

STANDARDS COMMITTEE – 13 NOVEMBER 2008**REVIEW OF SANCTIONS**

Report of the: Monitoring Officer

Status: For consideration and decision

Executive Summary: The Standards Committee (England) Regulations 2008 came into force on the 8th May 2008 and set out a new local standards framework. The Regulations introduced changes to the level of sanctions that can be imposed by Standards Committees. Following the introduction of the Regulations the Standards Board for England has now produced guidance on how to apply the new level of sanctions. Local authorities are obliged to have regard to the guidance and to develop or update their own assessment criteria. This Committee is asked to consider and approve the updated “Guidance on Applying an Appropriate Sanction when a Member has breached the Code of Conduct” set out in the Appendix to this report.

This report supports the Key Aim of effective management of Council resources.

Portfolio Holder Cllr. Loney

Head of Service Head of Legal and Democratic Services –
Mrs. Christine Nuttall

Recommendation: It is Recommended to Council that the updated “Guidance on Applying an Appropriate Sanction when a Member has breached the Code of Conduct” set out as an Appendix to this report be adopted and incorporated into the Constitution.

Background

- 1 The long awaited Standard Committee (England) Regulations 2008 (the Regulations) came into force on the 8th May 2008 which introduced a new local standards framework. This new framework includes the local assessment of complaints as well as investigation and determination of complaints that a Member may have breached the Code of Conduct.
- 2 The Regulations have introduced changes to the sanctions that can be imposed by the Standards Committee and following such changes and publication of guidance produced by the Standards Board for England (the Board) it is necessary to update the existing guidance on how to apply an appropriate sanction as set out at Appendix U to the Constitution.

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- 3 The updated document is entitled “Guidance on Applying an Appropriate Sanction when a Member has breached the Code of Conduct” and is set out as an Appendix to this report.

Introduction

- 4 In deciding what action to take, the Standards Committee should bear in mind an aim of upholding and improving the standard of conduct expected of Members as part of the process of fostering public confidence in local democracy.
- 5 Therefore the action taken by the Standards Committee should be designed both to discourage or prevent the particular Member from any future non-compliance and also to discourage similar action by others.
- 6 The Standards Committee should take account of the actual consequences which have followed as a result of the Member’s actions while at the same time bearing in mind what the possible consequences may have been even if they did not come about.
- 7 The guidance does not include a firm tariff from which to calculate what length of disqualification or suspension should be applied to particular breaches of the Code. The Board states that any such tariff would in any event need to have regard to the need to make adjustments toward the lower end of the spectrum if there are mitigating factors and towards the upper end if there are aggravating factors.

Mitigating Factors

- 8 The guidance sets out examples of mitigating factors that can be taken into account by the standards committee when making a decision on the most appropriate sanction to apply. However, the list is not exhaustive and every case has to be judged on its own merits.
- 9 When deciding on a sanction, the standards committee should ensure that it is reasonable and proportionate to the member’s behaviour. All relevant circumstances need to be taken into account.

Aggravating Factors

- 10 The guidance also sets out examples of aggravating factors that can be taken into account by the Standards Committee when making a decision on the most appropriate sanction to apply. Once again, the list is not exhaustive. Every case will be different and needs to be judged according to all relevant individual circumstances.

Decision Not to Impose a Sanction

- 11 Guidance is also given on when not to impose a sanction, again with helpful examples given.

Suspension and Partial Suspension

- 12 Suspension and partial suspension is also covered by the guidance. Suspension is appropriate where the circumstances are not so serious as to justify disqualification but sufficiently serious to give rise to the need for the public to be reassured and to impress upon the Member the seriousness of the matter and the need to avoid a future breach.
- 13 Partial suspension may be appropriate where there is concern that the Member appears not to understand or accept the requirements of the Code of Conduct in relation to a particular matter or area of activity but the difficulty does not affect the Member's ability to act properly in relation to other matters.

Apology, Conciliation or Training

- 14 Such sanctions combined with suspension or partial suspension can help to encourage good conduct in the future.

Censure

- 15 This is the lowest sanction that can be applied. This may be appropriate where the breach is at the lower end of the spectrum of misconduct but the Standards Committee wishes to mark the fact that the behaviour was unacceptable and must not happen again.
- 16 This form of sanction may be the only sanction available where the person is no longer a serving Member.

Key Implications

Financial Implications

- 17 It is important that the Committee strives to make consistent decisions that can be justified as fair and reasonable as well as proportionate in each case thus avoiding the cost consequences of a successful High Court challenge.

Legal and Human Rights

- 18 It is important that the quasi judicial function of local investigation or determination is carried out in accordance with the rules of natural justice and that the rules of reasonableness are applied as well as proportionality in each case.

Resource (non financial)

- 19 There are no resources implications identified.

Value for Money

- 20 Efforts are being made to try and keep the expenditure associated with the requirements of the new procedures within existing budgets. Guidance that enhances the decision making process should facilitate the speed and quality of the decisions that are made thus ensuring value for money.

Equality

- 21 The public need to be clear about the criteria which will be applied to the decision making process so that they can have confidence that the process is applied in a fair and equitable manner.

Conclusion

- 22 When deciding on an appropriate sanction for breaches of the Code of Conduct it is recommended that the general guidance contained in this Report be adopted to help achieve consistency and fairness in the decision making process.

Risk Assessment Statement

- 23 Although each case should be decided on its own merits it is important that the level of sanction imposed by the Standards Committee can be justified in accordance with previously adopted guidance thus minimising the risk of a successful challenge.

Sources of Information:

The Regulations

Guidance received from the Standards Board for England

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