

TYNE AND WEAR FIRE AND RESCUE AUTHORITY

MEETING: GOVERNANCE COMMITTEE – 30TH JUNE 2008

**SUBJECT: A SUMMARY OF THE STANDARDS COMMITTEE (ENGLAND)
REGULATIONS 2008**

REPORT OF THE DEPUTY CLERK

1 INTRODUCTION

The Standards Committee (England) Regulations 2008 (hereafter “the Regulations”) were made on 14 April 2008 and came into force on 8 May 2008. The purpose of this report is to summarise in detail the content of the Regulations. In summary, local authority Standards Committees will be responsible for receiving complaints about members and deciding what action needs to be taken. It identifies the actions already taken and those required to be taken. (References are made to Standards Committees which in the Authority’s case is its Governance Committee).

2. COMPOSITION OF STANDARDS COMMITTEES

At least 25% of a Standards Committee must be made up of independent members. The Authority has agreed to the appointment of a third independent member in accordance with the guidance issued by the Standards Board

3. APPOINTMENTS TO STANDARDS COMMITTEE

Normally, a person cannot be appointed as an independent member of a Standards Committee unless:

- The appointment is approved by a majority of the members of the authority.
- The appointment is advertised in a local newspaper circulating in the area.
- The person has submitted an application to the authority.
- The Person has not been a member or officer of the authority within the previous five years and is not a relative or close friend of a member or officer of the authority.

The Authority has appointed a third independent member (Ms Glenys Goodwill) in compliance with these requirements.

The new regulations do not change this, but add that advertisements can be placed in any other publications or websites the authority considers appropriate.

There is a new flexibility whereby an independent member of another authority can be appointed for a specific period of time. Alternatively, they can be appointed to deal with a particular allegation or set of allegations against a member. The term of office of such an independent member can then be fixed accordingly.

An authority can adopt whatever procedures it thinks fit to appoint such independent members and members of parish councils. It must consider the Standards Board for England's Standards Committee guidance, published on 9th May 2008, when making these appointments.

The relevant requirements have been satisfied in respect of the appointment of a third independent member.

4. SUB-COMMITTEES OF STANDARDS COMMITTEES

- 4.1 The Standards Committee of an authority must appoint a sub-committee chaired by an independent member to carry out initial assessments of allegations. This is under Section 57A of the Local Government Act 2000. It is suggested that this should generally be the responsibility of the Chairman of the Committee (Mr Cook).
- 4.2 It must also appoint a sub-committee chaired by an independent member to carry out reviews under Section 57B of the Local Government Act 2000. If the Standards Committee appoints a sub-committee to hold hearings, that sub-committee must be chaired by an independent member. It is suggested that this should generally be undertaken by the Vice-Chairman (Mr Paterson).
- 4.3 Nothing in the regulations requires a sub-committee of a Standards Committee to have fixed membership or chairmanship.

5. VALIDITY OF PROCEEDINGS

- 5.1 For a meeting of the Standards Committee to be valid at least three members must be present, one of whom must be an independent member. The independent member must chair the meeting. For a meeting of a Standards Committee sub-committee to be valid at least three members of the Standards Committee must be present, including normally at least one elected member and one independent member. In either case, if parish issues are being discussed, one of the three members present must be a parish representative.
- 5.2 No member who took part in the initial assessment of an allegation can attend a sub-committee meeting that is considering a review of a decision to take no further action on a matter.

6. APPLICATION OF THE LOCAL GOVERNMENT ACT 1972 – ACCESS TO INFORMATION RULES

The existing rules about publicity and access to documents apply, except that initial assessment hearings and reviews are excluded from

the scope of Part VA of the Local Government Act 1972. They are replaced with the following requirements:

- After the meeting, the sub-committee must produce a written summary. The written summary must record the main points considered, the conclusions reached and the reasons for them. It must be prepared having considered the Standards Board for England's Standards Committee guidance.
- The sub-committee may also give the name of any member subject to allegations unless such disclosure is not in the public interest or would prejudice any investigation. The record must be available for inspection by members of the public at the offices of the authority for six years after the meeting and must be given to any parish or town Authority involved.

7. WRITTEN ALLEGATIONS

- 7.1 Standards Committees must publish details of the address or addresses that written allegations should be sent to. Standards Committees themselves can choose how they do this. Details have been posted on the Authority's website and forms of complaint with the address are displayed in the Brigade Headquarters and Sunderland Civic Centre. An advertisement was placed in the local press. They must also take reasonable steps to ensure that the public are kept aware of address details and that any changes to them are published promptly. The form of complaint which has been prepared, based on guidance issued by the Standards Board is presented elsewhere on this agenda. If members have any suggestions on the form these will be considered.
- 7.2 In addition, Standards Committees must publish details of the procedures they will follow. These are the subject of a further report on this agenda.
- 7.3 A Standards Committee must take account of relevant guidance issued by the Standards Board when complying with these obligations. This has been done.

8. MODIFICATION OF DUTY TO PROVIDE WRITTEN SUMMARIES TO MEMBERS SUBJECT TO ALLEGATIONS

- 8.1 Under Section 57C(2) of the Local Government Act 2000, a Standards Committee must take reasonable steps to give a written summary of the complaint to the member subject to the allegations. The new regulations provide that this duty does not arise if the Standards Committee decides that giving a written summary would be contrary to the public interest. Standards Committees also need not provide a written summary if it would prejudice any person's ability to investigate the allegation.
- 8.2 The Standards Committee must take account of any guidance issued by the Standards Board when reaching a decision. It may also consider any advice received from the monitoring officer or any ethical standards officer concerned.
- 8.3 Once the monitoring officer or ethical standards officer has advised the Standards Committee that it would no longer be against the public interest or prejudicial to any investigation, a written summary must be provided. In any

event this must be done before any consideration by the Standards Committee or sub-committee of a report or recommendation from a monitoring officer or ethical standards officer about that allegation.

9. MODIFICATION OF SECTION 63 OF THE LOCAL GOVERNMENT ACT 2000

Section 63 of the Local Government Act 2000 has been modified so that the confidentiality requirements in that section are applied to information gathered by the monitoring officer in the course of an investigation. The monitoring officer can disclose this information if it is for the purposes of carrying out their functions under the legislation, or for enabling a Standards Committee, sub-committee or an appeals tribunal to do so.

10. REFERRAL OF MATTERS TO A MONITORING OFFICER FOR OTHER ACTION

10.1 There may be occasions where a matter is referred to a monitoring officer by a sub-committee of a Standards Committee or an ethical standards officer, with a direction to take steps other than carry out an investigation. The sub-committee can only make such a referral after consulting the monitoring officer. Other action can include arranging training, conciliation or anything else that appears appropriate.

10.2 The monitoring officer must submit a written report to the sub-committee or ethical standards officer within three months, giving details of what action has been taken or is proposed to be taken. If the Standards Committee is not satisfied with the action specified in the report, it must give a further direction to the monitoring officer.

10.3 If the ethical standards officer concerned is not satisfied with the action specified in the report, they may ask the monitoring officer to publicise a statement. This statement should be published in at least one newspaper circulating in the area of the authority concerned. This should give details of the direction given by the ethical standards officer, the reasons why the ethical standards officer is dissatisfied with the action taken, and the monitoring officer's response to those reasons.

11. REFERRAL OF MATTERS TO A MONITORING OFFICER FOR INVESTIGATION

11.1 Where a matter is referred to the monitoring officer for investigation, the monitoring officer must inform the following parties that the matter has been referred for investigation:

- Any member subject to an allegation
- The person who made the allegation
- The Standards Committee of any other authority concerned
- Any parish or town Authority or other authority concerned

11.2 The monitoring officer must also consider any relevant guidance issued by the Standards Board, and must comply with any relevant direction given by it.

- 11.3 The monitoring officer can make enquiries of anyone and require them to provide information or explanations that the monitoring officer thinks necessary. In addition, they may require any of the authorities concerned to provide advice and assistance as reasonably needed, and, except for parish and town Authorities, to meet the reasonable costs of doing so.
- 11.4 The monitoring officer may also require any of the authorities concerned to allow reasonable access to documents they possess which the monitoring officer may find necessary to conduct the investigation.
- 11.5 Following an investigation, a monitoring officer must make one of the following findings:
- Finding of failure – there has been a failure to comply with the Code of Conduct of the authority concerned or, as the case may be, of any other authority concerned.
 - Finding of no failure – there has not been a failure to comply with the Code of Conduct of the authority concerned or, as the case may be, of any other authority concerned.
- 11.6 The monitoring officer must prepare a written report concerning the investigation and findings. They must then send that report to the member subject to the allegation and refer the report to the Standards Committee. The report can also be sent to any other authority that the member belongs to, if they request it. The monitoring officer must refer the report to the Standards Committee in instances where an investigation report is sent to the monitoring officer by an ethical standards officer.

12. REFERENCES BACK FROM THE MONITORING OFFICER

In cases referred to a monitoring officer for investigation after an initial assessment, the monitoring officer can refer that back to the Standards Committee concerned if:

- 1) As a result of new evidence or information, the monitoring officer believes both of the following:
 - The matter is materially more or less serious than may have seemed apparent to the Standards Committee when it made its decision on the initial allegation.
 - The Standards Committee would have made a different decision had it been aware of that new evidence or information.
- 2) The member subject to the allegation 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 with an investigation.

If a matter is referred back to a sub-committee under this regulation, 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.

13. CONSIDERATION OF REPORTS BY STANDARDS COMMITTEE

13.1 Where a monitoring officer refers a report to the Standards Committee of any authority, it must consider that report and make one of the following findings:

- Finding of acceptance – it accepts the monitoring officer’s finding of no failure to comply with the Code of Conduct.
- The matter should be considered at a hearing of the Standards Committee.
- The matter should be referred to the Adjudication Panel for England for determination.

13.2 A Standards Committee can only refer a case to the Adjudication Panel if:

- 1) it decides that the action it could take against the member would be insufficient were a finding of failure to be made.
- 2) the President or Deputy President of the Adjudication Panel has agreed to accept the referral.

13.3 The Standards Committee must give written notice of a finding of acceptance to the parties involved, as soon as possible after making it. It must arrange for the decision to be published in at least one local newspaper and, if the committee deems it appropriate, on its website and any other publication. If the member subject to the allegation requests that the decision not be published, then the Standards Committee must not publish it anywhere.

14. HEARINGS BY A STANDARDS COMMITTEE

14.1 A Standards Committee can conduct a hearing using whatever procedures it considers appropriate in the circumstances. But the meeting must be conducted with regard to relevant guidance issued by the Standards Board.

14.2 The hearing must be held within three months of the date of which the monitoring officer has received a report by an ethical standards officer or the date that the report is completed, if it was prepared by the monitoring officer.

14.3 If it cannot be held within three months of the above, it must be held as soon as possible thereafter.

14.4 The hearing must not be held until at least 14 days after the date that the monitoring officer sent the report to the member subject to the allegations, unless the member concerned agrees to the hearing being held earlier.

14.5 Any member who is the subject of a report being considered by the Standards Committee must be given the opportunity to present evidence and make representations at the hearing orally. Alternatively, they can make representations in writing, personally or through a representative. The representative can be a barrister, solicitor or, with the consent of the Standards Committee, anyone else.

- 14.6 A Standards Committee may arrange for witnesses that it thinks appropriate to attend and a member subject to an allegation may arrange to call any number of witnesses. It may also place a limit on the number of witnesses a member calls if it believes that the number is unreasonable.
- 14.7 If the member subject to the allegations fails to attending a hearing, the Standards Committee may make a decision in their absence. This is unless it is satisfied that there is sufficient reason for the member subject to the allegation failing to attend. It may alternatively adjourn the hearing to another date.
- 14.8 A Standards Committee may, at any stage prior to the conclusion of the hearing, adjourn the hearing and require the monitoring officer to seek further information. Alternatively, it may require the monitoring officer to carry out further investigation on any points it specifies. However, the Standards Committee cannot adjourn the hearing more than once.
- 14.9 If a Standards Committee receives a report from an ethical standards officer, it may adjourn the hearing at any stage before it concludes, and refer it back to the ethical standards officer for further investigation. It must set out its reasons for doing this.
- 14.10 The ethical standards officer 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.

15. STANDARDS COMMITTEE FINDINGS

- 15.1 Following a hearing, a Standards Committee will make one of the following findings about the member subject to the allegation:
- The person had not failed to comply with the Code of Conduct.
 - The person had failed to comply with the Code of Conduct but that no action needs to be taken.
 - The person had failed to comply with the Code of Conduct and that a sanction should be imposed.
- 15.2 If the member subject to the allegation is no longer a member of any authority, the Committee can only censure that person. Otherwise, it must impose any one or a combination of the following sanctions:
- Censure
 - Restriction for up to a maximum of six months of that member's access to the premises and/or resources of the authority. This is 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 of that member for up to a maximum of six months.
 - Suspension of that member for up to a maximum of six months.
 - A requirement that the member submit a written apology in a form specified by the Standards Committee.

PREVENTING PROTECTING RESPONDING

- A requirement that the member undertake training as specified by the Standards Committee.
- A requirement that the member undertake conciliation as specified by the Standards Committee.
- Partial suspension of the member for 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 a maximum of six months or until such time as the member undertakes any training or conciliation specified by the Standards Committee.
- Suspension of the member for 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.
- Suspension of the member for up to a maximum of six months or until such time as that member undertakes such training or conciliation as the Standards Committee specifies.

Normally any sanction imposed must start immediately following its imposition. However, the Standards Committee can decide that any sanction will start on any specified date up to six months after the imposition of that sanction.

16. NOTIFICATION OF STANDARDS COMMITTEE FINDINGS

- 16.1 The notification provisions under the new regulations are similar to those under the previous regulations. All interested parties, including the Standards Board, should be notified of a decision along with the reasons for it. The Standards Committee must arrange for a notice to be published in a local newspaper and, if the committee thinks it appropriate, on its website and any other publication. If the member concerned is found not to have failed to comply with the Code of Conduct, a summary must not be published anywhere if the member so requests.
- 16.2 Where the Standards Committee finds that the member has failed to comply with the Code, the notice to the member concerned must include the right to appeal in writing against the decision to the President of the Adjudication Panel for England.

17. APPEALS

- 17.1 The member who is the subject of a finding can ask for permission to appeal within 21 days of receiving notification of the Committee's decision. They can also apply for the suspension of any sanction imposed until such time as any appeal is decided.
- 17.2 Any appeal must specify whether the appeal is against the finding or the sanction or both. It must also specify:
- The grounds of the appeal
 - Whether any application for suspension of any sanction is made
 - Whether the person consents to the appeal being dealt with in writing only

- 17.3 The application for permission to appeal or to suspend a sanction will be decided by the President of the Adjudication Panel for England. In the absence of the President this will be decided by the Deputy President, unless they consider that special circumstances render a hearing desirable.
- 17.4 If permission is refused, or if a suspension of a sanction is not granted, the notice given to the member concerned will give the reasons.
- 17.5 The conduct of appeals, the composition of appeals tribunal and the procedures to be followed are essentially the same as under the previous regulations.

18. OUTCOME OF APPEALS

- 18.1 Where an appeals tribunal dismisses a Standards Committee's finding, including any sanction imposed, will cease to have effect from the date of the dismissal.
- 18.2 Where an appeals tribunal upholds the finding of a Standards Committee that there has been 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. Alternatively, it may impose any sanction which was available to that Standards Committee.
- 18.3 Where an appeals tribunal upholds a Standards Committee's findings, or part of a finding, that there has been a breach of the Code of Conduct, it may confirm any sanction imposed by that Committee. Alternatively, it may substitute any other sanction which was available to that Standards Committee.
- 18.4 Normally any sanction imposed must start immediately following its imposition by the appeals tribunal. However, an appeals tribunal can decide that any sanction imposed should start on any specified date up to six months after the imposition of that sanction.
- 18.5 The appeals 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.

19. COMPLAINTS FROM THE PUBLIC

- 19.1 As local authorities prepare to receive and assess complaints about member conduct, the Standards Board in passing on its advice about dealing with complaints from members of the public.

Their experience suggests that if members of the public do not understand the process, including the possible or likely outcomes if their complaint is upheld, then they are more likely to be unhappy about the outcomes of the cases.

In short the Standards Board's key recommendations based on their experience of dealing with complaints from the public are:

- Complaint materials should be easily available and the complaint process should be made very clear from the start.

PREVENTING PROTECTING RESPONDING

- Complaint materials and responses to complaints need to be clear and concise. They should explain exactly what can and cannot be done, including an outline of the powers available.
- Complaint materials should assume complainants are unfamiliar with how to make a complaint, the Code of Conduct and the authority's complaint process.

20. GUIDANCE

The Standards Board issued its Local Assessment Guidance on 9th May 2008 (copy at Appendix 2). This will be used in preparing the procedures to be adopted.

21. RECOMMENDATIONS

- 1) That the contents of this report be noted and the action taken be endorsed.
- 2) That if possible members attend a training exercise to be held at 2.30 p.m. on 30th June 2008 at Sunderland Civic Centre.

BACKGROUND PAPERS

- Standards Committee (England) Regulations 2008
- Standards Board Bulletin