays, sickness, unavailability etc.
- 3.16 The Committee is therefore recommended to appoint Members and substitute Members to the Complaint Assessment Sub-Committee, Complaint Review Sub-Committee and Complaint Determination Sub-Committee on the basis set out in Appendix 1 to this report and also to recommend to full Council that such membership of the Sub-Committees be recorded in the Constitution.

Local Assessment Criteria

- 3.17 At its last meeting, the Committee agreed Local Assessment Criteria for assessing and reviewing complaints. The Criteria have been amended in line with Members' comments and a revised version is attached at Appendix 2.
- 3.18 There are now a couple more issues for Members to consider in the context of the Criteria. The first issue relates to the withdrawal of complaints. The Standards Board Guidance on Local Assessment states that:

There may be occasions when the complainant asks to withdraw their complaint prior to the assessment sub-committee having made a decision on it.

In these circumstances, the assessment sub-committee will need to decide whether to grant the request. It would be helpful if the assessment sub-committee had a framework by which to consider such requests.

A suggested framework for the consideration of requests to withdraw complaints, based on the Standards Board Guidance, has been included in the Local Assessment Criteria at proposed new paragraph 10 on the version attached at Appendix 2, for Members' consideration.

- 3.19 The second issue relates to requests for confidentiality. The Standards Board Guidance on Local Assessment states that:

As a matter of fairness and natural justice, a member should usually be told who has complained about them. However, there may be instances where the complainant asks for their identity to be withheld. Such requests should only be granted in exceptional circumstances and at the discretion of the assessment sub-committee. The assessment sub-committee should consider the request for confidentiality alongside the substance of the complaint itself.

Authorities should develop criteria by which the assessment sub-committee will consider requests for confidentiality.

Suggested criteria against which to judge requests for confidentiality, based on the Standards Board Guidance, have been included in the Assessment Criteria at proposed new paragraph 9 on the version attached at Appendix 2, for Members' consideration.

- 3.20 Stylistic amendments to paragraph 8 of the Local Assessment Criteria have also been suggested, to make them consistent with the rest of the document.

4.0 OUTSTANDING PARTS OF FRAMEWORK

- 4.1 The following parts of the new local ethical framework are not yet in force:

(a) Application of Code to Members' private conduct

Once certain provisions of the Local Government Public Involvement in Health Act 2007 Act are in force, the Code will apply to some conduct by Members in a private capacity, as prescribed in the Code. However, until that time, the Code still only applies to Members in their official capacity.

(b) Joint Standards Committees

Once new regulations are made, two or more relevant authorities will be able to 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.

4.2 Members will be kept informed of developments in these areas.

5.0 RECOMMENDATIONS

5.1 That Members note the contents of this report;

5.2 That Members determine whether they wish to make representations regarding the Council's Members' Allowances Scheme, in particular:

- a) whether the Council should have the ability to withhold any part of a Member's basic allowance, special responsibility allowance, co-optees allowance or travel and subsistence allowance payable for any period where, or in respect of duties from which, s/he is suspended or partially suspended under Part III of the Local Government Act 2000; and
- b) whether the Council should have the ability to require repayment of any allowance (or part thereof) already paid in respect of any period during which the Member concerned is suspended or partially suspended under Part III, ceases to be a member of the authority or is in any other way not entitled to receive the allowance in respect of that period.

5.3 Subject to any comments Members may have, that the Committee appoints Members of the Committee to the following sub-committees:

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

on the basis set out in Appendix 1 to this report and that Members recommend to full Council that membership of the Sub-Committees be recorded in the Constitution;

5.4 That, subject to any comments they may have, Members agree the suggested amendments to the Local Assessment Criteria for the Standards Committee, as set out in Appendix 2 to this report.

CAROLE DUNN

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Background Documents:

The Standards Committee (England) Regulations 2008

The Standards Board Guidance "Standards Committee Determinations"

The Standards Board Guidance "Local Assessment of Complaints"

County Hall
NORTHALLERTON

4 August 2008

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

Proposed Sub-Committee Appointments

Complaint Assessment Sub-Committee

Membership

- | | |
|----------------------------|----------------------|
| 1. Gillian Fleming (Chair) | (Independent Member) |
| 2. James Daghish | (Independent Member) |
| 3. Brian Marshall | (Elected Member) |

Substitutes

- | | |
|---------------------|----------------------|
| 1. Janet Holt | (Independent Member) |
| 2. Vacancy | (Independent Member) |
| 3. David Jeffels | (Elected Member) |
| 4. John Marshall | (Elected Member) |
| 5. Caroline Seymour | (Elected Member) |
| 6. Jim Snowball | (Elected Member) |
| 7. Peter Sowray | (Elected Member) |

Complaint Review Sub-Committee

Membership

- | | |
|-----------------------|----------------------|
| 1. Janet Holt (Chair) | (Independent Member) |
| 2. John Marshall | (Elected Member) |
| 3. Peter Sowray | (Elected Member) |

Substitutes

- | | |
|---------------------|----------------------|
| 1. James Daghish | (Independent Member) |
| 2. Gillian Fleming | (Independent Member) |
| 3. Vacancy | (Independent Member) |
| 4. David Jeffels | (Elected Member) |
| 5. Brian Marshall | (Elected Member) |
| 6. Caroline Seymour | (Elected Member) |
| 7. Jim Snowball | (Elected Member) |

Complaint Determination Sub-Committee

Membership

- | | |
|--------------------------|----------------------|
| 1. James Daghish (Chair) | (Independent Member) |
| 2. Gillian Fleming | (Independent Member) |
| 3. Brian Marshall | (Elected Member) |

Substitutes

- | | |
|---------------------|----------------------|
| 1. Janet Holt | (Independent Member) |
| 2. Vacancy | (Independent Member) |
| 3. David Jeffels | (Elected Member) |
| 4. John Marshall | (Elected Member) |
| 5. Caroline Seymour | (Elected Member) |
| 6. Jim Snowball | (Elected Member) |
| 7. Peter Sowray | (Elected Member) |

August 2008

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

All complaints falling within the jurisdiction of the Standards Committee will be assessed in accordance with the criteria below.

More than one criteria may be applicable to a complaint.

1. Capacity

Was the Member acting in his/her official capacity at the time of the alleged conduct?

If the answer is **no**, then unless there is some direct link between the activity and the Member's office, the Code did not apply to the Member at the time of the alleged conduct and therefore there can be no breach of the Code. The response of the sub-committee should therefore be: "The Member concerned was not acting in his/her official capacity at the time of the alleged conduct and therefore the Code of Conduct for Members did not apply to the Member at that time. Consequently no potential breach of the Code has been disclosed and the Standards Committee is unable to take any action in respect of the complaint."

The Code does not currently apply to Members' conduct outside of the performance of their functions as Members. Only if they have engaged in private conduct/activity which has a link with the functions of the office of member, might the conduct in question be covered by the Code.

NB: If certain legislative provisions are enacted in the future, then the Code will also apply to certain private conduct (which relates to paragraphs 3(2)(c) (intimidation), 5

(disrepute) or 6(a) (improperly conferring advantage/disadvantage) of the Code) which has led to a criminal conviction.

2. 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.”

3. 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.”

4. 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.”

5. 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.”

6. 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.”

7. Underlying Motivation

Does the complaint appear to be simply malicious, vexatious, 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”.

8. Anonymous Complaints

Is the complaint under consideration anonymous?

If the answer is **yes**, the Assessment Sub-Committee will only refer such a complaint for investigation or some other action if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

9. Requests for Confidentiality

Has the complainant asked for his/her identity to be withheld?

If the answer is **yes**, the Assessment Sub-Committee will need to consider the request by the complainant for confidentiality alongside the substance of the complaint itself.

As a matter of fairness and natural justice, Members should usually be told who has complained about them. Requests for confidentiality should only be granted in exceptional circumstances and at the discretion of the Assessment Sub-Committee.

The following considerations may assist the Sub-Committee’s deliberations in this respect:

- (a) Whether the complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed;
- (b) Whether the complainant is an officer who works closely with the subject Member and they are afraid of the consequences to their employment or of losing their job if their identity is disclosed (NB: this should be covered by the Council’s Whistle-Blowing Policy);
- (c) Whether the complainant suffers from a serious health condition and there are medical risks associated with his/her identity being disclosed. In such circumstances, the Assessment Sub-Committee may wish to request medical evidence of the complainant’s condition;
- (d) Whether the disclosure of the complainant’s identity is necessary for the investigation of the complaint; for example, this may be relevant in a bullying allegation. In such cases, the Assessment Sub-Committee may give the complainant the option of requesting a withdrawal of his/her complaint;
- (e) Whether it is possible to investigate the complaint without making the complainant’s identity known;
- (f) Whether the public interest in proceeding with an investigation outweighs the complainant’s wish to have their identity withheld from the subject Member.

Where the Assessment Sub-Committee decides to refuse a request by a complainant for confidentiality, it may, in the particular circumstances, decide to offer the complainant the option to withdraw the complaint, rather than proceed with their identity being disclosed.

10. Withdrawal of Complaints

Has the complainant indicated that s/he wishes to withdraw his/her complaint?

If the answer is **yes**, the Assessment Sub-Committee will need to decide whether to grant the request. The following considerations may assist the Sub-Committee's deliberations in this respect:

- (a) Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
- (b) Is the complaint such that action can be taken on it, for example an investigation, without the complainant's participation?
- (c) Is there an identifiable underlying reason for the request to withdraw the complaint? For example, is there information to suggest that the complainant may have been pressured to withdraw the complaint?

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, for investigation or other action;
- referral of the complaint to the Standards Board for England;
- no action should be taken in respect of the complaint.

August 2008