

STANDARDS COMMITTEE

22 September 2003

THE LOCAL AUTHORITIES (CODE OF CONDUCT) REGULATIONS 2003 – GUIDANCE FROM THE STANDARDS BOARD

REPORT OF CITY SECRETARY AND SOLICITOR

Contact Officer: Stephen Whetnall Tel No: 01962 848220 swhetnall@winchester.gov.uk

RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

This report:

- (a) summarises the new provisions which enable the Standards Board to refer some complaints about Councillors for local determination by the Standards Committee, (although the investigation is still undertaken by an Ethical Standards Officer appointed by the Board) and
- (b) suggests that the Standards Board procedural guidance is adopted by the Committee. This would require a change in Council practice so that an Independent Member takes the Chair when an individual complaint is being considered.

Further Regulations are due later in the year which would also allow the Board to ask Monitoring Officers to undertake the investigation work locally in appropriate cases.

RECOMMENDATIONS:

- 1 That it be recommended to Council:-
 - (a) that the Standards Board Guidance that an Independent Member should chair the Committee when a complaint about an individual Councillor is being considered be supported.

(b) that Council approves guidelines for the selection of the Chairman and other members for such hearings and the Committee considers the issues/options raised in the draft guidance as set out in paragraph 4.5.3 of the report, and recommends a 'final' version for approval by Council.

(c) that Council Procedure Rule 24(4) be revised as follows:

"The quorum for the Standards Committee shall normally be three Councillors plus one Independent Member and, where parish issues are discussed, one parish member must also be present.

When the Committee is hearing a complaint about an individual member the quorum shall be three Members of the Committee to include an Independent Member, and where a parish matter is being considered, a parish Member".

(d) that the categories of exempt information set out in Access to Information Procedure Rule 10.4 be extended to include the additional categories 16 to 19 contained in the new Regulations (para 3.1.1 of this report refers).

2 That the Committee approves the use of the Standards Board Guidance, as up-dated from time to time, for use in any cases referred to the Committee by the Standards Board.

3 That such Guidance also be used by the Committee, as far as relevant and practicable, in dealing with any complaints that relate to alleged breaches of local protocols, where a reference to the Standards Board is not required.

STANDARDS COMMITTEE

22 September 2003

THE LOCAL AUTHORITIES (CODE OF CONDUCT) REGULATIONS 2003 – GUIDANCE FROM THE STANDARDS BOARD

DETAIL:

1 INTRODUCTION

- 1.1 These Regulations, which have been expected for some time, came into force on 30 June 2003. They are the first set of Regulations made under section 66 of the Local Government Act 2000. They enable Ethical Standards Officers (ESOs) (these are officers who have been appointed by the Standards Board for England to investigate allegations that the Code of Conduct has been breached by a Councillor) to refer alleged breaches of the Code to the relevant Standards Committee, once the ESO has completed an investigation of and report on the allegation.
- 1.2 It is important that the Committee agrees procedures for dealing with any such references, so that it can respond immediately if one is received. There is now the potential for an allegation that a District or Town/Parish Councillor has breached the Model Code of Conduct to be referred to the Committee at any time.
- 1.3 In mid-July the Standards Board issued Guidance to assist Monitoring Officers and Standards Committees in carrying out their duties under the Regulations. The Regulations require Standards Committees to have regard to this Guidance. The Guidance includes recommendations for the procedures Standards Committees should follow when determining complaints locally. Copies of the Guidance have been circulated to the Committee and Group Leaders. A copy has also been placed in the Members' Library.
- 1.4 Once the Local Government Bill has come into force, (which is likely later this year), the Government has promised a further set of regulations enabling ESOs to refer cases to the Monitoring Officer before investigating them. The Monitoring Officer will then be expected to arrange for their investigation. This will be the subject of a future report to the Committee once these further regulations have been made.

2. CONTENT OF THE NEW REGULATIONS

- 2.1 Broadly, the Regulations provide as follows:
 - 2.1.1 Once the ESO has carried out an investigation, one option is to send the report to the local Monitoring Officer. The Monitoring Officer must then send a copy of it to the councillor who is the subject of the report, and arrange for the Standards Committee to meet to consider it. The Standards Board advise that the cases likely to be referred are those of a local nature that do not affect broader national issues, and which do not appear to need the heavier penalties available to the Adjudication Panel. They also advise that the Committee should not re-open the investigation,

although if new evidence becomes available the Committee may consider that during the course of the hearing.

- 2.1.2 Certain rules are specified which the Standards Committee must follow. Subject to these, the Committee may use such procedures as it considers appropriate in the circumstances, (subject to the requirement to have regard to the Standards Board's Guidance). These provisions are explained in more detail in Section 3 of this report.
- 2.1.3 If the Committee finds that the Member did breach the Code of Conduct, it may impose one or more of a range of penalties. These are:
- (a) censure (this is the only penalty available if the person concerned is no longer a Councillor);
 - (b) restriction for up to 3 months of the Councillor's access to the Council's premises or use of resources (providing the restrictions are reasonable and proportionate to the breach, and do not unduly restrict the Councillor's ability to perform his functions as a member);
 - (c) partial suspension of the Councillor (for example, from a particular committee) for a maximum of 3 months, or until he/she apologises in writing or undertakes specified training or conciliation;
 - (d) total suspension of the Councillor for a maximum of 3 months, or until he apologises in writing or undertakes specified training or conciliation.

Alternatively, the Committee may decide not to impose a penalty. Some guidance will be available from the Standards Board to help the Committee decide on an appropriate penalty.

- 2.1.4 There are various requirements for written notice to be given of the Committee's decision. Notably, if the Committee decides there was a breach of the Code, a summary of the findings must be published in a local newspaper or newspapers.
- 2.1.5 The Councillor may seek permission to appeal against the Committee's decision to the Adjudication Panel at national level. Whether to grant leave to appeal is up to the president or deputy president of the Panel. However, it is expected that leave to appeal will only be granted if the president or deputy president considers there is a reasonable prospect of the appeal succeeding.

(Note: The Adjudication Panel is a body appointed by the Lord Chancellor. Matters referred to the Panel are determined by "appeals tribunals". ESOs refer more serious cases direct to the Panel, as tribunals have greater powers of suspension and disqualification than do Standards Committees).

3. REGULATIONS GOVERNING PROCEDURE BEFORE THE STANDARDS COMMITTEE

3.1 Should the Hearing be in Public or Private?

- 3.1.1 The list of "exempt information" in Schedule 12a to the Local Government Act 1972 (information that need not be discussed in public nor made available to the public) is

extended by four new categories (paras 16 to 19) in the case of Standards Committee meetings held to consider an alleged breach of the code to include:

- (a) information relating to the personal circumstances of any person (para 16);
- (b) information which is subject to any obligation of confidentiality (para 17);
- (c) information which relates in any way to matters concerning national security (para 18), and
- (e) the deliberations of the Committee or any Sub-Committee when reaching their findings (para 19).

The Access to Information Rules in the Constitution will have to be up-dated to reflect these additional paragraphs.

- 3.1.2 Paragraph (d) above makes it clear that in all cases the Committee can retire to consider its "verdict" in private. Whether the entire hearing should be held in private, and whether the ESO's report should or should not be available to the public, will depend on the facts of the particular case.
- 3.1.3 The Standards Board advise that hearings should be in public where possible to ensure the hearing process is open and fair. If "exempt information" is likely to be discussed during only part of the hearing (for example, the evidence of one witness) the remainder should be held in public. Article 6 of the European Convention on Human Rights should also be considered, and there may be cases where, even though exempt information is to be considered, the Committee decides that the public interest in holding a hearing in public is more important than protecting the privacy of an individual.
- 3.1.4 As and when cases are referred, the Committee's legal advisor (who will usually be the Monitoring Officer), after consulting with the Chairman, will consider on the facts of each individual case whether the reports should be made available to the public in advance of the meeting. (The Monitoring Officer has an existing delegation to decide this question).
- 3.1.5 When the actual hearing starts, one of the Committee's first tasks will be to decide whether or not to exclude the public, based on the facts and evidence likely to be given.

3.2 Timing of the Meeting

- 3.2.1 The meeting must take place:
 - (a) not less than 14 days after the ESO's report was sent to the Councillor against whom the allegation was made (unless the Councillor agrees to an earlier meeting); and
 - (b) within 3 months from the date the Monitoring Officer received the ESO's report.

3.2.2 In practice, suitable dates for the meeting will initially be canvassed by an officer in the Committee Section, taking into account the availability of Committee members, the Councillor against whom the allegation is made, and any other potential attendees.

3.3 Councillor's Right to attend/be represented/call witnesses

3.3.1 The Councillor against whom the allegation is made must be given the opportunity to present evidence in support of his case, either orally at the meeting or, if he/she so chooses, in writing. He/she can be represented by counsel or a solicitor, or (with the Committee's consent) by anyone else. The Standards Board advise that the Committee should always permit "non-legal" representation, unless the nominated representative is directly involved in the matters being determined. They also advise that permission may be withdrawn during the hearing if the representative disrupts the hearing despite being warned. Councillors are responsible for bearing the costs of their representation.

3.3.2 If the Councillor fails to attend the meeting, the Committee must adjourn if they are satisfied there is sufficient reason for his/her failure. If they are not so satisfied, they may either proceed in the Councillor's absence, or adjourn.

3.3.3 Both the Councillor, and the Committee, can arrange for witnesses to attend. However, there is no power to demand the presence of witnesses under threat of penalty for non-attendance. The Committee may limit the number of witnesses the Councillor may call if the Committee considers the number proposed is unreasonable. The Standards Board suggests this might be appropriate if, for example, the Committee believed certain witnesses would simply be repeating the evidence of earlier witnesses, or if a witness would not be providing evidence that would help the Committee reach its decision.

3.4 Other than as stated in 3.1 to 3.3 above, the Regulations are silent on the procedure to be followed by the Committee, stating only that the Committee may use such procedures as it considers appropriate in the circumstances.

4. STANDARDS BOARD GUIDANCE

4.1 The Regulations do however state that hearings must be conducted having regard to any guidance issued by the Standards Board. The Board has given guidance in a number of areas which are not covered in the Regulations.

4.2 The Pre-hearing Process

4.2.1 The Board advises that councils should use a pre-hearing process to deal with procedural issues such as:

- (a) Whether the person who has been complained about disagrees with any of the ESO's findings of fact;
- (b) If so, whether any disagreements are significant;
- (c) Whether to hear evidence about such disagreements at the hearing;

- (d) Whether all or part of the paperwork should be withheld from the public, and whether all or part of the hearing should be in private.

4.2.2 It will normally be possible to carry out this process in writing, although occasionally the Monitoring Officer and Chairman may need to meet some of the people involved.

4.2.3 Undertaking this process should allow all disagreements on the facts to be established before the actual hearing, and enable the Committee to determine whether, and if so which, witnesses should be asked to attend. The Guidance stresses that the Committee should not allow the member to raise new disagreements over findings of fact for the first time at the hearing unless there are good reasons for doing so (such as new evidence becoming available).

4.3 Input from the ESO

4.3.1 The Board recommends that the ESO should be invited to comment on the Member's response to the pre-hearing process, and to state whether he or she:

- (a) wants to be present at the hearing, and/or call witnesses;
- (b) wants any part of his or her report or accompanying documents to be withheld from the public;
- (c) wants any part of the hearing to be in private.

(The ESO's preferences on the two latter points are of course not binding on the Committee).

4.4 When the Pre-hearing Process has been completed

4.4.1 The Standards Board recommends that once the process in 4.1 to 4.3 is completed, the Chairman of the Committee, in consultation with the legal advisor (who should normally be the Monitoring Officer) should write to everyone involved at least two weeks before the meeting setting out:

- (a) The date, time and place for the meeting;
- (b) A summary of the allegation;
- (c) The main facts that are agreed;
- (d) The main facts that are not agreed;
- (e) Whether the member concerned and the ESO will be present or be represented;
- (f) Any proposed witnesses;
- (g) The proposed procedure.

4.4.2 In practice, this letter will be drafted by the Monitoring Officer or his staff, for approval and signature by the Chairman.

4.5 Constitution of the Committee/Chairmanship

4.5.1 Under the legislation, all members of the Standards Committee may take part in a hearing if they choose. However, the Board recommends that a small number of members (three or five) take part, as it is fairer and more efficient to hold a hearing before a small group. (In due course, legislation may permit Committees formally to delegate their responsibility for local determinations to a Sub-Committee).

4.5.2 To encourage confidence and remove any perception of political interference, the Board also recommends that one of the independent members of the Committee chairs the hearing.

4.5.3 The Committee is asked to comment on the following issues:

- (a) which of the independent members should chair such meetings. Options are:
 - (i) the independent members take turns to chair these meetings (subject to availability); or
 - (ii) one of the members is appointed as the “regular” Chairman, with the others acting as reserves in the event that the regular Chairman is not available.

- (b) how membership of the Committee that is to conduct a particular hearing should be established. The following guidelines are suggested and contain some options on possible membership, which the Committee is asked to consider and refine:
 - (i) In addition to the Independent Chairman, one other Independent Member could, if available, be present every time, to emphasize the impartiality of the Committee. Alternatively the presence of one Independent member may be sufficient if the aim of keeping the body small is to be achieved;
 - (ii) If the complaint is against a Parish Councillor, one Parish Council representative should be present (a legal requirement); in addition one District Council Member of the Committee should also participate. Individuals shall be selected in rotation in alphabetical order and subject to availability by the Monitoring Officer in consultation with the Chairman.
 - (iii) If the complaint is against a District Councillor, there should be District Councillor representation of up to three or four Councillors. Individuals shall be selected in rotation in alphabetical order and subject to availability by the Monitoring Officer in consultation with the Chairman. If possible should all political groups should be represented? Or should the Group of which the affected Councillor is a Member be not included?

- (iv) No Committee member should be present if the complaint is against a member of the same Parish, or District Ward, as the Committee member;
- (v) Three to five (or six?) members should be present at each meeting, the precise number for any particular meeting to be determined on levels of availability and application of the above criteria.
- (vi) It should be noted that the attendance guidance does not have statutory effect and cannot prevent other Members of the Committee from attending. However, Standards Committee Guidance recommends that guidelines of this nature be adopted as it is fairer and more efficient to hold a hearing before a small group. It is anticipated that when enacted the current Local Government Bill will include a change in the law allowing Sub-Committees to be established to deal with District Councillor cases. At that time, it is envisaged that these guidelines will be amended and formally included in the Constitution.

4.5.4 If it is agreed that a hearing involving three members will in some cases be acceptable, Council Procedure Rules for Meetings will need amending to enable three members to constitute a quorum in these circumstances.

4.5.5 The current Quorum is set out in Rule 23(3) as follows: The quorum for the Standards Committee shall be three plus one Independent Member and, where parish issues are discussed, one parish member must also be present.

4.5.6 This could be revised, with the additional wording shown in underlining to:

“The quorum for the Standards Committee shall normally be three Councillors plus one Independent Member and, where parish issues are discussed, one parish member must also be present.

When the Committee is hearing a complaint about an individual member the quorum shall be three Members of the Committee to include an Independent Member, and where a parish matter is being considered, a parish Member”.

4.6 Procedure at the Hearing

4.6.1 The Standards Board has recommended some basic rules for the procedure at hearings. These are included in Appendix 2 to the Guidance Booklet.

4.6.2 The Committee needs to determine whether to simply use the Standards Board procedures – or to establish its own local procedures that comply with legislation and statutory guidance.

4.6.3 Broadly, the procedure can be broken down into four elements:

- (a) the pre-hearing process, from the time the ESO’s report is referred to the Monitoring Officer to the time responses to all the initial queries have been received;
- (b) setting up the hearing and informing the relevant parties;

- (c) the hearing itself;
- (d) action after the hearing.

4.6.4 It is suggested that it would be simpler to generally use the Standards Board procedures contained in the Guidance Booklet, as up-dated from time to time. If updates require any variation to local practice, or need local variations to be agreed, then these can be brought to the attention of the Committee for consideration. These procedures could also be used, as far as relevant and practicable, in dealing with any complaints that relate to alleged breaches of local protocols that do not have to be referred to the Standards Board.

4.7 The Role of the Monitoring Officer

4.7.1 The Guidance points out that the Monitoring Officer needs to be aware of potential conflicts of interest. The Monitoring Officer should be the main advisor to the Committee unless the interest is such to prevent this. The Guidance also points out that informal discussions between the Monitoring Officer and a Member on day to day advice, of itself, is unlikely to give rise to a conflict.

4.7.2 However, the Guidance mentions that the option of having another officer to give advice on a day to day basis, or to advise the Committee if necessary, should be available. In practice the Assistant City Secretary (Legal) also is involved (with other officers in the Department) in giving day to day advice. The Monitoring Officer will also be involved – either because of complexity of the matter in hand, or lack of availability of other staff. It is not proposed to formally separate the roles as there are two officers who can take the separate role of advising the Committee if the other one has a conflict of interest. Discussions have also taken place with other Hampshire authorities so that a Monitoring Officer from another authority can advise the Committee if a serious matter involved a conflict of interest.

OTHER CONSIDERATIONS:

5 CORPORATE STRATEGY (RELEVANCE TO):

5.1 Relevant to the aim of being “open and democratic” in the way business is conducted.

6 RESOURCE IMPLICATIONS:

6.1 Reference of complaints to the Committee may well give rise to more meetings, with associated costs.

6.2 Obviously it is not possible to predict with certainty how many complaints will need to be dealt with by the Committee, as this will depend on the number of complaints made against Councillors which the ESO considers may be sufficiently serious to warrant a possible penalty. However, in the year May 2002 to May 2003, it is known that there no formal references to the Standards Board about City or Parish Councillors.

BACKGROUND DOCUMENTS: None.

APPENDICES: None.