

WYRE FOREST DISTRICT COUNCIL

ETHICS AND STANDARDS COMMITTEE

8th December 2008

OPEN	
Responsible Officer	Monitoring Officer
Contact Officer	C S Newlands Ext. 2715
Appendices	Appendix 1 Member Reports

The Case Tribunals (England) Regulations 2008 No.2938

1. Purpose of the Report

To inform Members about The Case Tribunals (England) Regulations 2008 which are due to come into force on 12th December 2008.

2. Recommendation

The Committee is asked to **DECIDE:**

- 1. That the Committee notes that The Case Tribunals (England) Regulations 2008 will apply with effect from 12th December 2008.**

3. Background

- 3.1. The Case Tribunals (England) Regulations 2008 legislation was laid before Parliament on 18th November 2008.
- 3.2. The legislation is due to come into force on 12th December 2008 and will be applicable in cases where the Adjudication Panel makes a decision under Section 78A(4) of the Local Government Act 2000 in respect of a respondent (a member or co-opted member) who, under the Council's Code of Conduct is alleged to have failed or, in the opinion of a case tribunal has failed to comply.
- 3.3. The legislation sets out sanctions which the Adjudication Panel for England impose; it also outlines what notices the Panel are required to issue and when withdrawal of references by the Ethical Standards Officer are appropriate.
- 3.4. The following sanctions or a combination of them will be available to the Adjudication Panel:
- 3.5. (a) censure of the respondent.
- (b) restriction for a period not exceeding 12 months of the respondent's access to the premises of, or the respondent's use

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of the resources of, the relevant authority concerned, or any relevant authority concerned, provided that any such restriction:

- (i) is reasonable and proportionate to the nature of the failure to comply with the authority's Code of conduct; and
 - (ii) does not unduly restrict the respondent's ability to perform the functions of a member;
- (c) partial suspension of the respondent from the relevant authority concerned, or any relevant authority concerned, for a period not exceeding 12 months;
- (d) suspension of the respondent from the relevant authority concerned, or any relevant authority concerned for a period not exceeding 12 months.
- (e) A requirement that the respondent submit a written apology in a form specified by the case tribunal.
- (f) A requirement that the respondent undertake such training or participate in such conciliation as the case tribunal specifies.
- (g) Partial suspension of the respondent from the relevant authority concerned, or any relevant authority concerned, for a period not exceeding 12 months or until such time as the respondent submits a written apology in a form specified by the case tribunal.
- (h) Partial suspension of the respondent from the relevant authority concerned or any relevant authority concerned, for a period not exceeding 12 months or until such time as the respondent has undertaken such training or participated in such conciliation as the case tribunal specifies.
- (i) Suspension of the respondent from the relevant authority concerned, or any relevant authority concerned, for a period not exceeding 12 months or until such time as the respondent has submitted a written apology in a form specified by the case tribunal;
- (j) Suspension of the respondent from the relevant authority concerned, or any relevant authority concerned, for a period not exceeding 12 months or until such time as the respondent has undertaken such training or participated in such conciliation as the case tribunal specifies; or
- (k) Disqualification of the respondent for being, or becoming (whether an election or otherwise) a member of the relevant

authority concerned, or any other relevant authority for a period not exceeding 5 years.

- (2) If a case tribunal imposes a sanction under paragraph (1) (c) or (d) or any of the sub-paragraphs from (g) to (j), the period for which the respondent is suspended or partially suspended must not exceed the remainder of the respondent's term of office.
- (3) If a case tribunal makes a decision under section 78A(4) of the Act, other than a decision to take no action, in respect of a respondent who has ceased to be a member of any relevant authority at the date on which it makes the decision, it may only impose a sanction under either paragraph (1)(a) or (1)(k)

3.6. Notices

The following notices will be required:

1. Where a case tribunal makes a decision under section 78A(4) of the Act it must give a notice to the standards committee of any relevant authority concerned, and may give a copy of that notice to the standards committee of any other relevant authority of which the respondent has been a member or co-opted member
2. The notice specified in paragraph (1) must –
 - a. state that the case tribunal has decided that the respondent has failed to comply with the code of conduct on the relevant authority;
 - b. specify the details of that failure;
 - c. Specify whether the case tribunal has decided to impose a sanction under regulation 3(1), and if so what that sanction is;
 - d. Specify the date from which any sanction is to take effect; and
 - e. State that the respondent may, by virtue of section 78B(4) of the Act, seek leave to appeal to the High Court against the decision, or any other decision of the case tribunal which relates to the respondent.
- 3 Subject to paragraph (4) where a notice given under paragraph (1) specifies any sanction under regulation 3 (1) the notice shall have the effect of bringing the sanction into force on the date specified in the notice.
- 4 The president or deputy president of the Adjudication Panel may suspend the effect of a notice given under paragraph (1) if requested to do so by a respondent who intends to seek leave to appeal to the High Court under section 78(B)(4) of the Act.

3.7. Withdrawal of references by ethical standards officer

Withdrawal of references by Ethical Standards Officers may apply in the following circumstances

1. An ethical standards officer who has referred a matter to the president of the Adjudication Panel under section 64(3)(b) or 65 (4) of the Act may withdraw that reference if-
 - a. the circumstances are as mentioned in any of sub-paragraphs (a) to (c) of paragraph (2); and
 - b. The requirements of paragraphs (3) and (4) of this regulation are satisfied;
2.
 - a. The sentence of imprisonment (whether suspended or not) for a period of not less than three months, without the option of a fine, has been passed on the respondent.
 - b. The ethical standards officer is satisfied –
 - (i) that the matter is materially less serious than appeared to be the case when it was referred to the president of the Adjudication Panel and that as a consequence is not sufficiently serious to be determined by a case tribunal or a standards committee; or
 - (ii) that the pursuit of the matter would not be in the public interest
 - c. The president or deputy president of the Adjudication Panel invites the ethical standards officer to withdraw the reference.
3. Except in a case where the president or deputy president of the Adjudication Panel agrees to dispense with the requirement in this paragraph, the ethical standards officer-
 - a. has given 28 days notice in writing to –
 - (i) the person who has made the written allegation under section 57A of the Act which gave rise to the investigation;
 - (ii) the respondent;
 - (iii) the standards committee of any relevant authority concerned and
 - (iv) the monitoring officer of any relevant authority concerned,that a request is to be made to the president of the Adjudication Panel to withdraw the reference and
 - b. has considered any representations received from any person in that regard.

- 4 The President of the Adjudication Panel, or in the absence of the president, the deputy president of the Adjudication Panel, has given consent to the withdrawal of the reference.
- 5 The president of the Adjudication Panel, or the deputy president, as the case may be, shall give reasons in writing for the giving of an invitation under paragraph 2(c) or of consent under paragraph 4.
- 6 Where a reference to the president of the Adjudication Panel is withdrawn under this regulation, the ethical standards officer shall give to each person or body to whom notice was given under paragraph (3) (a)
 - (a) written notice of the withdrawal, and
 - (b) a copy of the reasons referred to in paragraph (5)

4. Financial Implications

- 4.1. The proposed new arrangements will have member and officer resource implications but as yet these are unknown. It is intended to closely monitor the effects during the first six months from the new arrangements coming into effect.

5. Legal And Policy Implications

- 5.1. These new arrangements will be brought into effect under the provisions of The Case Tribunals (England) Regulations 2008.

6. Conclusion

- 6.1. Legislation had hitherto not been available for the Adjudication Panel for England. This will enable the Panel to operate under clear legislative processes.

7. Consultees

- 7.1. Chairman and Vice-Chairman.

8. Background Papers

The Case Tribunals (England) Regulations 2008