



Local Standards 2.0 – the proportionality upgrade?

A review of the local standards framework

Standards for England, March 2010

2) Executive summary

The local standards framework is working. There is evidence – presented within this review - that it is both having a positive influence on behaviour and generating confidence that bad behaviour will be dealt with. Within local government it attracts considerable support, although the public knows less about it.

After 18 months it is maturing and there is a body of evidence relating to most aspects of its use.

However, we know there are bugbears and glitches, both for those operating the system and those regulated under it, raising questions about the proportionality of the framework - its timeliness, cost and fairness to all, at all times.

We believe these difficulties can be fixed. The fixes are often pragmatic – ways of improving effectiveness and redressing proportionality to offer a better alignment of *nature of behaviour, degree, cost and clarity of process and sanction or outcome*.

Our recommendations, in chapter eight, are set into a narrative which describes our findings. We have also grouped the recommendations together in an appendix.

Key ones include:

- More streamlined local assessment – arrangements to more easily dismiss trivial and less serious complaints, saving on time, money and burdensome process.
- An enhanced role for independent chairs and vice chairs – in the assessment of complaints and the progress of investigations, with a counterbalancing extra power for the national regulator to investigate and if necessary remove poor performing or partisan chairs.
- A new power for standards committees to be able to halt investigations, if they have good reasons.
- A commitment to greater transparency for members who are the subject of complaints.
- The need to develop an approach which allows better understanding and management of costs associated with the operation of the framework.

We end with some thoughts about the need for and the role of the strategic regulator in this sector. With more streamlined local processes there will be extra risks to manage, and there is a growing need to provide high quality training, advice, support and access to good practice.

The review now goes to the Department for Communities and Local Government for their consideration. Although the majority of recommendations require legislative or regulatory change, some could be brought about through a change of emphasis in our work and guidance. However it is important to note that in all matters raised in this review we await government views before determining next steps.

Appendix 1

The Recommendations

The recommendations are repeated here, alongside a note of the main legislative provisions which would need to be amended to bring about the proposed change.

Recommendation 1:

Monitoring officers should receive all allegations and make a decision about whether or not they are within the remit of the Code of Conduct.

Changes to s.57A(1) and s.57C LGA 2000 to replace references to the standards committee with references to the monitoring officer

Addition to Standards Committee (England) Regulations 2008 SI 2008 No. 1085 to allow monitoring officers to do this.

Change to paragraph 11 of the Standards Committee (England) Regulations 2008 SI 2008 No. 1085 to allow monitoring officers to inform the subject member on receipt of the complaint.

Recommendation 2:

For allegations within the remit of the Code the independent chair of the standards committee, acting with the advice of the monitoring officer, should determine what happens to an allegation. The chair would have a choice of five options:

- to take no further action (effectively determining that the behaviour complained about is not sufficiently serious, if proved, to warrant any sanction)
- to refer for local investigation
- to refer to Standards for England for investigation
- to refer to the monitoring officer for other action
- to refer to the standards committee to seek their advice in choosing one of the previous four options.

Changes to s.57A (2)-(6) LGA 2000 to replace references to the standards committee with references to the chair and to add the additional option of referring to the standards committee for advice on which option to choose.

Changes to paragraphs 6 – 8 Standards Committee (England) Regulations 2008 SI 2008 No. 1085 to replace references to the standards committee and sub-committees with references to the chair

The standards committee chair should provide written reasons for each decision.

Recommendation 3:

The vice chair of the standards committee should be an independent member.

Addition to s.53(4) LGA 2000

Recommendation 4:

If the chair is unavailable or has a conflict of interest in relation to an allegation then the independent vice chair should deputise. Standards committees should be able to develop reciprocal arrangements so that their chairs can assess each other's allegations.

The following provisions would need amending to allow the vice-chair to deputise and to allow for reciprocal arrangements:

s.56A LGA 2000

s.57A LGA 2000

Paragraphs 6 – 8 Standards Committee (England) Regulations 2008 SI 2008 No. 1085

The Standards Committee (Further Provisions)(England) Regulations 2009 SI 2009 No. 1255

Recommendation 5:

Standards committees should undertake retrospective periodic reviews of these decisions to ensure consistency and quality. The national body should also provide an oversight via its regulatory role.

Addition to the Standards Committee (England) Regulations 2008 SI 2008 No. 1085 to require the retrospective reviews.

Also possible addition to regulation 3(2) of the Standards Committee (Further Provisions)(England) Regulations 2009 SI 2009 No. 1255 to include additional intervention powers based on concerns about the way in which the independent members are carrying out the initial assessment function.

Recommendation 6:

The current statutory review arrangements should be removed but authorities should be given a discretionary power to allow for the review of particular decisions. This review could be undertaken by the standards committee or a sub-committee of it, by an independent member of the standards committee not involved in the initial decision or by any of these from another principal authority.

Amend s.57B LGA 2000 by removing the mandatory review provision but allowing a discretionary one.

Paragraphs 6, 7 and 8 of the Standards Committee (England) Regulations 2008 SI 2008 No. 1085 would need amending to reflect the proposed discretionary nature of a review.

Recommendation 7:

After completion of a local investigation the chair of the standards committee should decide whether to accept a finding of no breach, and where a breach is found whether the case should go to a local hearing or to the First-tier Tribunal. Vice chairs should be able to deputise in this role. Standards committees should be able to develop a wide range of reciprocal arrangements with other standards committees so that their chairs can assess each other's investigations in this way.

Addition to s.66 LGA 2000 to give the Secretary of State power to make regulations allowing the chair rather than a standards committee to make these decisions.

Amend regulation 17 of the Standards Committee (England) Regulations 2008 SI 2008 No. 1085 to allow the chair or vice-chair rather than a standards committee to make these decisions.

Addition to the Standards Committee (Further Provisions) (England) Regulations 2009 SI 2009 No. 1255 to allow the chair or vice-chair of other standards committees to make these decisions under reciprocal arrangements.

Recommendation 8:

The chair or the vice-chair should have a greater role in case management, making the pre-hearing decisions (For example, setting deadlines for responses to documents, deciding which witnesses should be called to give evidence and dealing with applications for an adjournment) with advice from the monitoring officer.

Addition to s.66 LGA 2000 to give the Secretary of State power to make regulations to allow the chair or vice-chair to make pre-hearing decisions.

Addition to the Standards Committee (England) Regulations 2008 SI 2008 No. 1085 to provide for case management.

Recommendation 9:

Standards for England should produce guidance that urges chairs to be more robust in their decision letter and highlight when they believe an allegation to have been trivial.

No statutory or regulatory changes needed to implement this recommendation.

Recommendation 10:

The monitoring officer should be able to recommend to the standards committee – at any stage and for any reason – that an investigation be stopped. The Standards Committee should view such recommendations with regard to how the public interest is best served.

Amendment to regulation 16 of the Standards Committee (England) Regulations 2008 SI 2008 No. 1085 to enable the monitoring officer to recommend that an investigation cease. Also regulations 14 and 17 would need to be made subject to the amended regulation 16.

Recommendation 11:

On receipt of an allegation the monitoring officer should inform a member that they have been the subject of a complaint unless there are compelling circumstances not to (for example, a risk of prejudicing an investigation by intimidation of witnesses or destroying or compromising evidence).

Amendment to s.57C LGA 2000 to require the monitoring officer rather than the standards committee to inform the member.

Change to paragraph 11 of the Standards Committee (England) Regulations 2008 SI 2008 No. 1085 to allow monitoring officers to inform the subject member on receipt of the complaint.

Recommendation 12:

Local authorities should no longer be required to publish decision notices in the local newspaper. Instead they should be publicised on the local authority's website.

Amendment to regulation 17(3) (b), 17(5), 20(1) (b) of the Standards Committee (England) Regulations 2008 SI 2008 No. 1085 to remove the requirement for a notice in the local press.

Recommendation 13:

Standards for England should assist local government by developing a clear and consistent understanding of the costs of the local standards framework and through working with local authorities identify and promote ways of ensuring those costs are reasonable and that excessive and wasteful expenditure can be avoided.

No statutory or regulatory changes needed to implement this recommendation.

Recommendation 14:

Local authorities should be encouraged to develop local solutions. Good practice in local solutions should be shared so local authorities can benefit from each other's experiences.

No statutory or regulatory changes needed to implement this recommendation.

Recommendation 15:

The next review should look for opportunities to simplify the Code and ensure that it is readily understood by members, and remains fit for purpose.

Changes to the Local Authorities (Model Code of Conduct) Order 2007

Recommendation 16:

Standards for England should develop its training role. In particular it should respond to the increased responsibility given to independent standards committee chairs by ensuring basic training is provided to enable them to fulfil this role.

Addition to s. 57 LGA 2000 to make clear that the training role is a function of Standards for England. Addition to Schedule 4 paragraph 2 of the LGA 2000 for the same purpose.

Recommendation 17:

The national regulator should have power to investigate allegations that the chair/vice chair of a standards committee was not acting impartially, or performing poorly. If there is sufficient evidence that this is the case then the national regulator should be able to remove the chair/vice chair of the standards committee.

Addition to s.57D LGA 2000 to enable regulations to be made for intervention by the Standards for England where the chair/vice chair of a standards committee is not acting impartially, or is performing poorly.

Addition to regulation 3(2) of the Standards Committee (Further Provisions)(England) Regulations 2009 SI 2009 No. 1255 to include additional intervention powers based on concerns about the way in which the independent members are carrying out the initial assessment function or any other function carried out as a result of these recommendations.

Addition to the above regulations to provide a mechanism for removal of the chair/vice chair of a standards committee.
