

STANDARDS COMMITTEE – 27TH JUNE 2006

REVIEW OF SANCTIONS

Report of the: Monitoring Officer

Status: For consideration and adoption

This report supports the Key Aim of promoting and maintaining high standards of conduct in local government.

Portfolio Holder Cllr. Loney

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

Recommendation: It is recommended that the general guidance contained in this Report be adopted.

Background

- 1 The Local Government Act 2000 enables an Ethical Standards Officer of the Standards Board to refer an allegation of member misconduct to a local authority for local investigation or determination.
- 2 In deciding what action to take the Standards Committee should bear in mind the aim of improving and upholding the standards of conduct expected of members. Therefore, the action taken by the Standards Committee should be designed to discourage the particular member from any future breach of the Code of Conduct.

Introduction

- 3 There is a general requirement to impose sanctions that are fair and reasonable and there is a need to consider proportionality in each case. A sanction that is not proportionate to the breach may be considered a breach of a Councillor's human rights.
4. A sanction may only be imposed in relation to the facts which the Standards Committee has found to be true or which are admitted by the member.

Penalties

- 5 The Standards Committee can impose one, or any combination of the following:
 - Censure the Member

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- restrict the member's access to the premises and resources of the relevant authority for up to three months, ensuring that any restrictions are proportionate to the nature of the breach and do not unduly restrict the Member's ability to perform his or her duties as a Member;
 - order the Member to submit a written apology in a form satisfactory to the Standards Committee;
 - order the Member to undertake training specified by the Standards Committee;
 - order the Member to participate in a conciliation process specified by the Standards Committee;
 - suspend, or partially suspend, the Member for up to three months;
 - suspend, or partially suspend, the Member for up to three months, or until such time as the Member submits a written apology that is accepted by the Standards Committee;
 - suspend, or partially suspend, the Member for up to three months, or until such time as the Member undertakes any training or conciliation ordered by the Standards Committee.
- 6 Any, sanction, other than censure, may be ordered to start at a date up to 6 months hence. This may be appropriate if the penalty would otherwise have little effect on the Member such as in the case of a suspension or partial suspension, if there are no authority or committee meetings which the Member would normally go to in the period following the conclusion of the hearing.
- 7 Even though the Committee decides that an allegation is well founded, it is not obliged to impose a sanction and can decide not to take any further action if it is satisfied that such a decision is appropriate.
- 8 When deciding on an appropriate sanction the Committee should consider any mitigating factors and whether there are any aggravating factors.

Mitigating Factors

- 9 Although this does not constitute an exhaustive list the following factors are examples of the types of factors that the Committee may wish to take into account when considering imposing an appropriate sanction:
- An honestly held view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct
 - An open and frank admission at an early stage
 - A Member's previous record of good service
 - A single isolated incident

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- Co-operation in rectifying the effects of a breach
- Self reporting of the breach by the Member
- An apology to the complainant
- Compliance with the Code since the events giving rise to the breach
- No actual harm resulting from the breach
- Whether the breach has involved any beneficial effects for the public
- Time lapse since the incident
- Efforts to avoid such behaviour recurring
- Proposed changes to the Code of Conduct
- Health of the Member at the time of the breach

Aggravating Factors

- 10 Although this does not constitute an exhaustive list the following factors are examples of the types of matters that the Committee may wish to consider when assessing an appropriate sanction:
- Disregard to previous censures
 - Dishonesty
 - Disregard of written and or oral advice from the Monitoring Officer
 - Blatant disregard for the Ethical Framework
 - Continuing to deny the facts despite clear contrary evidence
 - Seeking unfairly to blame other people

Decision Not to Impose a Sanction

- 11 Circumstances where it may not be appropriate to impose any sanction could include:
- A wholly inadvertent failure to abide by the Code
 - Despite the lack of a sanction there is not likely to be any future failure to comply with the Code
 - The absence of any harm having been caused or the potential for such harm as a result of the failure to comply with the Code

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- The imposition of a sanction will not be a deterrent to other Members

Referral

- 12 If the Committee is of the opinion that the most appropriate sanction would be either suspension for more than three months or disqualification, they should refer the matter back to the Ethical Standards Officer.

Suspension

- 13 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. Suspension sends out a clear message to the Member and to the public about what is regarded as acceptable behaviour.
- 14 The Standards Board has suggested that suspension may be appropriate in, amongst others, cases of bullying of officers, trying to gain an advantage or disadvantage for him or herself in the course of office or dishonesty/breach of trust.
- 15 Suspension also has the effect of preventing a Member from carrying out his or her elected functions during the period of suspension. In addition suspension can have some financial impact on a Member who may be denied payment of allowances during the period of suspension.

Partial Suspension

- 16 This sanction 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. Suspending the Member from exercising some particular function or having particular responsibilities such as being the holder of a particular office or a member of a particular Committee may provide a sufficient safeguard against a future breach whilst leaving the Member able to make an effective contribution to the other work of the Council.

Apology, Conciliation or Training

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

Censure

- 18 Where it is decided that a period of suspension is not warranted, a censure is an available sanction. 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 Committee wishes to mark the fact that the behaviour was unacceptable and must not happen again.

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- 19 This form of sanction may be the only sanction available where the person is no longer a serving Member.

Financial Implications

- 20 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 Implications

- 21 Sections 60(2) and 64(2) of the Local Government Act 2000 provides for an Ethical Standards Officer of the Standards Board to refer an allegation to a local authority for local investigation or determination. It is important that this quasi judicial function 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.

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.

Sources of Information:

The Local Government Act 2000

Information Received from DMH Stallard

Guidance received from the Standards Board for England

Contact Officer(s):

Christine Nuttall – ext. 7245

Corporate Resources Director
Dr. Pav Ramewal

RISK ASSESSMENT STATEMENT

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.

