

Report to the Standards Committee

Date of meeting: 2 July 2008

**Subject: Local Initial Assessment of Allegations of
Misconduct by Councillors**

**Responsible Officer: C O'Boyle (Monitoring Officer)
I Willett (Deputy Monitoring Officer)**

Democratic Services Officer: G Lunnun (01992 - 564244)



Recommendations:

Assessments Sub-Committee

- (1) That an Assessments Sub-Committee comprising three members of the Standards Committee be established to carry out initial assessments of complaints;**
- (2) That the terms of reference for the new Sub-Committee be approved as set out in Appendix 1 to this report;**

Reviews Sub-Committee

- (3) That a Reviews Sub-Committee be established comprising three members of the Standards Committee to carry out reviews of decisions by the Assessments Sub-Committee;**
- (4) That the terms of reference of the new Sub-Committee be approved as set out in Appendix 2 to this report;**

Standards Committee

- (5) That a report be submitted to the Council recommending:
 - (a) that the number of District Councillor members of the Standards Committee be increased to three and an appointment to the additional place be made at the Council meeting;**
 - (b) that the number of Parish/Town Council representatives be increased to three, with the present deputy becoming one of the members;****

Hearings Sub-Committees

- (6) That Hearings Sub-Committees be convened as and when required;**
- (7) That the Monitoring Officer, in consultation with the Chairman of the Standards Committee make appointments to the Assessments, Reviews and**

Hearings Sub-Committees when required and in accordance with statutory requirements;

Joint Working

- (8) That further consideration be given to a policy for joint working with other local authorities when further Government regulations are published;

Notifications to Councillors and Complainants

- (9) That the Monitoring Officer be authorised:
- (a) to notify the relevant Councillor of the receipt of a complaint, the name of the complainant and a summary of the complaint no later than the despatch of case details to the Assessments Sub-Committee, notification to include, where necessary any decision regarding confidentiality;
 - (b) to acknowledge receipt of allegations to complainants at the same time as notification under (a);
 - (c) to consult the Chairman of the Standards Committee on any cases where delayed notification is appropriate;

Local Resolution of Complaints

- (10) That the local protocol set out in Appendix 3 to this report be adopted to enable the Monitoring Officer to seek local resolution of complaints where possible in advance of an Assessments Sub-Committee meeting;

Assessment Criteria

- (11) That the criteria for initial assessments of complaints as set out in Appendix 4 be approved;

Anonymous Complaints

- (12) That, as a matter of policy, complaints made anonymously be not considered;
- (13) That the Monitoring Officer be authorised keep the identity of a complainant confidential where she feels that this would be in the public interest;

Pre Investigation by the Monitoring Officer

- (14) That the Monitoring Officer be authorised to obtain and supply to the Assessments Sub-Committee any publicly-available information which is considered helpful in the consideration of any complaint;

Meeting Arrangements - Assessments, Reviews and Hearings Sub-Committees

- (15) That the Assessments and Reviews Sub-Committee meetings be held in private session unless there are exceptional circumstances which warrant the proceedings being held in public;

- (16) That, as a matter of policy, all meetings of the Hearings Sub-Committee be held in public session unless there are clear statutory grounds for its proceedings to take place in private session;

Results of Investigations

- (17) That the functions of determining whether to accept a finding by the Monitoring Officer of no breach of the Code of Conduct or to proceed to a local hearing in cases where the finding is that a breach of the Code has been found be delegated to the Assessment Sub-Committee; and

Interim Arrangements

- (18) That, pending the adoption of the revised constitution for the Standards Committee and the appointment of an additional District Councillor, the Monitoring Officer, in consultation with the Chairman of the Standards Committee, be authorised to convene meetings of any Sub-Committee in compliance with statutory requirements when any complaint is received.
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Local Initial Assessment of Standards Complaints

1. Previously a complaint of misconduct by a member had to be submitted to the Standards Board for England (SBE), and the Referrals Unit of the SBE determined whether the allegation appeared to disclose a failure by a member to comply with the Authority's Code of Conduct and whether the allegation merited investigation. All such complaints must now be made to the Standards Committee of the Authority, and a Sub-Committee of the Standards Committee will have to decide whether the complaint should be investigated.
2. This report sets out the changes to the system of handling complaints against members which are now required, and the issues which need to be addressed in order to meet the new requirements.

Date of Implementation

3. The new rules will only apply to complaints received from 8 May 2008 onwards, and as each allegation must be assessed within 20 working days of receipt, it is necessary for the Committee to establish Sub-Committees required for this purpose.

Number of Sub-Committees

4. The Act requires the Standards Committee to establish a Sub-Committee (the SBE has advised that this should be known as the "Assessments Sub-Committee") which will undertake the initial assessment and decide whether the complaint shows an apparent failure to comply with the Code of Conduct and, if so, whether that complaint merits investigation or other action. If the Assessments Sub-Committee decides to take no action in respect of an allegation, the complainant will have 30 days within which to request the Authority to review that decision. The Act requires the Standards Committee to set up a second Sub-Committee (the "Reviews Sub-Committee") to conduct that review. No member can sit on the Reviews Sub-Committee in respect of a complaint if they served on the Assessments Sub-Committee for the same complaint.

5. If the matter is referred for investigation a hearing would then be held. The Standards Board recommends that such hearings should be held before a Sub-Committee (a "Hearings Sub-Committee") of between three and five members.
6. Whilst the Act prohibits any member from sitting on both the Assessments and Reviews Sub-Committees on the same case (because a member cannot fairly review his/her own decision), there is no similar statutory prohibition in respect of the Hearings Sub-Committee. The SBE advises that if a member has been involved in the case either at the Assessments Sub-Committee or the Reviews Sub-Committee, there is no reason why they should be precluded from serving on the Hearings Sub-Committee.
7. Each such Sub-Committee is recommended to comprise three members drawn from the Standards Committee. The statutory requirements for membership are as follows:
 - (a) at least 25% of each Sub-Committee must be independent members, one of whom must be present to chair the meeting;
 - (b) at least one elected member of this Council must be present at each meeting;
 - (c) at least one member must be a Parish or Town Council representative if the Sub-Committee is dealing with a complaint in respect of the conduct of a Councillor in the capacity of a local council member.

Assessments Sub-Committee

8. It is clear that meetings of this Sub-Committee will need to be called urgently to comply with the 20 day time limit. It is recommended that the Monitoring Officer in consultation with the Chairman of the Standards Committee agree the membership of the Sub-Committee on an ad hoc basis. This is considered preferable to fixed memberships which could make it more difficult to convene a meeting quickly in the event of absence of a member for any reason.

Reviews Sub-Committee

9. Any review of a decision by the Assessments Sub-Committee must be conducted within three months of a request being made. A Hearings Sub-Committee must be held within three months of receipt of the investigation report, so there is more flexibility to arrange such meetings on a date to suit the available members. In addition, if the matter is referred for investigation without a review, more members will also be available for the Hearings Sub-Committee. It is proposed that arrangements for appointing Reviews and Hearings Sub-Committee meetings should be conducted in the same way as for the Assessments Sub-Committee.

Joint Working Between Authorities

10. The Act provides that authorities may appoint Joint Committees to discharge all or any of their functions in relation to complaints without maintaining its own separate Sub-Committees. Such joint working may be more acceptable in terms of the initial assessment and the review, rather than the actual hearings which might benefit from a more "local" approach. The regulations bringing these provisions into force have not yet been made, and the Committee is asked to review these arrangements when further detail is known.

Notifications to the Member/Complainant

11. The Act requires the Standards Committee to notify the Councillor of the receipt of a complaint and to provide a written summary of the allegation. In practice, the first meeting at which the Committee itself could do so is likely to be the initial assessment. However, the Authority ought to acknowledge receipt of the allegation to the person making the allegation and advise when the complaint will be assessed.
12. On the question of notifying the Councillor concerned, it is not considered appropriate to withhold this until after the Assessments Sub-Committee has reached its decision. For instance, the member could learn of the complaint from the person making the complaint or from the press which would clearly be of concern. Accordingly, it is recommended that the Monitoring Officer notify the member at the same time as acknowledging the receipt of the complaint to the person making the complaint and no later than sending the agenda out to members of the Assessments Sub-Committee, i.e. at least five clear working days before the meeting of the Sub-Committee. Any member who sought to lobby other members in his/her own cause would be committing a further breach of the Code of Conduct.
13. Concerns have been voiced about the danger of a member interfering with evidence or intimidating witnesses. It has been suggested that in such cases the member might not be notified of the complaint until the investigation had secured such evidence. Although it is considered that this may be unlikely to happen, it is proposed that the Monitoring Officer be given the discretion, after consulting the Chairman of the Standards Committee, to defer notification in exceptional circumstances. In such cases, the Monitoring Officer would notify the member concerned as soon as the reasons for deferral of notification no longer applied, for example, when the investigation had already been completed.

Local Resolution of Complaints

14. There is no formal process for local resolution of complaints in the 2007 Act, although regulations may enable the Assessments Sub-Committee to propose conciliation or some other course as an alternative to a formal investigation. However, where the member concerned has acknowledged that his/her conduct was at fault and has apologised, and the complainant has accepted that the complaint should not proceed to formal investigation, the Assessments Sub-Committee may determine that no further action is required.
- ... 15. To cover this situation, the Committee is recommended to adopt a local protocol as set out in Appendix 3 authorising the Monitoring Officer to seek such local resolutions in appropriate cases.

Filtering out of Irrelevant Complaints

16. Standards Board experience has been that a large number of complaints received do not relate to the Code of Conduct for Members, and publicity for the new system may result in more such complaints. Such requests can be categorised as follows:
 - (a) requests for an additional service from the Authority;
 - (b) statements of policy disagreement;
 - (c) matters relating to other authorities; and

(d) matters relating to a member's private life.

17. The 2007 Act provides that the function of initial assessment of complaints must be conducted by the Standards Committee, or by a Sub-Committee, but does not allow for delegation of this function to the Monitoring Officer. Where the Monitoring Officer identifies that a complaint clearly falls within categories (a) and (b) of paragraph 16, it is recommended that she be authorised to respond to the complainant on how the matter can be dealt with, only reporting to the Assessments Sub-Committee if the complainant insists that it be dealt with as a standards complaint. In all other cases, it will be necessary to report to the Assessments Sub-Committee and for the Assessments Sub-Committee and for the latter to determine which of the following statutory options should apply:

(a) refer the allegation to the Monitoring Officer;

(b) refer the allegation to the Standard Board for England;

(c) decide that no action should be taken in respect of the allegation; or

(d) where the allegation relates to a person who is no longer a member of this Authority but is a member of another relevant local authority, refer the allegation to the appropriate Monitoring Officer.

... 18. Assessment criteria for these categories are attached in Appendix 4.

Anonymous Complaints

19. There is nothing in the legislation which requires a complaint to be signed by the complainant. The Standards Board for England has entertained some anonymous complaints and this has given rise to concern. In such cases, it is not possible to meet the requirements to notify the complainant of the decision in respect of the complaint.

20. It is recommended that the Committee take a policy decision that anonymous complaints should not be entertained.

Multiple Complaints

21. It is not uncommon that a single event will give rise to similar complaints from a number of different complainants. The legislative position is that each separate complaint must be considered, and that even where a meeting of the Assessments Sub-Committee has previously decided that no action be taken upon an identical complaint, a subsequent complaint must still be referred back to the Sub-Committee.

Pre-Investigation

22. The Assessments Sub-Committee has to decide whether the allegation appears to disclose a failure to comply with the Code of Conduct and whether it merits investigation. Where the Sub-Committee has only a letter of complaint, it is not always easy to assess whether there is any substance to the allegation. However, there may be information which might substantiate, or contradict, the allegation and so make it easier for the Sub-Committee to decide whether the complaint has any substance. The Monitoring Officer should be authorised to check publicly available information between receipt of the complaint and the meeting of the Assessments Sub-Committee, to assist with this process. This is covered in

... Appendix 3.

Public or Private Meetings

23. The new Regulations provide that information presented to the Assessments, Reviews and the Hearings Sub-Committees can be regarded as “exempt information” for the purpose of Schedule 12A to the Local Government Act 1972. They will therefore have a discretion to exclude the press and public from their meetings. Each meeting will therefore start by resolving whether to exclude press and public. It is recommended that Assessments and Reviews Sub-Committees should hold meetings in private.
24. Hearings Sub-Committees can be held in private but the practice adopted to date has been to hold these in public for the purposes of public accountability and transparency. The Committee is invited to make a policy decision in that regard, subject to a proviso that exceptional circumstances may warrant exclusion of public and press.

Public Information about Complaints Received - Agenda, Minutes and Reports

25. The Authority must publish an agenda stating the date, time and location of the meeting and in general terms the business to be transacted, but it can withhold copies of the reports and background papers where they would disclose exempt information and the meeting is likely to be held in private. Once a meeting has decided that particular complaints should be investigated or not a minute of that meeting would be published. By this stage, the member will normally have been notified of the complaint, and the complainant will also be notified of the decision in respect of his/her complaint.

Member Requests for Information Under the Data Protection Act

26. Any person is entitled to request access to any personal information about them held by the Authority. Accordingly a member may request to be informed whether the Authority has received a complaint about him/her and may ask to see and correct that information. Section 31 of the Data Protection Act 2000 provides that the Authority would not have to disclose such information where it is held for any relevant function which is designed for protecting members of the public against dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorised to carry on any profession or other activity. Accordingly, the Authority would be able to refuse to disclose whether a complaint had been received until the member was notified on the sending out of the Assessments Sub-Committee agenda, or where no notification is made because the disclosure of that information would be likely to prejudice the proper conduct of the investigation.

Freedom of Information Act (FOI)

27. As FOI requests must be dealt with within 20 working days, the Authority may need to respond to press and public requests before the Assessments Sub-Committee has met. The Authority must determine each request individually. However, the Authority may refuse to provide information where the information is held for “law enforcement” purposes, which includes the regulation of improper conduct, and where the disclosure would prejudice the effective conduct of public affairs. However, in each case, disclosure can only be resisted where the public interest in withholding the information outweighs the public interest in its disclosure. Accordingly, the Authority may have grounds for resisting early disclosure of

information relating to complaints received, but this is likely to be contested by persons making such requests.

... Appendix 3 to this report sets out the responsibilities and discretions of the Monitoring Officer in the provision or withholding of information relating to complaints.

Notification following Initial Assessment

28. Where the Assessments Sub-Committee decides that no action be taken on a complaint, it must take reasonable steps to give notice in writing to the complainant of the decision and the reasons for that decision. It must also give similar notification to the member concerned of a decision not to take any action. There is no such requirement for a decision to investigate or to refer a complaint to the Standards Board for England, but such notification is desirable unless there were exceptional circumstances where such disclosure might impede proper investigation. In taking a decision on whether a complaint should be investigated, the Assessments and Reviews Sub-Committees will be required to state their reasons for each decision. It will also be the relevant Sub-Committee which notifies the complainant and the member, not the Monitoring Officer.

Review of Initial Assessment

29. Where the Assessments Sub-Committee decides that no action should be taken on a complaint, the complainant may, within 30 days of being notified of that decision, request the Reviews Sub-Committee to review that decision. Standards Board guidance suggests that the Reviews Sub-Committee should apply the same criteria used for initial assessment. In cases where further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint, the Reviews Sub-Committee should consider carefully if it is more appropriate to pass this to the Assessments Sub-Committee to be handled as a new complaint. In such a case, the Reviews Sub-Committee will still need to make a referral decision that the review request will not be granted. The Reviews Sub-Committee's decision is then notified to the complainant, who then has no further recourse other than judicial review.

Decision whether to Conduct a Local Hearing

30. Where the Monitoring Officer's investigation concludes that there has not been a failure to observe the Code of Conduct, the current regulations provide for the Monitoring Officer's report to be submitted to the Standards Committee (or a Sub-Committee of the Standards Committee) which then decides whether it accepts that conclusion, or whether it wishes to conduct a formal hearing.
31. Where the Monitoring Officer's investigation concludes that there has been a failure to observe the Code of Conduct, the old regulations provided for the matter to proceed directly to a local hearing. If the Hearings Sub-Committee decided that it could not fairly hear the matter or that the matter was so serious that it would merit more than the maximum 3 months suspension, the Hearings Sub-Committee could request the Standards Board to take the matter back and direct it to a national Case Tribunal.

32. The new Regulations add another step. The Monitoring Officer's report now has to be reported to the Standards Committee, or a Sub-Committee, which can only decide to send it for a local hearing or to send it to a Case Tribunal. Given that the maximum local sanction is now increased to six months' suspension, and the Monitoring Officer has the opportunity to refer the matter to the Standards Board at any stage prior to the completion of the investigation, the number of matters which will require to be referred to a Case Tribunal by the Sub-Committee could be very limited.
33. However, the new Regulations require that a meeting is held to consider the report and take this decision before the actual hearing can be arranged. It is proposed that this decision should be taken by the Assessments Sub-Committee. To avoid setting up another Sub-Committee, it is recommended that the functions of (a) determining whether to accept the Monitoring Officer's finding of no breach, or (b) to proceed to a local hearing or (c) to refer the matter to a Case Tribunal in cases where the Monitoring Officer's finding is that there has been a breach, should be delegated to the Assessments Sub-Committee (See Appendix 1). The matter will then proceed to a meeting of a Hearings Sub-Committee.

Publicity for the New Arrangements

34. The Standards Board has provided guidance on such notice being advertised in one or more local newspapers, the Authority's own newspaper and on the Authority's website and by means of a public notice. The Monitoring Officer has already arranged appropriate publicity in accordance with the Regulations and Guidance.

Cost Implications

35. Overall, this change will mean a larger Standards Committee, with more Sub-Committees, and more meetings. It will require the Monitoring Officer and her staff to undertake a significant amount of additional work in receiving any allegations of misconduct and reporting them to the relevant Sub-Committees. There is a significant cost to conducting any investigations and hearings. Under the legislation, even where complaints relate to the conduct of Parish or Town Councillors, it is the District Council which bears the full cost of investigations and hearings. There are therefore potentially very substantial cost implications, but the actual costs will depend upon how many complaints of misconduct are received. There is no additional Central Government funding being provided as a result of this change.