

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

5 August 2009

Local Ethical Framework Developments

0.0 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, although one or two are outstanding (see later in the report).

3.0 DEVELOPMENTS

The Standards Board – “a new look”

2.1 The Standards Board for England has announced that from July, there will be a new look and feel to its communications. The Board says that its communications “will do more to highlight the positive aspects of conduct; making the point that ethical behaviour is both a good thing in itself and good for local democracy.”

2.2 The Standards Board is also introducing an abbreviated version of its name: “**Standards for England**”.

2.3 The changes have been made to emphasise the change in the Board’s role over the past 18 months, from a focus on complaint handling to being “the strategic regulator of standards among local politicians.”

2.4 More information about the Board’s refreshed identity is available on its website, the address of which has also changed to reflect the revised name (www.standardsforengland.gov.uk).

Standards Committee (Further Provisions) Regulations 2009

2.5 Members have previously been informed that the Government intended to make regulations to revise the existing Standards Committee dispensation regulations, to allow authorities to establish joint standards committees, and to enable Standards for England (“SFE”) to suspend a standards committee's powers to assess Code of Conduct allegations.

2.6 The Standards Committee (Further Provisions) Regulations 2009 are attached at Appendix 1 to this report. The Regulations came into force on 15 June 2009 and have the following effect:

- the Regulations allow the SFE to suspend a relevant authority’s local assessment functions (eg where an authority has failed to have regard to the SFE’s guidance/directions, or to carry out its standards functions properly, or where the standards committee requests the SFE’s intervention);

- the Regulations enable authorities to establish joint standards committees to deal with all or any functions of a standards committee;
- the Regulations amend the powers of standards committees to grant dispensations to Members with a prejudicial interest.

Joint Standards Committees

2.7 The SFE has also recently produced guidance on joint standards committees, a copy of which is attached at Appendix 2 to this report, in support of the 2009 Regulations.

2.8 The SFE envisages that joint arrangements are likely to be most useful where additional flexibility to deal with cases is needed, or where resources are limited and sharing them would benefit the successful management of the standards framework in that area. It has identified a number of potential benefits of forming a joint standards committee:

- avoidance of conflicts of interest through a wider pool of Members;
- consistency of procedures;
- public confidence in the complaints process enhanced through a greater 'distance' between standards committees and complainants/subject Members;
- greater capacity to meet the increased role and workload of standards committees under the local standards framework;
- efficient and effective use of resources through sharing of resources and pooling expertise;
- increased ability to promote high ethical standards through a raised profile of the standards committee;
- the ability to jointly commission and fund mediation, training and investigations;
- the opportunity to create stronger support and advisory functions;

as well as a number of potential issues with joint arrangements:

- the possibility that it could become an overly bureaucratic and more complex process, leading to a lack of clarity for the general public;
- member resistance to joint standards committees;
- differing resource implications for authorities within the same joint working arrangement;
- loss of local ownership of standards and ethical issues.

2.9 The SFE recognises that there will be different reasons for authorities wanting to create joint standards committees and has therefore produced three model governance structures.

- **Model A: A joint standards committee to receive written allegations and requests for a review and to decide what action to take in relation to them.** This Model enables local authorities to retain their own standards committee to perform all other standards functions independently. It helps to reduce the likelihood of standards committee Members being conflicted out of a stage of the complaints process, as the joint committee membership would be larger. This model also allows standards committees to retain ownership of all other functions, including the hearing and determination processes, so that individual committees can apply sanctions based on their own local knowledge.

- **Model B: A joint standard committee to carry out the functions in Model A along with receiving and considering final investigation reports and conducting hearings, making findings and imposing sanctions.** In addition to the above listed advantages, this model also offers an increased opportunity to reduce costs through holding joint hearings, although the ability to draw on local knowledge when applying sanctions may be diminished.
- **Model C: A Joint committee to carry out all of the functions of a standards committee.** Standards for England state in the Guidance that this Model is most appropriate for single purpose authorities such as police or fire authorities, because they have less contact with the public than local authorities and are the source of fewer complaints, therefore a joint working arrangement would be a sensible use of resources. The SFE does not, however, recommend that this model be adopted by local authorities, because it remains an important role of an authority's standards committee to promote and maintain high standards within its own authority.

2.10 The Guidance on Joint Committees sets out, in some detail, guidance on the composition and operation of joint standards committees, including the functions which can be exercised, rules for the conduct of meetings, a protocol for the exercise of Monitoring Officer functions and the allocation of expenses.

2.11 The Monitoring Officer also provides a Monitoring Officer service to the North Yorkshire Fire and Rescue Authority and the North York Moors National Park Authority and supports those authorities' standards committees. The Monitoring Officer will consider whether there is any scope for joint arrangements between those, and this, Authority, in light of the 2009 Regulations and the new Guidance and will report to a future meeting of the Committee.

Dispensations

2.12 The SFE has also recently produced guidance on dispensations, a copy of which is attached at Appendix 3 to this report, in support of the 2009 Regulations.

2.13 Under the previous dispensations regulations, a standards committee could only grant a dispensation where the transaction of business would otherwise be impeded because:

(a) more than 50% of the Members entitled or required to participate would not be able to; or

(b) an authority would not be able to comply with "any duty which applies to it under section 15(4) of the Local Government and Housing Act 1989".

It was long acknowledged that there was a problem with the drafting of paragraph (b), the political balance criterion, as the s15(4) duty requires the allocation of seats and the appointment of committees that reflect the overall political balance of an authority. However, the duty does not arise in relation to individual meetings, either of the authority or its committees.

2.1 The practical effect of paragraph (b) was, therefore, that a dispensation could be sought if the Authority would be unable to allocate seats in accordance with the rules relating to political balance however this would only occur at the time that allocations were made to political groups and, thereafter, committees and not simply that political balance would not be maintained thereafter. For this reason, it was difficult to envisage circumstances in which the paragraph (b) criterion would be met.

2.2 The new Regulations clarify that standards committees may grant a dispensation where the number of Members prohibited from voting on the business would upset

the political balance of that meeting to such an extent as to prejudice the outcome of voting.

- 2.3 The paragraph (a) ground for granting a dispensation where more than 50% of the Members are affected remains, but the wording clarifies that it is Members prohibited from voting on the business (rather than just participation (eg by co-opted Members, see para 3.13 (a) above).
- 2.4 Dispensations may also be granted for speaking only, as well as for speaking and voting. However, the Authority's current Code of Conduct relaxed the provisions for restricting Members with a prejudicial interest from speaking, provided the public were also able to speak at that meeting. Therefore, the need to request a dispensation in this respect is likely now to be limited to circumstances where the public do not have the right to speak.
- 2.5 The changes to the dispensation regime and the new SFE Guidance on Dispensations mean that the Committee's Dispensation Request Procedure requires amendment. Suggested amendments to reflect the changes and to generally update the procedure are set out on the version of the Procedure attached at Appendix 4 to this report, for Members' comments.

SFE Guidance on 'Other Action' by Monitoring Officers

- 2.6 One of the options open to a standards committee in assessing a complaint that a Member may have breached the Code of Conduct, is to refer the complaint to the Monitoring Officer for 'other action'. This means action other than investigation for example, training, conciliation or anything else that appears appropriate (eg instituting changes to Authority procedures if they have given rise to the complaint).
- 2.7 The purpose of 'other action' is not to find out whether the Member breached the Code; the decision is made as an alternative to investigation.
- 2.8 In response to a number of queries, the SFE has produced a guidance document regarding 'other action' (a copy of which is attached at Appendix 5 to this report), in order to clarify what it is, what it can involve, when it is appropriate, and what to do if it does not prove to be successful. The Guidance addresses the role of the monitoring officer, adjournment of assessment sub-committee meetings, and explains why 'other action' closes the opportunity to investigate.
- 2.9 The Committee's Complaint Assessment Procedure contains provisions relating to referrals for other action and some amendments are suggested to Members, as set out in the version attached at Appendix 6, in light of the new Guidance.
- 2.10 The Guidance acknowledges that Assessment/Review Sub-Committees may be reluctant to refer a complaint for other action without knowing whether the subject Member and any other Members of the Authority will cooperate with the proposed approach. The Sub-Committee may adjourn the assessment/review to ask the Monitoring Officer to find out whether the Member(s) will co-operate or, alternatively, the Standards Committee could agree, as a matter of general process, that the Monitoring Officer seeks views on other action when a complaint is received. Given the disadvantages which exist in adjourning an assessment/review meeting (see page 8 of the Guidance), it is recommended to Members that the Committee agrees that as a matter of general process, when appropriate, the Monitoring Officer should seek views on other action when a complaint is received. Suggested amendments to the Complaint Assessment Procedure are therefore set out in Appendix 6 on that basis.
- 2.11 Where there has been a direction for other action, the Monitoring Officer must submit a written report to the Standards Committee/Sub-Committee within three months of

such a referral being made (or as soon as reasonably practicable afterwards), detailing what action has been taken or is proposed to comply with the referral. The Guidance states that the standards committee or an appropriate sub-committee should consider the Monitoring Officer's report and decide whether it is satisfied with the action described.

- 2.12 The Guidance states that the Monitoring Officer's report can be considered by the same Members who initially assessed the complaint, by another Sub-Committee, or by the Standards Committee as a whole. This is a decision to be made by each authority, and will depend on the way in which the Committee has been set up, what sub-committees it has and the terms of reference of each body. The advantage of the same Members considering the report is that this provides consistency and they will be aware of the details of the original complaint. However, Members may consider that convening a Sub-Committee simply to consider one report is not a good use of time and resources and that it might be more appropriate to include consideration of the Monitoring Officer's report as an item on the agenda of the next regular meeting of the Standards Committee itself.
- 2.13 Given that the Committee's Complaint Assessment Sub-Committee has delegated authority to undertake all functions of the Standards Committee in relation to the initial assessment of complaints, specifically including the referral or otherwise of complaints for investigation or other action, and given the advantages of the same Members considering the report for reasons of consistency and completeness, it is recommended that the Assessment Sub-Committee should receive the Monitoring Officer report on the 'other action' taken. Suggested amendments to the Complaint Assessment Procedure are therefore set out in Appendix 6 on that basis.
- 2.14 All standards legislation and SFE guidance documents are published on the SFE's website (www.standardsforengland.gov.uk).

3 OUTSTANDING PARTS OF FRAMEWORK

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

Application of Code to Members' private conduct

- 3.2 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.
- 3.3 It is the Government's intention that these amendments will become effective at the same time as the new Members' Code of Conduct becomes operative.

New Codes of Conduct for Members and Officers

- 3.4 At its meeting on 1 December 2008 the Standards Committee considered a consultation paper in relation to further proposed amendments to the Members' Code of Conduct. The proposals related primarily to the issue of the applicability of the Code to Members' conduct whilst not acting in their official capacity (see paragraphs 4.2 and 4.3 above).
- 3.5 The second part of the consultation paper dealt with a proposed new national Officers' Code of Conduct.
- 3.6 The Monitoring Officer prepared a response to the paper, in consultation with the Chairman of the Committee, for approval for submission by the Executive Member for Corporate Services.

3.7 No further information has been received in relation to the proposals to date, or the likely timescale for the publication of the new Codes.

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

5.0 RECOMMENDATIONS

5.1 That Members note the contents of this report;

4.2 That, subject to any comments Members may have, the Committee's Dispensation Request Procedure be amended as set out in Appendix 4 to this report.

4.3 That, subject to any comments Members may have, the Committee's Complaint Assessment Procedure be amended as set out in Appendix 6 to this report.

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Background Documents:

The Standards Committee (Further Provisions) Regulations 2009

Standards for England Guidance documents on Joint Committees, Other Action and Dispensations

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