

Report of	Meeting	Date
Monitoring Officer	Standards Committee	5 June 2008

THE STANDARDS COMMITTEE (ENGLAND) REGULATIONS 2008

PURPOSE OF REPORT

1. To update the Standards Committee on the impact of the Standards Committee (England) Regulations 2008.

RECOMMENDATION(S)

2. That the following recommendations be adopted:
 - a. The Guidance from the Standards Board be noted and adopted.
 - b. That the Committee considers its arrangements for publicizing the new arrangements.
 - c. That the Committee authorise the Monitoring Officer, in consultation with the Chairman to finalize the format of the complaints form.
 - d. That the Committee's Assessment Criteria be considered for approval, and in particular that the Committee consider whether or not it wishes the Monitoring Officer to notify a subject member of a complaint prior to the meeting of the Assessment Sub-Committee, and whether the Review Sub-Committee should consider a complaint afresh, substituting its own view for that of the Assessment Sub-Committee
 - e. That the Chief Executive, or her representative, be authorized to convene ad hoc Assessment and Review Sub-committees, each of three members to deal with the initial assessment of allegations and subsequent requests for review.

EXECUTIVE SUMMARY OF REPORT

3. The long awaited changes to the arrangements for dealing with complaints that Members have breached the Code of Conduct are now in force. The Standards Committee (England) Regulations 2008 have been implemented with effect from the 8th May 2008. From that date any complaint that a member has breached the Code of Conduct must be referred in the first instance to the local Standards Committee.
4. The Regulations require local authorities to have regard to guidance issued by the Standards Board. Copies of the guidance on the role and make-up of standards committees and local assessment of complaints are attached separately to the agenda package. There are a number of issues, arising from the Regulations and guidance, on which the Committee is required to make decisions or establish procedures, and these are set out in the report below.

CORPORATE PRIORITIES

5. This report relates to the following Strategic Objectives:

Put Chorley at the heart of regional economic development in the Central Lancashire sub-region		Develop local solutions to climate change.	
Improving equality of opportunity and life chances		Develop the Character and feel of Chorley as a good place to live	✓
Involving people in their communities		Ensure Chorley Borough Council is a performing organization	

PUBLICITY

6. The Standards Committee is required to publish details of the address to which allegations of failure to comply with the Code of Conduct are to be sent. This is to ensure that members of the public are aware of the change of responsibility for handling Code of Conduct complaints.
7. These details have been published on the Council's website and the notice is enclosed for information. Experience suggests that placing notices in newspapers etc. attracts limited attention and is not a cost effective means of promotion. In due course the Committee may wish to consider how best to promote the new arrangements.

COMPLAINTS FORMS AND PROCEDURES

8. The guidance suggests that there are two main ways in which authorities can set up procedures for the submission of complaints that a member may have breached the Code of Conduct. Authorities may choose to integrate the making of Code complaints into the existing complaints framework, so that when a complaint is received it can be analysed to decide which of the complaints processes is most appropriate, and the authority can then advise the complainant accordingly.
9. Alternatively, authorities may choose to develop a separate process for Code complaints so that the process is distinct from other complaints. At least until the new arrangements bed in the Monitoring Officer's preference would be to develop a separate process and it is proposed that arrangements should be made which will enable both online and paper based complaints to be submitted.
10. It is of course possible that complaints about Members conduct will be submitted through other routes and arrangements will be put in place to ensure that these are handled appropriately. A copy of the proposed complaints form, which is based on the Standards Board's template is appended to this report for the Committee's approval. The Committee may wish to authorize the Monitoring Officer, in consultation with the Chair, to finalize the form.

ASSESSMENT PROCEDURES AND CRITERIA

11. The Committee is also required to publish details of the procedures it will follow in relation to any written allegation received. In complying with these requirements, the Committee must take account of the guidance issued by the Standards Board. In addition to taking account of that guidance Monitoring Officers from across Lancashire have met on two occasions to discuss possible criteria and the draft criteria which are attached reflect the those discussions.
12. There are a number of issues that require the Committee's specific consideration, and these are set out below.

13. The Regulations require the Committee to appoint sub-committees to deal with the initial assessment of allegations of breach of the Code of Conduct, and with any subsequent request for review of the initial assessment. Such Assessment and Review sub-committees must be chaired by an independent member, and no member who has taken part in the initial assessment of an allegation may participate in a review in respect of that allegation.
14. A sub-committee shall not be quorate unless at least three members are present. One member of the Borough Council must always be present, and, if the allegation relates to a parish councillor, a parish representative must also be present. The Regulations do not prescribe the size of the sub-committees but sub-committees of three would seem appropriate given the need to have at least two separate sub-committees available to deal with each case.
15. Rather than establishing fixed sub-committees with named members, it is recommended that the Committee authorize the Chief Executive or her representative to convene ad hoc sub-committees of three.
16. An Assessment or Review Sub-committee meeting is not required to be open to the public, and the normal rules about publication of agendas and minutes do not apply. However, the sub-committee must produce a summary of its consideration, which must be prepared having regard to guidance issued by the Standards Board. The summary will be open to public inspection for a period of six years.
17. The issue of whether or not a subject member should be notified of a complaint before the Assessment Sub-Committee meets is a difficult one. The guidance states that the Monitoring Officer has the discretion to take the administrative step of acknowledging receipt of a complaint and telling the subject member that a complaint has been made about them. The notification could say that a complaint has been made, and state the name of the complainant (unless the complainant has requested confidentiality – a request that would be considered by the Assessment Sub-Committee), the relevant paragraphs of the Code that may have been breached and the date of the Assessment Sub-Committee meeting.
18. A written summary of the allegation can only be provided to a subject member once the Assessment Sub-Committee has met. Because of this, and the fact that the Assessment Sub-Committee meeting is held in private, there seems to the Monitoring Officer to be little to be gained from telling the subject member about the existence of the complaint at that stage, and indeed it seems that this would only cause anxiety to the subject member. All the Monitoring Officers present at their most recent meeting supported this view. However, the Committee's views on this are sought.
19. When an Assessment Sub-Committee considers an allegation, it may refer the allegation to the Monitoring Officer, refer the allegation to the Standards Board, or decide that no action should be taken in respect of the allegation. In referring an allegation to the Monitoring Officer, this may be for investigation, or with a direction to take other steps.
20. These steps are arranging for the member who is the subject of the allegation to attend a training course, arranging for the member and the complainant to engage in a process of conciliation or such other steps (apart from investigation) as appear appropriate to the sub-committee. The Standards Board has advised that Standards Committees should establish criteria for the assessment process, and a draft for the Committee's consideration is later in the report.

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

ASSESSMENT CRITERIA

23. A. Circumstances where the Assessment Sub-Committee may decide that no action should be taken in respect of the allegation:

A1: Where the complaint is about someone who is no longer a member of the borough council or a parish council.

A2: Where the information provided by the complainant is not sufficient to enable the sub-committee to make a decision as to whether the complaint should be referred for investigation or other action. However, the complainant will be advised that it is possible to resubmit the complaint with further information.

A3: Where a substantially similar allegation has previously been made by the complainant to the Standards Board or the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority (except where a Review Sub-Committee has taken the view that a request for review contains new information and should be considered by an Assessment Sub-Committee rather than the Review Sub-Committee). The sub-committee will only refer the complaint for investigation or other action if it considers that there is a compelling reason to do so.

A4: Where the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now. It is acknowledged, however, that where a delay has arisen as a result of criminal or other legal proceedings, it may be appropriate to refer the complaint for investigation or other action.

A5: Where the allegation is anonymous, unless it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

A6: Where the allegation discloses a potential breach of the Code of Conduct, but the Committee considers that the complaint is not serious enough to warrant further action.

A7: Where the complaint appears to be malicious, politically motivated or tit-for-tat.

24. B. Circumstances where the Standards Committee may decide to refer the allegation to the Monitoring Officer for investigation

B1: Where the allegation discloses a potential breach of the Code of Conduct that the Committee considers sufficiently serious to justify the cost of an investigation.

25. C. Circumstances where the Standards Committee may decide to refer the allegation to the Monitoring Officer for training, conciliation or other steps as appear appropriate to the Standards Committee

Note: This approach may be appropriate where the Sub-Committee believes that the 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. If this approach is taken, the purpose of the action is NOT to find out whether the subject member breached the Code, and no conclusion will have been reached on whether the subject member failed to comply with the Code. It should be noted that this approach may only be taken after consultation with the Monitoring Officer

C1: Where the complaint suggests that there is a wider problem throughout the authority and it is appropriate to extend the action to other members who are not the subject of the complaint.

C2: Where it is apparent that the subject of the allegation is relatively inexperienced as a Member, or has admitted making an error and the matter would not warrant a more serious sanction.

C3: Where it appears that even if the allegation was fully investigated, and a breach of the Code of Conduct upheld, training or conciliation would be the appropriate remedy.

26. D. Circumstances where the Standards Committee may decide to refer an allegation to the Standards Board

D1: Where the Assessment Sub-Committee believes that the status of the member or members, or the number of members about whom the complaint is made, would make it difficult for the Standards Committee to deal with the complaint. For example, if the complaint is about the Leader of the Council or a Group Leader, or a member of the Cabinet or Standards Committee.

D2: Where the Assessment Sub-Committee believes that the status of the complainant(s) would make it difficult for the Standards Committee to deal with the complaint. For example, if the complainant is a group leader, member of Cabinet or the Standards Committee, or the Chief Executive or a statutory officer.

D3: Where the Assessment Sub-Committee considers that there is a potential conflict of interest of so many members of the Standards Committee that it could not properly deal with the matter itself.

D4: Where the Assessment Sub-Committee believes that that there is a potential conflict of interest of the Monitoring Officer or other officers, and that suitable alternative arrangements cannot be put in place to address the conflict.

D5: Where the case is so serious or complex that it cannot be handled locally.

D6: Where the complaint will require substantial amounts of evidence beyond that available from the authority's documents, its members or officers.

D7: Where the complaint relates to long-term or systematic member/officer bullying which someone outside the Council could more effectively investigate.

D8: Where the allegation raises significant or unresolved legal issues on which a national ruling would be helpful.

D9: Where the public might perceive the Council to have an interest in the outcome of a case. For example, if the authority could be liable to be judicially reviewed if the complaint were upheld.

IMPLICATIONS OF REPORT

27. This report has implications in the following areas and the relevant Corporate Directors' comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	
Legal	✓	No significant implications in this area	

ANDREW DOCHERTY
CORPORATE DIRECTOR OF GOVERNANCE

There are no background papers to this report.

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