

**LOCAL ASSESSMENT OF COMPLAINTS**

*These arrangements were agreed by the Standards Committee on 20th October 2008 and were amended by the Standards Committee on 26 January 2009. They are to be read in conjunction with the Terms of Reference of the Assessment and Review Sub-Committees, which were adopted on 14th July, 2008.*

**Sub-Committees**

*The Council has established two new Sub-Committees of the Standards Committee: an Assessment Sub-Committee and a Review Sub-Committee.*

*The Assessment Sub-Committee is required to undertake the initial assessment of a case, to decide whether the complaint shows an apparent breach of the Code of Conduct and, if so, whether the complaint merits investigation or other action. The complaint must be assessed within an average of 20 working days of receipt. If the Sub-Committee decides to take no action the complainant has 30 days within which to require a review of that decision. The Review Sub-Committee would carry out any review of the Assessment Sub-Committee's findings. The membership of the two Sub-Committees cannot therefore 'overlap'.*

*If the complaint proceeds to a full hearing, through either of the two Sub-Committees, there is nothing to prevent any member who has already considered the complaint on one of the Sub-Committees sitting on the formal hearing. In some circumstances – for example where the member who is the subject of the complaint objects to the same member being involved in both the initial Assessment (where he/she would not have had the benefit of any response from the member) and the hearing – then different members may be called upon to make up the Sub Committee which hears the formal hearing.*

*Given the limited size of the Standards Committee, even with the appointment of a third independent member, the membership of the Sub-Committees are not fixed. The Monitoring Officer has been given authority to request members to make up the various Sub-Committees on an ad-hoc basis having regard to availability and/or any potential conflicts of interest.*

*The quorum for each Sub-Committee is 3 members. The Chair must be taken by an independent member and at least one elected member must be present at each meeting.*

*The Committee has adopted Terms of Reference for both the Assessment Sub-Committee and the Review Sub-Committee.*

**Notifying Members**

*The Standards Committee is required to notify the relevant member of the receipt of a complaint and to provide a written summary of the allegation.*

*However, the Committee members will not meet to assess the complaint until some time after it is submitted. In the Consultation Paper the Standards Board were concerned that if a member was notified at an early stage he/she might seek to lobby members of the Standards Committee and that it would therefore be advisable not to notify until the complaint had been assessed.*

*If however notification was withheld and news of the complaint were to 'leak out' from the complainant or other source prior to the assessment (as is likely) it would put the system in an unfavourable light.*

*It has been decided that the more open option shall be followed. The Monitoring Officer shall notify the member that a complaint has been received, this at the same time the complaint is acknowledged (i.e. no later than the dispatch of the agenda to the Assessment Sub-Committee). That said, the Monitoring Officer retains the discretion to notify members at a later stage if there are exceptional circumstances. Examples of this include in a situation where it is considered possible that the member might interfere with evidence or intimidate witnesses. In these cases the Monitoring Officer would however consult first with the Chair of the Standards Committee.*

### **The initial assessment of complaints: the Assessment Sub-Committee**

The initial assessment of complaints that a member has breached the Code of Conduct for Members is now carried out by the Assessment Sub-Committee: a Sub-Committee of the Standards Committee. The Assessment Sub-Committee decides whether the complaint appears to show that there has been a breach of the Code of Conduct. Where it considers that there has been a potential breach of the Code then it decides on the next step. The Sub-Committee may direct that the complaint should be the subject of formal investigation (either by the Standards Board or locally under the direction of the Monitoring Officer). Alternatively it may decide either that Monitoring Officer should be directed to take other appropriate action in respect of the complaint or that no action should be taken.

It is considered that many complaints might be dealt with more rapidly and effectively if an early informal resolution of the matter were to be achieved. Where a complaint has been received in, therefore, the potential for local resolution may be explored. While this may in appropriate instances avoid the need for a formal investigation, the complainant will retain the right to have their complaint referred to the Sub-Committee.

In any case, the Assessment Sub-Committee will have no jurisdiction over complaints which:-

- (a) Do not relate to members of the authority.
- (b) Relate to actions taken before a person became a member of the authority.
- (c) Relate to actions which pre-date the adoption of the Code of Conduct in 2001.

(d) Refer to conduct in a member's private life and not to his conduct as a local authority member.

### **The decision as to whether a potential breach of the Code of Conduct for Members exists**

The Assessment Sub-Committee will first ask whether there has been a prima facie breach. The complainant should have stated clearly (a) who is the subject of the complaint; (b) what actions the complaint relates to; and (c) why the actions are considered to constitute a breach of the Code of Conduct, this preferably by completing a standard form available from the Monitoring Officer or via the EBC website.

Following receipt of details of the complaint, the Monitoring Officer will collect information to assist the Sub-Committee in considering it. Any enquiries made will be of a clarificatory nature only, while the amassing of information may include the gathering of basic information from the records such as the agenda and/or minutes of the meeting where the alleged misconduct occurred or the Member's entry in the Register of Interests.

The Assessment Sub-Committee will then consider whether on the basis of the complaint received in and any clarificatory information put to them by their Monitoring Officer there has been a potential breach of the Code of Conduct.

Where the Assessment Sub-Committee has concluded that a potential breach of the Code exists, then it has four options available to it. These will be considered in the light of detailed Assessment and Review criteria which have been devised to assist the Sub Committee in reaching its decision in appropriate instances. Whilst each case will be considered on its own merits, these criteria have been created to maintain clarity and transparency and to ensure fairness for all parties.

### **Assessment and Review Criteria: The four options where a potential breach has been found:**

#### **1. circumstances where a decision may be reached to take no further action:**

Where the complaint:

- (1) does not include enough information to satisfy the Sub-Committee that the complaint should be referred for investigation or other action;
- (2) is about someone who is no longer a member of the Council;
- (3) has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances;
- (4) it or a complaint substantially similar to it has already been the subject of an investigation or other action relating to the Code of Conduct or has been the subject of an investigation by other regulatory authorities;

- (5) is believed to be either:
  - (a) relatively minor
  - (b) tit-for-tat
  - (c) politically motivated
  - (d) malicious
  - (e) not sufficiently serious to warrant further action
- (6) where the subject member has apologised and/or admitted making an error and the matter does not warrant a more serious sanction;
- (7) where it is apparent that the subject Member is relatively inexperienced as a Member;
- (8) where it appears that even if the allegations were fully investigated and a breach of the Code of Conduct upheld, training or conciliation would be the appropriate remedy; OR
- (9) where the complaint has been made anonymously.

Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers' and members' time. This is an important consideration where the matter is relatively minor. The Standards Committee's Sub-Committees will take into account the public benefit when considering whether or not to investigate complaints which they consider to be relatively less serious, politically motivated, malicious or vexatious. Sub-Committees will not normally refer a complaint for investigation where it is considered that the public interest in investigating the complaint is outweighed by the cost and resources that are likely to be involved.

**2. circumstances where a decision may be taken to refer the complaint to the Monitoring Officer for local investigation:**

Where the complaint is sufficiently serious to justify the cost of an investigation and it is in the public interest to investigate.

**3. circumstances where a decision may be made to refer the allegation to the Monitoring Officer for other positive action:**

- (1) Where the complaint:
  - (i) could be dealt with more effectively by:
    - (a) requesting an apology
    - (b) mediation
    - (c) training
    - (d) reviewing procedures and protocols
  - (ii) is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the authority and could be dealt with by:

- (a) mediation
- (b) training
- (c) reviewing procedures and protocols

(2) Where it is not in the interest of good governance to undertake or complete an investigation into a complaint.

Note:

(a) The Initial Assessment Sub-Committee must consult the Monitoring Officer before reaching a decision to take other action.

(b) If a decision is made to refer the complaint to the Monitoring Officer for another form of positive action, the following must be considered:

- What is being proposed
- Why is it being proposed
- Why the Member should co-operate, and
- What the Sub-Committee hopes to achieve.

(c) A complaint referred for positive action will state that the decision made was an alternative to formal investigation and that no conclusion was reached regarding whether the subject member had failed to comply with the Code.

(d) There will be no opportunity to undertake an investigation into the complaint at a later date if this option is selected, nor can it be referred back to Committee subsequently if this action is perceived to have failed.

**4. circumstances where a decision may be taken to refer the complaint to the Standards Board for England for formal investigation:**

(1) Where the status of the member or members or the number of members about whom the complaint is made would make it difficult to deal with the complaint, e.g. the complaint is against the Leader of the Council or senior opposition group members or a Cabinet Member or a Standards Committee Member.

(2) Where the status of the complainant or complainants would make it difficult to deal with the complaint e.g. the complaint is one from the Chief Executive or Legal Director or other senior officer or a Group Leader or Cabinet Member or Standards Committee Member.

(3) Where a large number of key people are conflicted out and/or there is a risk of successful judicial review.

(4) Where there is a potential conflict of interest of the Monitoring Officer or other officers and suitable alternative arrangements cannot be put in place to address the conflict.

(5) Where the complaint is so serious or complex, or it involves so many members, that it cannot be handled locally.

(6) Where the complaint requires substantial amounts of evidence beyond that available from the authority's documents, its members or officers.

- (7) Where there is substantial governance dysfunction in the Council or its Standards Committee.
- (8) Where the complaint relates to long-term or systemic member/officer bullying which could be more effectively investigated by someone outside the authority.
- (9) Where the complaint raises significant or unresolved legal issues on which a national ruling would be helpful.
- (10) Where the public might perceive the Council to have an interest in the outcome of the case e.g. if the Council would be liable to be judicially reviewed if the complaint is upheld.
- (11) Where there are exceptional circumstances which would prevent the authority or its Standards Committee investigating the complaint competently, fairly and in a reasonable period of time, or meaning that it would be unreasonable for local provision to be made for an investigation.

## **Review criteria**

The complainant may request a formal Review where the Assessment Sub-Committee has decided to take no further action rather than referring a complaint for investigation. Any such Review will be heard by a specially convened Review Sub-Committee, and will include two elements:-

- (a) consideration of whether the decision which is subject to review is reasonable taking into account the information that was before the Sub-Committee as well as the approved assessment criteria.
- (b) consideration of whether any new evidence submitted by the complainant or obtained by the Monitoring Officer since the original decision demonstrates that the decision was incorrect.

## **Withdrawing complaints**

In situations where the complainant seeks to withdraw a complaint before the Assessment Sub-Committee has made a decision regarding it, then the Assessment Sub-Committee will decide whether or not to grant the request in all of the circumstances. Consideration will be given to the Assessment Sub-Committee's assessment of the public interest, in particular whether the public interest in taking action on the complaint outweighs the complainant's desire to withdraw it. Other factors may include the practicality or otherwise of proceeding without the complainant's participation and also the Assessment Sub-Committee's assessment of any underlying reason – such as the complainant being pressurized to withdraw – which may appear to apply to the request to withdraw.

## **The Monitoring Officer Protocol**

*Receipt of allegations: The Monitoring Officer shall set up arrangements to secure that any allegation made in writing that a member of the authority has or may have failed to comply with the Code of Conduct should be referred to him/her immediately on receipt by the authority. All such allegations received shall be maintained by the Monitoring Officer in a register. Complaints will only be entertained where they are signed by the complainant however the Monitoring Officer is authorised to maintain the confidentiality of the identity of the complainant where that would be in the public interest.*

*Notification of receipt of allegations. All relevant allegations must be assessed by the Assessment Sub-Committee. The Monitoring Officer has no authority to deal with any allegation which appears to relate to a breach of the Code of Conduct other than by reporting it to the Assessment Sub-Committee. The Monitoring Officer shall therefore determine whether the allegation appears to be a substantive allegation of misconduct. Where it appears that it is not, the Monitoring Officer shall ensure that the matter is dealt with under a more appropriate procedure. Examples would include where it is really a request for service from the authority, a legal claim against the authority or a complaint against an officer.*

*Following receipt of the allegation, and where the allegation appears to be a complaint of misconduct against a member, the Monitoring Officer will promptly arrange for a meeting of the Assessment Sub-Committee as soon as reasonably practicable and if possible, within twenty working days from the receipt of the complaint. The Monitoring Officer will also acknowledge receipt and confirm that the allegation will be assessed by the Sub-Committee and notify the member against whom the allegation is made supplying that Member with a written summary of the allegation and confirmation that it will be considered at a meeting of the Assessment Sub-Committee. However, in cases where notification might be contrary to the public interest or might prejudice any investigation the Monitoring Officer after consulting with the Chairman of the Standards Committee may decide that advance notification should not be given. The Monitoring Officer will proceed with gathering such information as is readily available to assist the Assessment Sub-Committee or may seek local resolution of the complaint where this is practicable. The Monitoring Officer's report to the Assessment Sub-Committee will include a copy of the allegation, readily available information and those paragraphs of the Code that the complaint might relate to.*

### **The Local Resolution of Complaints**

*Local resolution is not an alternative to reporting the allegation to the Assessment Sub-Committee but can avoid the necessity of a formal local investigation. Where the Monitoring Officer is of the opinion that there is potential for local resolution, the Monitoring Officer will mediate between the complainant and the Member against whom the allegation has been made to explore whether the matter can be dealt with by an apology or other remedial action. The Monitoring Officer should then report to the Assessment Sub-Committee what is required and at the same time report the response to the Member concerned and the complainant. Where the Member has acknowledged that the conduct complained of was inappropriate and where the complainant would be satisfied with a proper apology or other remedial action, the Assessment Sub-Committee shall take that into account when considering whether the matter merits investigation.*

### **Review of decisions not to investigate**

*Where the Assessment Sub-Committee has decided that no action be taken on a particular matter, the Monitoring Officer shall advise the complainant of that decision promptly. The complainant has thirty days from the receipt of that notification to request a review. The review shall normally be of the reasonableness of the original decision rather than a fresh consideration of the complaint and the review will normally be completed within three months. The Monitoring Officer shall report to the Review Sub-Committee the information which was provided to the Assessment Sub-Committee. Other relevant information which has become available prior to the meeting of the Review Sub-Committee will also be reported.*

### **Local Investigation**

*It is recognised that the Monitoring Officer will not personally conduct a formal local investigation. It will be for the Monitoring Officer to determine who to*

*instruct to conduct a formal local investigation. This may include another senior officer of the authority, a senior officer of another authority or an appropriately experienced consultant.*

**Publicity**

*The Regulations place an obligation on each Standards Committee to publicise the new arrangements as well as the fact that allegations should now be sent to the authority rather than to the Standards Board. This authority has complied with this responsibility by placing notices on the EBC website and by advertising in the local newspaper.*

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