

STANDARDS COMMITTEE

15TH NOVEMBER 2010

PROCEDURES FOR THE ASSESSMENT AND DETERMINATION OF COMPLAINTS UNDER THE MEMBERS' CODE OF CONDUCT

REPORT BY THE INTERIM MONITORING OFFICER

Purpose of the report – To explain the statutory requirements relating to the receipt, assessment, investigation and determination of allegations of failure to comply with the Members' Code of Conduct, and to seek approval to procedures to ensure compliance.

Resource implications – minimal providing members of the Authority give matters of ethical conduct a high profile in their deliberations, so that allegations of failure to comply with the Code are minimal. However, in the event that a matter is referred for investigation, or reaches a final hearing, additional costs are likely to be incurred.

1. RECOMMENDATIONS

The Committee is recommended:

- 1 Subject to any amendments agreed by the Committee, to approve the procedures appended to the report, and
- 2 To agree that these procedures should be published on the Authority's website.

2. INTRODUCTION

- 2.1 The Standards Committee (England) Regulations 2008 ("the Regulations") set out detailed requirements governing the receipt, assessment, investigation and determination of complaints against members who are alleged to have failed to comply with their authority's members' code of conduct. These give local standards committees the responsibility for initially assessing all allegations of misconduct by members and, in all but the most serious cases, for any subsequent investigations, decisions and sanctions. The report gives a summary of the main elements of the requirements, and identifies the matters to be addressed by the Standards Committee in making sure that effective arrangements are in place.

3 KEY ELEMENTS OF THE NEW REGIME

3.1 Overview

Section 57A of the Local Government Act 2000 ("the Act") enables people to make a written allegation to the standards committee of a relevant authority in England that a member or co-opted member (or former member or former co-opted member) of the authority has failed to comply with the authority's code of conduct. The Regulations make provision for dealing with such allegations and confer powers on the monitoring officer of the relevant authorities concerned to carry out investigations. They also

make provision for standards committees to reach decisions on allegations and to impose sanctions, and for appeals to the First Tier Tribunal.

3.2 Action on Receipt of an Allegation

On receipt of an allegation, Regulations 6 and 7 require standards committees to establish a sub-committee of at least three members, including at least one member of the authority and an independent member as Chair, to undertake the initial assessment of the complaint. The sub-committee may decide to -

- (a) refer it to the authority's Monitoring Officer, or
- (b) refer it to the Standards Board for England ("SBE") for consideration, or
- (c) decide that no action should be taken.

Where the decision is that no action should be taken, notice must be given, with reasons.

3.3 Right of Review

Where it is decided that no action should be taken, the person making the allegation may request, within 30 days, that that decision be reviewed. Such review must be carried out within three months by a differently constituted sub-committee, of at least three members of the Committee, including at least one member of the authority and an independent member as Chair. The outcome of a review may be to uphold the original decision, or that the matter should be referred to the Monitoring Officer or SBE.

3.4 Information to the Member the Subject of the Allegation

Where a complaint is received, reasonable steps must be taken to give a written summary of the allegation to the member concerned, except where this would be contrary to the public interest or would prejudice an investigation. However, in circumstances where a standards committee is not required to provide a written summary of an allegation at the time it receives the allegation, it must provide a written summary to the subject of the allegation before any hearing is convened under regulation 17 or 18 to consider any report on the allegation.

3.5 Consideration and Final Hearings

Where the outcome of initial assessment is that the report is referred to the monitoring officer for investigation, the standards committee may also then decide to establish a further sub-committee of at least three members, including an independent member as Chair, to consider the monitoring officer's report and to conduct a hearing into the matter. The Regulations do not require that any such sub-committee is differently constituted from the sub-committees who considered the complaint at the initial stage. This means that all those members who took part in consideration of the matter at initial assessment, or review stage, are able to take part in deliberation at these later stages.

3.6 Public Access to Meetings

Regulation 8 makes provision as to public access to meetings and documents of standards committee proceedings. Where a sub-committee of a standards committee is considering an allegation against a member under section 57A of the Act or a request under section 57B of the Act to review a decision to take no action, there is

no public right of access to the meetings or documents. The sub-committee is required to produce a written summary of its consideration of those matters, which is to be made available to the public. Otherwise, the proceedings of standards committees and sub-committees of standards committees are to be open to the public in a manner similar to that in which other proceedings of local authorities are made open.

3.7 Publication

Regulation 10 requires standards committees to publicise the address or addresses to which written allegations of misconduct should be sent and to keep published details up to date. Standards committees are also required to publish details of the procedures they will follow in the handling of complaints. In both cases, publication shall be in such manner as the Committee considers appropriate. It is suggested that publication be via the Authority's website. It is further suggested that, subject to any detailed comments from members, the procedures to be followed are those appended to this report. These are procedures that comply with relevant legislation and guidance, and which have been proven to work successfully in other authorities.

3.8 Alternatives to Investigation

Regulation 13 enables a sub-committee of a standards committee to refer a matter to a monitoring officer with a direction to take steps other than carry out an investigation. A direction may require the monitoring officer to arrange for a member to attend a training course, to engage in a process of conciliation or to take such other steps as appear appropriate. The monitoring officer must report back to the standards committee, who can either give a further direction to the monitoring officer or, if satisfied with the action taken, bring the matter to a close.

3.9 Monitoring Officer Investigation

Regulation 14 makes provision for monitoring officers to carry out an investigation into an allegation. It makes provision as to who must receive notice that the matter has been referred for investigation, and confers powers on the monitoring officer to request information or an explanation of matters from any person and to require authorities to provide advice and assistance. Following an investigation, the monitoring officer must submit a report to the standards committee indicating whether in the opinion of the monitoring officer the person who is the subject of the report has failed to comply with the authority's code of conduct.

In practice, an investigation is likely to be carried out by another lawyer or monitoring officer from a neighbouring authority, so that the Authority's own Monitoring Officer is not "tainted" and able to advise the Standards Committee objectively on its responsibilities once the report of investigation is received.

3.10 Consideration of Report by Standards Committee

Regulation 17 deals with a standards committee's consideration of reports received from monitoring officers. The committee must make one of the following findings:

(a) that it accepts the monitoring officer's findings that there has been no failure to comply with an authority's code of conduct;

(b) that the matter should be considered at a hearing under regulation 18; or

(c) that the matter should be referred to the First Tier Tribunal for determination.

The Regulation also imposes requirements as to notification and publication of its findings. Regulation 18 deals with the procedure for the holding of a hearing. As indicated earlier, the Standards Committee may establish a sub-committee of at least three members, including at least one member of the authority and an independent member as Chair, to receive the report and to conduct any hearing.

3.11 Findings

Regulations 19 and 20 make provision as to the findings available to a standards committee following a hearing, the sanctions which it may impose on a person if it finds that the person has failed to comply with an authority's code of conduct and the manner in which those findings are to be notified and publicised. Sanctions include: censure; restriction on access to the authority's premises and resources for up to six months; suspension for up to six months; and that the member give an apology or attend training. Notification of the decision must be given in a local newspaper.

3.12 Appeal

There is a right to seek permission to appeal against any finding of the standards committee, or any sanction imposed, to the First Tier Tribunal.

4 TRAINING

- 4.1 It is important that Standards Committee members receive training on these procedures. A training exercise, applying material developed by SBE, is scheduled to take place on the same date as this meeting.

5. RESOURCES

- 5.1 The resource implications of these procedures will be minimal providing members of the Authority give matters of ethical conduct a high profile in their deliberations, so that allegations of failure to comply with the Code are avoided. However, in the event that a matter is referred for investigation, or reaches a final hearing, additional costs are likely to be incurred.

6. RISK MANAGEMENT

- 6.1 The procedures proposed for adoption are designed to ensure that the Authority meets all legal requirements and statutory timescales.

7. HUMAN RIGHTS, EQUALITIES, HEALTH & SAFETY

- 7.1 The Code adopted by the Authority includes the prohibition of doing anything that may be in breach of equality laws. Promotion of compliance with this is within the Committee's role.

8. CONSULTEES

- 8.1 Interim Chief Executive, Interim Chief Financial Officer, Senior Management Team

9 CONCLUSION

- 9.1 The report gives a summary of the main elements of the legal requirements for the receipt, assessment, investigation and determination of complaints that members have failed to comply with the Code of Conduct. The resource implications of the changes will be minimal providing the Authority continues to give matters of ethical conduct a high profile in its deliberations. It is essential in this respect that Standards Committee is trained and ready to handle its responsibilities effectively.

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Appendices:

Appendix A - Draft procedures for the receipt, Assessment, Investigation and Determination of Complaints

Appendix B - Complaints form (Appendix 1)

Appendix C - Local Assessment Criteria (Appendix 2):.