

**NORTHAMPTON BOROUGH COUNCIL**

**STANDARDS COMMITTEE**

Your attendance is requested at a meeting to be held at the Holding Room,  
the Guildhall on Monday, 16 June 2008 at 5:00 pm.

**D. Kennedy**  
**Chief Executive**

**AGENDA**

1. APOLOGIES
2. MINUTES
3. DEPUTATIONS / PUBLIC ADDRESSES
4. DECLARATIONS OF INTEREST
5. MATTERS OF URGENCY WHICH BY REASON OF SPECIAL CIRCUMSTANCES THE CHAIR IS OF THE OPINION SHOULD BE CONSIDERED
6. APPOINTMENT OF TWO INDEPENDENT MEMBERS  
Solicitor to the Council to report
- .... 7. STANDARDS COMMITTEE - LOCAL DETERMINATION OF CONDUCT COMPLAINTS D. Burrows  
x 7735  
Report of the Solicitor to the Council (copy herewith)
- .... 8. STANDARDS COMMITTEE HEARING M. Saleem  
x 7596  
Report of Solicitor to the Council (copy herewith)
9. EXCLUSION OF PUBLIC AND PRESS  
THE CHAIR TO MOVE:  
"THAT THE PUBLIC AND PRESS BE EXCLUDED FROM THE REMAINDER OF THE MEETING ON THE GROUNDS THAT THERE IS LIKELY TO BE DISCLOSURE TO THEM OF SUCH CATEGORIES OF EXEMPT INFORMATION AS DEFINED BY SECTION 100(1) OF THE LOCAL GOVERNMENT ACT 1972 AS LISTED AGAINST SUCH ITEMS OF BUSINESS BY REFERENCE TO THE APPROPRIATE PARAGRAPH OF SCHEDULE 12A TO SUCH ACT."

<TRAILER\_SECTION>  
A5326

## Standards Committee

**AGENDA STATUS: Public**

<b>Report Title</b>	<b>STANDARDS COMMITTEE – LOCAL DETERMINATION OF CODE OF CONDUCT COMPLAINTS</b>
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<b>Date of Meeting:</b>	16 June 2008
<b>Directorate:</b>	Chief Executive
<b>Ward(s)</b>	-

### 1. Summary

The Standards Committee (England) Regulations 2008, which give detailed effect to the provisions in the Local Government and Public Improvement in Health Act 2007 on the treatment of written allegations of breach of code of conduct by Councillors, came into force on 8 May 2008. This report summarises the main regulations and notes some of their practical implications for this Committee.

### 2. Recommendations

That members:-

- 2.1 Consider the contents of the report and approve the action proposed.
- 2.2 Authorise the Monitoring Officer to arrange appropriate publicity in accordance with the regulations and guidance.
- 2.3 Note the options for local resolution (ie steps other than an investigation – Regulation 13) of complaints.
- 2.4 Establish three Sub-Committees – a Referral Sub-Committee, a Review Sub-Committee and a Hearing Sub-Committee.
- 2.5 Adopt the functions set out in Appendix 1 for these three Sub-Committees.

### 3. Report Background

The main Regulations for members to note are as follows:-

- 3.1 Regulation 4 – Composition.

At least 25% of the Committee members must be independent, and at this Council only one of them should also be a member of the Executive. There must also be two Parish Council representatives.

### 3.2 Regulation 6 – Sub-Committees.

There must be two Sub-Committees to carry out the functions of Referral and Review, each of which must be chaired by a different independent member. But you are asked to establish three Sub-Committees, as set out in the recommendations, to provide for a separate panel to deal with the hearings – and to consider and approve the functions for them set out in Appendix 1.

### 3.3 Regulation 8 – Private/Public Information.

Details of the allegation (of Councillor misconduct) can be exempt information so that the Sub-Committee may exclude press and public from meetings of the initial assessment, but at each meeting a resolution will need to be made that the public interest requires that it be held in private.

### 3.4 Regulation 10 – Written Allegations.

The Standards Committee must publish details of the address to which written allegations (of a failure to comply with the Code of Conduct) should be sent, and any address changes should be updated promptly thereafter. The Committee is asked to authorise the Monitoring Officer to arrange appropriate publicity. There is also a requirement for the Committee to publish the procedures it will follow in relation to the written regulations.

### 3.5 Regulation 11 – Duty to Subject of Allegation.

The Monitoring Officer may immediately notify the member who is the subject of a complaint, and provide him or her with a summary of it, but may leave the Sub-Committee to make a more detailed or formal notification and summary in due course. This can be deferred where the Sub-Committee decides that notifying would be contrary to the public interest or would prejudice the proper investigation of the allegation.

### 3.6 Regulation 13 – Referral to Monitoring Officer for steps other than Investigation.

The Referral Sub-Committee, on first receiving and assessing the allegation, must make a preliminary decision on whether the allegation seems to disclose a failure to observe the Code of Conduct and, if so, whether the matter merits investigation.

3.7 If the Sub-Committee decides not to cause the allegation to be investigated further, it may direct the Monitoring Officer to pursue alternatives to investigation. These include the provision of training, conciliation, mediation, or other appropriate steps. But the Sub-Committee cannot direct this without first consulting the Monitoring Officer.

3.8 The Monitoring Officer cannot compel Members to co-operate with this process, but is required to report back to the Sub-Committee (or to an Ethical Standards Officer, if appropriate) within three months of receiving a direction and in that event if the Sub-Committee were dissatisfied it could issue further directions to the Monitoring Officer.

3.9 A separate procedure is in place where the Monitoring Officer submits a report to the Committee or Sub-Committee for it to reconsider a decision based on a change of circumstances. (See Regulation 16 and the comments in this report, later).

- 3.10 Under the Regulations the Monitoring Officer may collect more information to assist the Sub-Committee in making its initial assessment but they do not state how far the Monitoring Officer can go. The Sub-Committee may wish to consider having some guidelines in place for the Monitoring Officer's performance of this role.
- 3.11 The Referral Sub-Committee is required to produce a summary of the decision and to send it to the complainant and the Member who is the subject of the complaint. The Regulations give the Sub-Committee discretion as to whether its public minutes name the Member subject, and there is no requirement to name the complainant. Members should consider how they wish to have these decisions minuted: and it is suggested that they do so on a case by case basis, as it is suspected that complaint details will vary significantly in their sensitivity and seriousness.
- 3.12 Where the Referral Sub-Committee decides that an allegation should not be investigated, the complainant has 30 days in which to ask for the decision to be reviewed. This review, which it is recommended be carried out by the Review Sub-Committee, must be done within three months. The Regulations do not state the mode of review (whether it should be a complete reconsideration of the matter, or focussed on any apparent error in the initial assessment)- but ,again, it is recommended that the Sub-Committee proceeds prudently on a case by case basis.

3.13 Regulations 14 and 15 – Referrals to Monitoring Officer.

The investigation process is very much like a local investigation following the referral by an Ethical Standards Officer to the Monitoring Officer. He is then required to give the member who is the subject of the complaint an opportunity to respond to it and then that officer must produce a report. It should include a conclusion on the matter of whether the Member concerned did in fact fail to comply with the Code of Conduct.

3.14 Regulation 16 – References back from the Monitoring Officer.

This officer may, in some circumstances, refer the matter back to the Sub-Committee where:-

3.14.1 New evidence has been received in the course of the investigation that suggests that the initial assessment is no longer valid or would have produced a different/better outcome had other information been available at that stage.

3.14.2 The person who is the subject of the complaint is or becomes seriously ill.

3.14.3 That person has resigned as a member of the authority concerned.

3.15 In deciding whether the matter is more or less serious than first thought, the Monitoring Officer may have regard to such matters as the failure to co-operate with the investigation, the fact that the Member concerned has been alleged to have breached the Code again or the fact that another Member of the authority has allegedly engaged in a related breach of that Code.

3.16 Regulation 17 – Consideration of Reports by Standards Committee.

This process is similar to the one followed where a matter has been referred from an Ethical Standards Officer. But it should be noted that in the event that the Monitoring

Officer concludes that the complaint discloses no failure to comply with the Code of Conduct, that conclusion must be reported to the Standards Committee (or Sub-Committee, as the case may be), which will decide whether to accept that conclusion and close the matter – or refer it for a formal hearing.

Under the previous regime, where a Monitoring Officer concluded that there had been a failure to comply with the Code the matter was referred directly to a formal hearing for the Standards Committee (or Hearing Sub-Committee). Now the position is that the Monitoring Officer's report must first go the Standards Committee, which must then make one of three findings:-

3.16.1 To accept the Monitoring Officer's conclusion

3.16.2 To refer the matter for hearing at the Standards Committee (or Hearing Sub-Committee)

3.16.3 Refer the matter to the Adjudication Panel for determination.

3.17 Regulation 18 – Hearings by Standards Committee.

The hearing must be held within three months of the date on which the Monitoring Officer has received a report referred by the Ethical Standards Officer, or the date that the report is completed if it was prepared by the Monitoring Officer. The hearing must be held as soon as possible thereafter if the three-month deadline is not achieved.

3.17.1 The hearing must not be held until at least 14 days after the date on which the Monitoring Officer sent the report to the Member who is the subject of the allegation, unless that Member agrees to the hearing being held earlier.

3.17.2 That Member too must be given the opportunity to present evidence and make representations at the hearing. He/she could, instead, make the representations in writing or send a representative (e.g. a barrister or solicitor) to make them.

3.18 The Standards Committee may arrange for witnesses that it thinks appropriate to attend and the Member subject of the allegation may arrange to call any number of witnesses. A limit on the number of them may be placed – if it is reasonable to do so.

3.19 If the subject of the allegation fails to attend the hearing, a decision may be taken in his or her absence.

3.20 At any time prior to its conclusion, the hearing may be adjourned in order for further information to be obtained or further investigation to be conducted. However, this power should not be used without good reason, that reason or reasons being given at the time the decision is taken, and the hearing cannot be adjourned more than once.

3.21 If the Standards Committee receives a report from an Ethical Standards Officer, it may adjourn the hearing at any stage for its conclusion, and refer it back to the ESO for further investigation. It must set out its reasons for doing this. The ESO must respond to the request within 21 days and can accept or refuse it. If refused, the Standards Committee must continue the hearing within three months or as soon as possible thereafter.

### 3.22 Regulation 19 – Findings of Standards Committee.

The maximum sanction available to the Committee or Sub-Committee has been increased from three to six months suspension, or partial suspension or exclusion from the authority's premises or use of its facilities for up to six months. Any sanction should, generally, begin at once after the decision to impose it has been taken. But the Standards Committee has the power to defer the starting of the sanction for up to six months.

### 3.23 Regulation 21 – notification of appeals

This provides for appeal, in certain circumstances, to the President of the Adjudication Panel. The notice of appeal must, among other things, be submitted to the President within 21 days of the member concerned having received the appropriate decision notice.

## 4. Implications (including financial implications)

### 4.1 Resources and Risk

4.1.1 Increase in Member remuneration budget? (There will be an increase in the number of Members on the Standards Committee, to staff the various Sub-Committees).

4.1.2 There is a potential impact on both the Monitoring Officer and the Member Services Team (which is already 40% under capacity at present), to service the extra meetings.

4.1.3 There may be other costs too. Anecdotal evidence from some other authorities that have had to investigate complaints suggests the average cost of investigating a complaint is about £8,000.

4.1.3 It may be necessary to appoint an External Consultant to conduct an investigation or to provide legal advice to the Hearing Panel in the event of a conflict of interest involving the Monitoring Officer or his Deputy.

### 4.2 Legal

The legal implications have mostly been commented upon in the body of this report.

If the Council cannot attract enough suitable independent members to sit on the Sub-Committees it could face potential legal challenges over issues such as bias and predetermination. Members will need to receive training to ensure that they are equipped to consider and respond to allegations.

### 4.3 Other Implications

It will be particularly important to ensure that the Council's processes for dealing with these allegations are implemented in such a way as to observe the human right of both the complainant and the subject of the complaint to respect for his/her private and family life.

## 5. Background Papers

Readers who wish to find out more of the detail should read the Standards Committee (England) Regulations 2008, which can be accessed via the following link:-

[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20081085\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081085_en.pdf)

**Report Author and Title:** David Burrows Governance Solicitor (Locum)

**Telephone and Email:** 01604 837735 [dburrows@northampton.gov.uk](mailto:dburrows@northampton.gov.uk)

(a) Referral Sub-Committee – Functions

1. The Referral Sub-Committee will, subject to paragraph 2, carry out an initial assessment of every written complaint forwarded to it by the Council's Monitoring Officer that member of the Council may have failed to comply with its Code of Conduct for Members.
2. In deciding whether it has the power to carry out the initial assessment the Referral Sub-Committee must be satisfied that the complaint:-
  - (i) is against one or more named members of the Council
  - (ii) that he/she was in office at the time of the alleged misconduct and when the Code of Conduct concerned was in force
  - (iii) if proven, would disclose a breach of the Code under which the member concerned was operating at the relevant time.
3. If the written complaint does not meet any one or more of these three tests it cannot be investigated as a breach of the Code, in which event the complainant must be advised that no further action will be taken in respect of the complaint.
4. The Referral Sub-Committee is empowered to:-
  - (i) decide that no action should be taken in respect of the allegation
  - (ii) refer the allegation to the Council's Monitoring Officer (if the allegation is reasonably likely to be substantiated and it is in the public interest that public funds be spent on a local investigation) with an instruction that he causes the allegation to be investigated
  - (iii) direct, pursuant to Regulation 13, that the Monitoring Officer arranges training, a process of conciliation or such other appropriate action as may be lawful
  - (iv) refer the allegation to the Standards Board for England for investigation or
  - (v) refer the allegation to the Monitoring Officer of another authority, in the event that the allegation concerns a person who is no longer a member of the Council but is a member of another relevant authority (as defined in Section 49 of the Local Government Act 2000).
5. In the event of a local investigation, the Referral Sub-Committee shall determine, giving reasons, whether:-
  - (i) it accepts the Monitoring Officer's finding of no failure to observe the Code of Conduct
  - (ii) to refer the matter for a hearing by the Hearing Sub-Committee
  - (iii) to refer the matter to the Adjudication Panel for determination, provided that it has determined that the action the Standards Committee could take against the member



would be insufficient were a finding of failure to be made and the President or Deputy President of the Adjudication Panel has agreed to accept the referral

6. In the event of the Referral Sub-Committee directing the Monitoring Officer to take steps other than investigate the matter, the Referral Sub-Committee will notify all relevant parties that there will be no further opportunity to investigate the complaint. The Referral Sub-Committee shall consider the Monitoring Officer's report, giving details of the action taken or proposed to comply with the direction, and if it not satisfied with the action specified the Referral Sub-Committee shall give a further direction to the Monitoring Officer.
7. Where a matter has been referred to the Monitoring Officer for local investigation, the Monitoring Officer may, in certain circumstances, refer a matter back to the Referral Sub-Committee for consideration as if it were a new complaint. In the event that the Monitoring Officer refers the matter back to the Referral Sub-Committee it may make any of the actions set out above in paragraph 4. The Referral Sub-Committee may, when considering the matter referred back to it, direct that the matter should not be referred back a further time.
8. Composition - The Referral Sub-Committee shall comprise three members, one of whom shall be an independent non-elected member of the Standards Committee. The Sub-Committee shall be chaired by an independent non-elected member.
9. Quorum – The quorum for a meeting of the Referral Sub-Committee shall be three members (the Chair being an independent non-elected member) and at least one elected member of the Council.

(b) The Review Sub-Committee – Functions

1. Following a decision by the Referral Sub-Committee to take no further action, the Review Sub-Committee will, subject to paragraph 2 and on the request of a person who has made an allegation that a member of the Council has failed or may have failed, to comply with any provision of the Council's Code of Conduct, be convened to review a decision of the Referral Sub-Committee that no action is taken in respect of that allegation.
2. The Review Sub-Committee will only review a decision of the Referral Sub-Committee to take no action provided that the request for a review is received by the Standards Committee within 30 working days of the date of receipt of notification of the Referral Sub-Committee's decision.
3. The Review Sub-Committee is empowered to take all decisions as set out in paragraph of the functions of the Referral Sub-Committee and must give reasons for its decisions.
4. The Review Sub-Committee must carry out the review within a maximum of three months of receiving the request for review.
5. Composition – The Review Sub-Committee shall comprise three members of the Standards Committee who were not members of the Referral Sub-Committee. One of the members of the Review Sub-Committee shall be an independent non-elected member of the Standards Committee. An independent non-elected member shall be Chair of the Sub-Committee.

6. Quorum – The quorum for a meeting of the Review Sub-Committee shall be three members.

(c) Hearing Sub-Committee - Functions

1. In the event that hearing of the Standards Committee is required the Hearing Sub-Committee shall be convened to hear and determine any allegation that a member of the Council has failed, or may have failed, to comply with the Council's Code of Conduct.
2. Composition – The Hearing Sub-Committee shall comprise three members of the Standards Committee who have not been involved in the matters that are not Referral or Review Sub-Committee stage. One of the members of the Hearing Sub-Committee shall be an independent non-elected member of the Standards Committee. An independent non-elected member shall be Chair of the Sub-Committee.
3. Quorum – The quorum for a meeting of the Hearing Sub-Committee shall be three members (with an independent non-elected member as Chair of the Sub-Committee), and at least one elected member of the Council.

Appendices:

Item No. 8

## Standards Committee

**AGENDA STATUS: PUBLIC**

<b>Report Title</b>	<b>Standards Committee Hearing</b>
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<b>Date of Meeting:</b>	16 <sup>th</sup> June 2008
<b>Directorate:</b>	Legal and Democratic Services
<b>Ward(s)</b>	N/A

### 1. Summary

This report responds to the Hearing Panel's request that a resume of events be presented to the Committee.

### 2. Recommendations

1. That the Standards Committee notes the outcome of the Sub-Committee hearing on 23rd May 2008.

### 3. Report Background

On 2<sup>nd</sup> May 2007, the Monitoring Officer of Northampton Borough Council received the case in accordance with s60 (2) of the Local Government Act 2000.

The Monitoring Officer, due to previous involvement with this case, to avoid any conflict of interest, appointed the Head of Legal Services at Corby Borough Council, Mr Simon Aley, to investigate the matter.

The allegations were as follows:

1. During a telephone conversation between the complainant, Mr Miah, and Cllr Wire, in 2006, Mr Miah alleged that he was subject to racial abuse, namely Cllr Wire saying "We do not want your sort here."
2. At a Planning Committee meeting for Northampton Borough Council held on 14<sup>th</sup> February 2007, while a Planning Application submitted by Mr Miah, for 88 Windsor Crescent, was being considered, Cllr Wire screamed and shouted at the Committee and as a result, Mr Miah failed to get a fair hearing and that this was part of a personal vendetta against Mr Miah.
3. Cllr Wire failed to declare an interest in the Planning Committee on 14<sup>th</sup> February 2007.

The Investigating Officer interviewed a number of people to look into these allegations. Initially he interviewed the complainant, Cllr Wire and Senior Planning Officer, Mrs Rita Bovey.

In relation to the first allegation, it was very difficult to prove either way as it was a case of one person's word against another. Mr Miah claimed there was a racial discrimination element in the

phone conversation by Cllr Wire. However, Cllr Wire stated nothing was said that could be interpreted as racist. Furthermore, Cllr Wire stated he was intimidated by Mr Miah and called the police.

Regarding the second allegation, it was clear that Cllr Wire did interject at the Planning Committee meeting. However, it was not clear whether this was enough to ensure Mr Miah's application was not given a fair hearing. What needed to be answered here was, did Cllr Wire have an interest in this application and if he did, did he declare it. It was clear that he did not declare an interest as he did interject in the meeting. It was found by the Investigating Officer that Cllr Wire held a personal interest and regardless of whether he interjected or not, merely by attending the meeting that interest needed to be declared.

Therefore, the Investigating Officer found a technical breach of the Code in that Cllr Wire failed to declare a personal interest at the start of the Planning Committee meeting on 14<sup>th</sup> February 2007 and spoke in the meeting without registering to do so prior to the meeting.

The report was completed towards the end of 2007.

In February 2008, a panel was arranged to consist of three members of the Standards Committee, with Mr Ian Harley as chair. Due to Standard Board Forms being needed to be completed and returned, the date for the hearing was arranged for 20<sup>th</sup> February 2008.

At this meeting, Cllr Wire's letter of absence was read out and it was decided to proceed in his absence.

After hearing Mr Aley's representations the panel required Mr Aley to carry out further investigations to clarify matters regarding the allegations.

The Hearing was adjourned to allow for these further investigations.

The Investigating Officer interviewed Cllr Yates, Chair of the Planning Committee in February 2007, Cllr Leslie Marriot, and Mr Jim Inch, Senior Solicitor at the time of the allegation and PC Philip Lee.

The Hearing was re-convened on 23<sup>rd</sup> May 2008. The Investigating Officer's conclusions remained the same as per his report of November 2007.

It was resolved that there was a technical breach of the Code of Conduct in that Cllr Wire did not declare a personal interest when he should have and as a result of which, further training needs to be provided to Councillors with regards to Declaration of Interests.

The procedure for dealing with complaints has now changed in that the matters need to be addressed by a local filter, rather than initially being referred to the Standards Board of England and Wales. This came into effect from 8 May 2008 with the publication of the Standards Committee (England) Regulations 2008. From this date any complaint that an elected member of this Council has breached the code of conduct must be referred to the Standards Committee, rather than to the Standards Board for England, and it will also be necessary for a sub-committee to decide whether the complaint should be referred to the Monitoring Officer for investigation or required some form of alternative action.

The Provisions of the Standards Committee (England) Regulations 2008 were subject to a separate report attached to the agenda of the meeting on 16<sup>th</sup> June 2008.

#### **4. Implications (including financial implications)**

##### 4.1 Resources and Risk

Investigating officer's costs.

##### 4.2 Legal

Council has complied with its statutory responsibilities.

##### 4.3 Other Implications

None.

#### **5. Background Papers**

Legal Services hold a file, which contained all the background correspondence from the beginning of the complaint through to the Hearings resolution where available.

**Report Author and Title:** Mr Muhammad Saleem, Interim Legal Services Manager

**Telephone and Email:** Tel: 01604 837596, Email: msaleem@northampton.gov.uk