

Subject:
Delegation to Officers

Status: For Publication

Report to: Standards Committee

Date: 2nd July 2009

Report of:
Head of Legal & Democratic Services

Portfolio Holder: N/A

Key Decision: No

Forward Plan General Exception Special Urgency

1. PURPOSE OF REPORT

- 1.1 To advise the Committee on the legal position with regard to delegation of Standards Committee decisions to officers.

2. CORPORATE PRIORITIES

- 2.1 The matters discussed in this report impact directly on the following corporate priorities:-
- Delivering quality Services to our customers
 - Encouraging healthy and respectful communities
 - Providing value for money services

3. RISK ASSESSMENT IMPLICATIONS

- 3.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:
- Possible legal challenge

4. BACKGROUND AND OPTIONS

- 4.1 The Committee has requested consideration of the practical and legal issues around delegation of certain basic decisions to the Monitoring Officer.
- 4.2 The workload of local Council Standards Committees has increased substantially since the coming into force of the Local Government etc Act 2007. This introduced local determination of complaints against Councillors, except in the most serious cases.
- 4.3 One of the main reasons for the changes brought about by the 2007 Act was the heavy workload of the National Standards Board, which became overburdened by relatively trivial complaints, particularly about “name-calling” between Councillors.
- 4.4 It is unsurprising therefore that this same issue has become apparent at Council Standards Committees. The Committee has dealt with 29 cases since the new regime came in. This equates to approximately 1.6 new cases per month.
- 4.5 The law allows delegation of a Council’s statutory functions to an officer; section 101 of the Local Government Act 1972 states that an authority may discharge its functions through a committee, sub-committee, another authority or an officer. Power may not be delegated to a member (except Executive powers) but it may be delegated to an officer in consultation with a Member.
- 4.6 It has been suggested that all decisions could be sub-delegated to the Council’s Monitoring Officer who would screen all complaints in order to filter out trivial, scurrilous or vexatious complaints.
- 4.7 The danger with this proposal is that in each decision will require the exercise of a judgment by an officer in respect of elected members. There is likely to be a public expectation of consideration of all cases by the committee itself (or at least a sub committee thereof). Officer decisions are more likely to be appealed which would result in the matter appearing before the committee in any event.
- 4.8 The National Standards Board has advised informally that delegation of decisions to officers, though not unlawful, is unwise for the reasons given above. In response to a request for their opinion they have commented as follows:

“The Standards Board takes the view that assessment decisions should be made by a standards committee and not delegated to an officer. We believe that members are best placed to judge whether actions should be initiated against their peers, and that the presence of the independent chair provides the objectivity that the process requires. We nevertheless recognise that convening a sub-committee to assess complaints which self evidently do not fall within the

scope of the Code of Conduct is not in the public interest.” (Natalie Ainscough NSB)

- 4.9 They have however indicated that they intend to publish a policy or guidance document on this topic later this year.

COMMENTS FROM STATUTORY OFFICERS:

5. SECTION 151 OFFICER

- 5.1 There are no material financial implications arising from the report.

6. MONITORING OFFICER

- 6.1 Comments are contained in the body of the report.

7. HEAD OF PEOPLE AND POLICY (ON BEHALF OF THE HEAD OF PAID SERVICE)

- 7.1 The job description of the Monitoring Officer would need to be updated to reflect the new responsibility and any impact on the grade considered

8. CONCLUSION

- 8.1 Whilst delegation of decisions to an officer is lawful, caution should be exercised in the context of a Standards Committee. Councillors and members of the public will have a legitimate expectation that decisions are made by elected and co-opted members.

9. RECOMMENDATION(S)

- 9.1 That determination of all cases remains with the Committee and its constituent sub-committees.

- 9.2 That the issue is reconsidered in 12 months

10. CONSULTATION CARRIED OUT

- 10.1 Discussions have taken place with contacts at the National Standards Board for England.

11. COMMUNITY IMPACT ASSESSMENT

Is a Community Impact Assessment required No

Is a Community Impact Assessment attached No

12. BIODIVERSITY IMPACT ASSESSMENT

Is a Biodiversity Impact Assessment required No

Is a Biodiversity Impact Assessment attached No

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Background Papers	
Document	Place of Inspection
File notes	Futures Park, Bacup