

ROLE AND COMPOSITION OF STANDARDS COMMITTEE, ASSESSMENT SUB-COMMITTEE AND REVIEW SUB- COMMITTEE

Report By: Assistant Chief Executive - Legal and Democratic

Wards Affected

County Wide

Purpose

1. To consider the Terms of Reference and Constitution of the Standards Committee and sub-committees having regard to the Standards Committee (England) Regulations 2008 and the guidance issued by the Standards Board for England, "the Role and Make Up of Standards Committees".

Financial Implications

2. There are financial implications in terms of council and officer resources in supporting such committees and hearings. In addition there are training issues for new members of the Standards Committee or any of its sub-committees.

Background

3. Members of the Committee are aware that new rules were applied to complaints received from the 8th May 2008 onwards with regard to an allegation of misconduct by a Member. All such complaints must now be made to the Standards Committee of the authority, and the sub-committee of the Standards Committee will have to decide whether the complaint should be investigated. This report sets out what the changes will be to the system of handling complaints against members and the issues which the authority needs to address in order to meet these new requirements for Committee Members consideration.

Consideration

4. Each allegation, as members are aware, must be assessed within 20 working days of receipt. The Standards Committee must therefore consider setting up sub-committees required for this purpose.
5. The Act requires the Standards Committee to establish a sub-committee (which I will refer to as the assessment sub-committee). This sub-committee will be required to undertake the initial assessment and decide whether the complaint shows an apparent failure to comply with the Code of Conduct for Members and, if so, whether that complaint merits investigation. If that sub-committee decides not to investigate the complaint, the complainant has 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 (which I refer to as the review sub-committee) to conduct that review. No member can sit on the review sub-committee in respect of a complaint where they were on the assessment sub-committee for the initial assessment of the same complaint.

6. If the matter requires investigation and the investigating officer concludes that there has been a failure to comply with the Code of Conduct for Members, a hearing would then be held. The Standards Board recommends that such hearings should be held before another sub-committee (a hearings panel) of between three and five members.
7. Whilst the Act requires that no member sits on both the assessment sub-committee and the review sub-committee on the same matter, because a member cannot fairly review his or her own decision, there is no similar statutory requirement for the members of the hearings panel to be comprised of members who are either on the assessment sub-committee nor the review sub-committee. However a member against whom a complaint has been made might reasonably take exception to a member being part of the hearings panel when that member had some three months previously seen the complaint without the benefit of any response from the member and decided that the matter should proceed to investigation. Separate membership for all three sub-committees clearly increases the minimum size of the Standards Committee and the minimum number of independent co-opted members (and Parish Council representatives) necessary to make up the separate sub-committees.
8. Each such sub-committee must comprise of at least three members, at least 25 per cent of whom must be independent co-opted members (and at least one of whom must be a Parish Council representative if the sub-committee is dealing with a complaint in respect of the conduct of a member as a member of a Parish Council). Such sub-committees should be kept small to facilitate the decision making and ideally would comprise of two independent co-opted members and either three ordinary members, not all from the same party group (or two ordinary members not both from the same party group and the Parish Council representative), thus allowing for absences and non availability. This imposes a requirement for a Standards Committee of fifteen members, including six independent co-opted members. As set out below, there is scope for joint Standards Committees for some of these functions, so a final decision on composition of each sub-committee should be taken in the light of paragraph 9 on joint committees below.
9. **Joint working between authorities.** The Act provides that authorities may appoint joint committees to discharge all or any of the standards functions. As set out above the requirement to populate three different sub-committees will place a considerable burden on the Councils. Such joint working is likely to be acceptable in terms of carrying out reviews rather than the actual hearing. Whilst the Assistant Chief Executive – Legal and Democratic has made contact with both Shropshire and Worcestershire they have now both indicated that they are unlikely to consider joint working arrangements.
10. **Notification to the member.** The Act requires the Standards Committee to notify the member 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 notify the member is likely to be the meeting at which it conducts the initial assessment. The consultation paper suggested that there was a danger that the member might seek to lobby members of the Standards Committee, and suggested that no notification be

made until the assessment sub-committee has come to a decision as to whether to investigate. However the authority ought to acknowledge receipt of the allegation to the person making the allegation and advise them when it is going to be assessed, and there is nothing to prevent the person making the allegation from publicising that fact. Accordingly, it will not engender confidence in the system if the Monitoring Officer was withholding notification to the member concerned and that member learned of the complaint from the person making the complaint or from the press. Accordingly it would be sensible for the Monitoring Officer to notify the member of receipt of the complaint at the same time as acknowledging receipt of the complaint to the person making the complaint and no later than sending the agenda out to members of the assessment 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 or her own cause would be committing a further breach of the Code of Conduct. The Department for Communities and Local Government consultation paper raised the possibility of cases of where there was a danger of the member interfering with evidence or intimidating witnesses, and suggested that in such cases the member not be notified of the complaint until the investigation had secured such evidence. This is a very remote possibility, but I would suggest that the Monitoring Officer be given the discretion, after consulting with the Chairman of the Standards Committee, to defer notification in such exceptional circumstances. In such cases the Monitoring Officer would notify the member concerned as soon as the reasons for deferral of notification no longer pertained, for example when sufficient investigation have already been completed.

11. **Local Resolution of Complaints.** Investigations and hearings are expensive. There is no formal process for local resolution of complaints in the 2007 Act, although the regulations may enable the assessment sub-committee to propose conciliation or some other course of action as an alternative to a formal investigation. However where the member concerned has knowledge that his or her conduct was at fault and apologised, and particularly where the complainant has accepted that and in light of that apology, if he or she is content for the complaint not to proceed to formal investigation, the assessment sub-committee may determine that the matter should not proceed to investigation. Accordingly there will be cases which informal mediation by the Monitoring Officer before reporting to the assessment sub-committee may avoid the need for a local investigation and or hearing. Equally some members may take exception to the Monitoring Officer seeking such local resolution.

12. **Filtering Out Irrelevant Complaints.** The Standards Board's experience has been that a large number of complaints received do not relate to the Code of Conduct for Members and the Assistant Chief Executive would anticipate that the publicity for the new system will engender more such complaints. Such requests can be categorised as follows:

- a) Request for additional service from the authority
- b) Statements of policy and disagreement
- c) Matters relating to other authorities
- d) Matters relating to a member's private life

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 the delegation of this function to the Monitoring Officer. Where the Monitoring Officer identifies that the complaint clearly falls within the above categories he or she

Further information on the subject of this report is available from

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may be able to ensure that the complaint is dealt with accordingly, responding to the complainant to set out how the matter is being dealt with, and only reporting to the assessment 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 assessment sub-committee and for the assessment sub-committee to determine which of the following statutory options should apply:

- refer the allegation to the Monitoring Officer
- refer the allegation to the Standards Board for England
- decide that no action should be taken in respect of the allegation;

or 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 Monitoring Officer of that other authority.

13. **Anonymous Complaints.** There is nothing in the legislation which requires the complaint to be signed by the complainant. The Standards Board for England has entertained some anonymous complaints, and this has given rise to considerable unease. In such cases, it is, of course, not possible to meet the requirements to notify the complainant of the decision in respect of the complaint.
14. **Multiple Complaints.** It is not uncommon that when an event gives 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 assessment sub-committee has previously decided that no action be taken on an identical complaint, a subsequent complaint must still be reported to and considered by the assessment sub-committee.
15. **Pre Investigation.** The assessment sub-committee has to decide whether the allegation appears to disclose a failure to comply with the Code of Conduct for members and then whether it merits investigation. Where the sub-committee has only the letter of complaint, it is not always easy to assess whether there is any substance to the allegation. However, there may be information which is readily available 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 cannot investigate whether to investigate. The Monitoring Officer can usually check publically available information between the receipt of the complaint and the meeting of the assessment sub-committee.
16. **Timescale for initial assessment of allegation.** The Department for Communities of Local Government Consultation Paper suggests that an initial assessment should be undertaken within 20 working days of the receipt of the allegation by the authority. This requirement is now set out in SBE guidance. The review sub-committee is then required to determine the review within three months of the date when the request for the review is received. In order to ensure that members of the sub-committees will be available within the required timescale if and when allegations for requests for reviews are received, it would be sensible to put dates into the Council diary and reserve rooms for meetings, although an actual meeting would only be held if there was business to be discharged.
17. **Public or private meetings.** The new regulations provide that information presented to the assessment sub-committee, to a review sub-committee or to a hearing panel

for the purpose of these new procedures shall be “exempt information” and the purposes of Schedule 12 A of the Local Government Act 1972, thus giving each of the sub-committees the power to exclude the press and public from their meetings. This is a discretion, so it will still be necessary for each meeting to start by resolving whether to exclude press and public. If the sub-committee did not exclude press and public, the member concerned would be unable to attend as he or she would have a prejudicial interest in the matter under consideration, whereas the complainant would have the right to attend (unless the complainant was also a member). No other party would have a right for attendance at the meeting.

18. **Public information about complaints received.**

18.1 **Advance publication of the agenda and reports.** Under existing legislation, the authority is required to 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 report and background papers where they would disclose the exempt information and the meeting is likely to be held in private. Once the meeting had decided that a particular complaint had been investigated, or be not investigated, a minute of that meeting would be prepared, and the minute can again be withheld from publication if it would disclose any exempt information. By this stage, the member would normally have been notified of the complaint, and the complainant will also be notified of the decision in respect of his or her complaint. Accordingly, I suggest that the minute should be published unless the Monitoring Officer has any reason to believe that such publication is likely to prejudice the investigation of a complaint.

18.2. **Member request for information under the Data Protection Act.** Any person is entitled to request access to any personal information which the authority holds in respect of him or her. Accordingly a member may request to be informed whether the authority has received a complaint about him or 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 from the public against dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetency of persons authorised to carry on any professional or other activities. Accordingly the authority would be able to refuse to disclose whether a complaint has been received until the member is notified on sending out the assessment sub-committee agenda or when no notification is made because the disclosure of that information would be likely to prejudice the proper conduct of the investigation.

19. **Freedom of Information Act.** As FOI requests must be dealt with within 20 days, the authority may need to respond to press and public requests before the assessment sub-committee has met. The authority is required to determine each request individually. The authority may refuse to provide the 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.

20. **Notification following initial assessment.** Where the assessment sub-committee decide that no action is to 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 the complaint to the Standards Board for England, but as a matter of policy clearly such notification should be given unless there are exceptional circumstances where such disclosure might impede proper investigation. On taking decisions on when the complaint should be investigated, the assessment and review sub-committees will be required to state their reasons for each decision. In practice it will not be the relevant sub-committee which will notify the complainant and the member but the Monitoring Officer.
21. **Review of initial assessment.** When the assessment 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 review sub-committee to review that decision. The review sub-committee decision is then notified to the complainant and then has no further recourse other than judicial review.
22. **Decision whether to conduct a local hearing.** Where the Monitoring Officer's investigation concludes that there has not been a failure to observe the Code of Conduct, the regulations provide for the Monitoring Officer's report to come before 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. This procedure remains as before.

When a Monitoring Officer's investigation concludes that there has been a failure to observe the Code of Conduct, the old regulations provide for the matter to proceed directly to a local hearing. If the hearing panel decide that they could not fairly hear the matter or that the matter is so serious that it would merit more than the maximum three months suspension, the hearing panel could request the Standards Board to take the matter back and direct it to a national case tribunal for hearing. The new regulations add in another step. So, 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 sanctions are 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 completion of the investigation, the number of matters which will require to be referred to the case tribunal by the sub-committee is going to be very limited. However, the new regulations require that a meeting of this sub-committee is held to consider the report and take the decision before the actual hearing can be arranged. Once the decision has been taken for a local hearing, the Monitoring Officer will then undertake the pre-hearing process, and the hearing panel will then conduct the hearing.

23. **Publicity for the new arrangements.** The Standards Board have issued guidance that the new arrangements should be publicised and the fact that allegations should now be sent to the authority rather than the Standards Board for England. That notice should be advertised in one or more local newspapers, the authority's own newspaper and on the authority's web site.

Recommendations

THAT, subject to comments from the Standards Committee, it be recommended to Council that:

- (i) the Terms of Reference for the Assessment Sub-Committee and the Review Sub-Committee be approved subject to the Committee's comments;
- (ii) the Monitoring Officer be instructed to notify members of receipt of a complaint, and:
 - provide a written summary of the allegation to the member(s)
 - at the same time, acknowledge receipt of the allegation from the person making the allegation.
 - This must be done no later than sending the agenda for the meeting of the assessment sub-committee to member of that sub-committee, unless after consultation with the Chairman of the Standards Committee, the Monitoring Officer considers it appropriate to defer notification in order to enable proper investigation to take place.
 - In the case of deferral, notification should be made as the reasons for the deferral no longer apply; and
- (iii) the authority should adopt a local protocol set out at Appendix 4, authorising the Monitoring Officer to seek local resolution in appropriate cases, and setting out the Committee's expectations of a Monitoring Officer through the referral process;
- (iv) anonymous complaints should not be entertained, but the Monitoring Officer be authorised to keep the identity of the complainant confidential where he/she is of the opinion that this is in the public interest;
- (v) the Monitoring Officer be instructed where practical to obtain and inform the Assessment Sub-Committee of any publically available information which would facilitate their task of determining whether a complaint merits investigation;
- (vi) the Monitoring Officer be instructed to make arrangements for a meeting of the Assessment Sub-Committee every four weeks, and with the review sub-committee every two months, but that he or she be instructed only to call actual meetings if there is business to be discharged;
- (vii) meetings of the Assessment and Review Sub-Committees should be held *in camera* unless the relevant Sub-Committee determines otherwise;

- (viii) the Committee approves a protocol set out at Appendix 4 detailing the responsibilities and discretions of a Monitoring Officer in the provision of withholding information relating to complaints;
- (ix) the functions of determining whether to accept the Monitoring Officer's finding of no breach, to go to a local hearing or to refer the matter to a case tribunal should be delegated to the Hearing Panel; and
- (x) the Monitoring Officer be instructed to arrange appropriate publicity in accordance with regulations and guidance after consultation with the Chairman of the Standards Committee in light of the changes to approve the terms of reference of the Standards Committee.

Background Papers

None

Appendices

- Appendix 1 – Proposed Terms of Reference for the Standards Committee
- Appendix 2 – Terms of reference of the assessment sub-committee
- Appendix 3 – Terms of reference of the review sub-committee
- Appendix 4 – Monitoring Officer Protocol