

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER: **H28**

TO: STANDARDS COMMITTEE

DATE OF MEETING: 15 May 2008

THE STANDARDS COMMITTEE (ENGLAND) REGULATIONS 2008

1. PURPOSE OF REPORT

- 1.1 To advise the Committee of the provisions introduced by the Standards Committee (England) Regulations 2008 and to put in place further arrangements in pursuance of the Regulations.

2. RECOMMENDATIONS

- 2.1 That a sub-committee comprising 3 members of the Standards Committee be established to undertake the initial assessment of complaints under Section 57A of the Local Government and Public Involvement in Health Act 2007, such sub-committee to be chaired by an independent member of the Committee.
- 2.2 That a sub-committee comprising 3 members of the Standards Committee be established to review decisions under Section 57B of the Local Government and Public Involvement in Health Act 2007, such sub-committee to be chaired by an independent member of the Committee.

The Committee is able to resolve this matter.

3. FINANCIAL IMPLICATIONS

- 3.1 None arising directly from this report although the Regulations provide for new functions and responsibilities which do have financial implications.

4. RISK MANAGEMENT

- 4.1 This report is most closely linked with the Council's Significant Business Risk No. 4 (Governance). Key risks are set out below:

Risk Description	Likelihood	Seriousness or Impact	Mitigation Measures
The Committee fails to implement measures to meet its new responsibilities under the Regulations	Low	Significant	In anticipation of the Regulations, the Council expanded membership of the Committee and progressed procedural steps in collaboration with colleagues in Suffolk (report G233 refers).

5. **KEY INFORMATION**

- 5.1 The Standards Committee (England) Regulations 2008 were laid before Parliament on 17 April 2008 and come into force on 8 May 2008. From that date, the Committee will assume responsibility for all initial complaints against parish, town and district councillors within the district of Babergh in so far as they relate to the Code of Conduct for Members. The Regulations provide the detail for the creation and composition of Standards Sub-Committees along with the procedures to be applied in relation to allegations. The Regulations amend the Relevant Authorities (Standards Committee) Regulations 2001 and also the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003. The main provisions of the new Regulations are set out below.

CONSTITUTION & GENERAL PROCEEDINGS OF STANDARDS COMMITTEES

- 5.2 The Regulations confirm that at least 25% of the Members of the Standards Committee must be independent Members and at least 2 Members must be parish councillors. An independent Member may also be appointed to any other Standards Committee for either a specified period of time or for a particular allegation or set of allegations. There is no equivalent provision for Parish Members.
- 5.3 The Council may adopt whatever procedures it thinks fit to appoint an independent Member from another Standards Committee, or to appoint a Parish Council Member to the Committee provided the Council has regard to any guidance issued by the Standards Board.
- 5.4 The Committee must establish Sub-Committees to undertake the initial assessment of allegations and a different Sub-Committee to consider any request to review a decision to take no action in respect of an allegation. Each Sub-Committee (including for hearings) must be chaired by an independent Member. A Sub-Committee has previously been established to undertake hearings and it now falls for Sub-Committees to be established for the first two stages.
- 5.5 A meeting of the Standards Committee or a Sub-Committee requires at least 3 members of the Committee or Sub-Committee to be present for its duration to be quorate. A Member who took part in the decision not to refer a complaint for investigation must not be involved in a review of that decision. At least 1 elected Member of the Council must be present at meetings to conduct the initial assessment, a review and for the consideration of a report following an investigation together with any hearing. If the matter concerns a Parish Councillor, then at least 1 Parish Member of the Committee must be present.
- 5.6 A meeting of the Sub-Committee to consider an assessment of an allegation or a review of a decision shall not be open to the public nor shall the documentation for that meeting be available to the public. However, the Sub-Committee must produce a written summary of its consideration of an allegation or a review. This summary must record the main points considered, its conclusion and reasons for that conclusion. The written summary must be prepared having regard to any guidance issued by the Standards Board. It may give the name of the person who was subject of the allegation unless the disclosure would not be in the public interest or would prejudice any investigation.

The summary must be available for public inspection for a period of 6 years from the date of the meeting and a copy must be provided to any parish council whose Member was subject to the allegation. The written summary is not required to be produced to the public or Parish Council until the person who is subject of the allegation has been provided with a copy.

- 5.7 The rules concerning confidentiality of committee reports have been expanded so that reports presented to a Standards Committee or Sub -Committee may be exempt from public disclosure. The Council must nevertheless give all parish councils within the district notice of the date, time and place of any meeting of the Committee or a Sub-Committee including the agenda (and report, if not exempt from disclosure) at least 5 clear days in advance or as soon as the meeting is convened if on shorter notice

WRITTEN ALLEGATIONS

- 5.8 The Committee must publish in a manner it considers appropriate the details of the address to which written allegations should be sent. The Committee must take “reasonable steps” to ensure that the details continue to be brought to the attention of the public and that any changes to those details are promptly published. The Committee must publish in a manner it considers appropriate details of the procedures it will follow in relation to any written allegation. In fulfilling these obligations the Committee must have regard to any guidance issued by the Standards Board.
- 5.9 The requirement to provide the Councillor with a written summary of the allegation does not arise at the time the Committee receives the allegation if it determines that the summary would be contrary to the public interest or would prejudice the investigation of the allegation. In making that decision, the Committee must take account of any guidance issued by the Standards Board and any advice received from the Monitoring Officer. The written summary must then be provided when the Monitoring Officer advises the Committee that it would no longer be contrary to the public interest or prejudicial to any investigation, but must in any event be before the Committee considers any report or recommendation relating to the allegation. Even if the Committee decides that the written summary should not be provided at the time that it receives the allegation, the Monitoring Officer may still notify the Councillor concerned that an allegation has been made. Alternatively, the Committee may provide the Councillor with some details of the allegation if it considers that those details would not be contrary to the public interest and would not prejudice the investigation.
- 5.10 The Monitoring Officer is prohibited from disclosing information obtained through an investigation otherwise than for the purposes of enabling the Committee or Sub-Committee to perform their functions. The Sub-Committee may direct the Monitoring Officer, rather than conducting an investigation into the allegation, to:
- Arrange for the Councillor to attend a training course
 - Arrange for the Councillor and the complainant to engage in a conciliation process e.g. mediation
 - Take such other steps as appear appropriate to the Committee.

The Committee shall only take such steps after consulting with the Monitoring Officer. The Monitoring Officer must then comply with the direction and give notice of the direction to the Councillor concerned, the complainant, the Standards Committee of any other Authority concerned and any Parish Council concerned. Within 3 months from the date that the direction was received, or as soon as reasonably practicable thereafter, the Monitoring Officer must submit a written report to the Standards Committee giving details of the action taken or proposed to comply with the direction. If the Committee is not satisfied with the action specified in the report, it must give further direction to the Monitoring Officer. If it is satisfied with the action specified in the report, it must give written notice to that effect to the Councillor, the complainant, the Standards Committee of any other authority concerned and any Parish Council concerned.

5.11 Where its Sub- Committee refers an allegation for investigation to the Monitoring Officer, the Monitoring Officer must (unless otherwise directed by the Standards Committee) inform the Councillor, the complainant, the Standards Committee of any other authority concerned and the Parish Council that the matter has been referred for investigation. The Monitoring Officer must conduct an investigation into the referred matters and give the Councillor opportunity to comment on the allegation made. The Monitoring Officer must have regard to any guidance issued by the Standards Board.

5.12 Following investigation, the Standards Committee must convene to consider the Monitoring Officer's report and make one of three findings: -

1. That it accepts the Monitoring Officers finding of no failure; or
2. That the matter should be considered at a hearing; or
3. That the matter should be referred to the Adjudication Panel for determination.

A matter may only be referred to the Adjudication Panel if the Standards Committee determine that its powers of sanction would be insufficient and the President or Deputy President of the Adjudication Panel have agreed to accept the referral. Members will note that 2. above introduces an additional step in the process where there is a finding of failure which under the former procedures would have been subject to an automatic referral to a hearing.

5.13 A hearing must be conducted within 3 months from the date of completion of the investigation report, but not less than 14 days after the Councillor concerned has been sent a copy of the report (unless the Councillor agrees to an earlier Hearing). If the hearing cannot be convened within 3 months then it should be as soon as reasonably practicable thereafter.

5.14 At a hearing, the Committee must make one of three findings: -

1. That the Councillor had not failed to comply with the Code of Conduct; or
2. That the Councillor had failed to comply with the Code of Conduct but no action needs to be taken; or
3. That the Councillor had failed to comply with the Code of Conduct and a sanction should be imposed.

5.15 If the Committee finds that a sanction should be imposed but the person is no longer a Councillor, then the Committee must censure that person. If the person is still a Councillor then the sanctions available to the Committee are any one of, or any combination of, the following: -

- Censure
- Restriction for up to 6 months of access to Council premises or use of Council resources. Such restriction must be reasonable and proportionate to the nature of the breach and must not unduly restrict the Councillor's ability to perform the functions of a Member of the Authority.
- Partial suspension for up to 6 months
- Suspension for up to 6 months
- That the Councillor submits a written apology in a form specified by the Committee
- Training, as the Committee specifies
- Participation in conciliation as the Committee specifies
- Partial suspension for up to 6 months or until such time as the Councillor submits a written apology in a form specified by the Committee
- Partial suspension of the Councillor for up to 6 months or until the Councillor has undertaken such training or participated in such conciliation as the Committee specifies
- Suspension for up to 6 months or until the Councillor has submitted a written apology in a form specified by the Committee
- Suspension of up to 6 months or until the Councillor has undertaken such training or participated in such conciliation as the Committee specifies.

5.16 The sanction takes effect immediately unless the Committee directs a later start date which must be within 6 months of imposition of the sanction.

5.17 The Committee must give written notice of its findings and reasons to the Councillor concerned, the Standards Board, the Standards Committee of any other Authority concerned, any Parish Council concerned and the complainant. The notice must also be placed in at least one newspaper circulating in the Council's area and may, if the Committee considers appropriate, be publicised on the Council's website. It may also be publicised in any other publication that the Committee considers appropriate. The notice shall not be publicised if there is a finding of no failure at the hearing and the Councillor concerned requests that it is not publicised. Where there is a finding of failure, the Councillor has a right of appeal to the Adjudication Panel within 21 days of receipt of the notice.

5.18 Since publication of the Regulations, the Standards Board for England has produced Bulletin 38 which also summarises the main provisions (see Appendix 1). It has also produced a toolkit of template letters and forms for authorities to adapt which are appended for information (see Appendix 2).

6. **APPENDICES**

Appendix 1 – Standards Board for England Bulletin 38

Appendix 2 – Standards Board for England local assessment toolkit.

7. **BACKGROUND PAPERS REFERRED TO:**

None

CONTACT: KATHRYN SAWARD

DIRECT LINE: 01473 825729

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