



Ward: N/a  
Key Decision: No

## Local Assessment of Complaints

### Report by the Executive Head of Legal & Democratic Services and Monitoring Officer

#### 1.0 Summary

- 1.1 To note the requirements of The Standards Committee (England) Regulations 2008.
- 1.2 To consider the number of Independent Members on the Standards Committee
- 1.3 To recommend the establishment of relevant sub-committees for the assessment, review and determination of complaints about the conduct of Members.
- 1.4 To recommend the process for the selection of Members and independent members to sit on the necessary sub-committees

#### 2.0 Background

- 2.1 The Local Government & Public Involvement in Health Act, 2007 amended the Local Government Act, 2000 so as to provide that complaints against councillors are to be made in writing to the Standards Committee of the Local Authority rather than to the Standards Board for England.
- 2.2 In addition to the Local Government Act, 2000 (as amended) there are The Standards Committee (England) Regulations 2008. The effect of the Act and Regulations are set out below.
- 2.3 Membership (Regulations 4 and 5)
  - a) At least 25% of the members of the Standards Committee must be independent members and no more than one member of the Committee may be a Member of the Council's Executive.
  - b) An independent member of one Authority's Standards Committee may be appointed to another Authority's Standards Committee for a specified period of time, in relation to a specific allegation or set of allegations.

- 2.4 Section 53. The Standards Committee must be chaired by an independent member.
- 2.5 Section 57A. The Standards Committee must consider the complaint and must:
- (a) refer the allegation to the monitoring officer of the relevant authority concerned
  - (b) refer the allegation to the Standards Board for England or
  - (c) decide that no action should be taken in respect of the allegation.
- 2.5 Sub Committee (Sections 54 & 55 and Regulations 6 & 7 )  
The Standards Committee is required to establish two sub-committees, each of which is to be chaired by an independent member of the committee. The sub-committees are to be for the following purposes:
- a) the initial consideration of complaints, an Assessment Sub-Committee; and
  - b) the review of a decision by the Assessment Sub-Committee to take no action on a complaint, a Review Sub-Committee.
- 2.6 The Standards Committee may establish a sub-committee to consider reports or hold hearings. If the committee establishes such a sub-committee, a Local Determinations Sub-Committee, then that also must be chaired by an independent member of the committee.
- 2.7 The members on the Assessment Sub-Committee must not also be members of the Review Sub-Committee for the same complaint.
- 2.8 The members of the Assessment Sub-Committee or the Review Sub-Committee can be members of the Local Determination Sub-Committee for the same complaint on the basis that the first two sub-committees are determining, on basic information, whether or not a complaint should be investigated. The Local Determination Sub-Committee will be hearing all of the evidence and determining whether or not, on the evidence, there has been a breach of the code of conduct and, if there has, what action should be taken.
- 2.9 At least three members must be present at any committee or sub-committee for its duration. One of whom must be an independent member and one of whom must be a member of the Council.
- 2.10 Publicity and Confidentiality (Regulations 8, 10 and 11)
- a) Where a sub-committee is considering an allegation against a member or a request to review a decision to take no action, there is no public right of access to the meetings or documents. The sub-committee is required to produce a written summary of its consideration, which is to be made available to the public. Otherwise the proceedings of the Standards Committee and Sub-Committees are to be open to the public (subject to the usual rules about excluding the press and public as apply to other local authority meetings).
  - b) Standards Committees must publicise the address to which written allegations of misconduct should be sent and to keep published details up to date.

c) Monitoring Officers cannot disclose information obtained through their investigations or supplied to them by an Ethical Standards Officer, otherwise than for the purpose of the process enabling a standards committee, sub-committee or an appeals tribunal of the Adjudications Panel for England, to perform any of their functions.

#### 2.11 Informing the subject of the complaint (Regulation 11)

a) A standards committee must give a written summary of a complaint to the subject of the allegation but need not do so at the outset where it would be contrary to the public interest or would prejudice an investigation. In such a case the subject may be told merely that a complaint has been made. The committee must give a full written summary in all cases before an hearing is convened to consider any report on the allegation.

#### 2.12 Options short of an investigation (Regulation 13)

a) The Standards Committee (or relevant Sub-Committee) or an Ethical Standards Officer may refer an allegation to the Monitoring Officer with a direction that no investigation is to be undertaken, but that the Monitoring Officer:

- i ) arranges for the Member, the subject of the complaint, to attend a training course; or
- ii ) arranges for the Member and the complainant to engage in a process of conciliation; or
- iii) takes such other steps as appear appropriate.

b) The Monitoring Officer must report back within 3 months and the regulations describe the steps that must be undertaken upon receipt of the report, dependent upon whether or not they are satisfied with the outcome.

#### 2.13 Investigations (Regulations 14 – 16)

a) A monitoring officer shall carry out an investigation into an allegation of a failure to comply with the authority's code of conduct. The complainant and the subject shall be informed. The Monitoring Officer may request information or an explanation of matters from any person and can require the authority to provide advice and assistance. The Monitoring Officer may ask (only once) to refer a matter back to the ethical Standards officer (if the matter came from an ethical standards officer) who can decide whether to accept it.

b) Following an investigation, the Monitoring Officer must submit a report to the Standards Committee as to whether the person who is the subject of the report has failed to comply with the code of conduct.

c) The Monitoring Officer shall send a copy of a report received from an ethical standards officer following an investigation referred back there, to the person who is the subject of the report and shall refer the report to the Standards Committee for consideration.

d) The Monitoring Officer may refer a matter back to the Standards Committee for reconsideration of how the allegation should be dealt with in the following circumstances:

- i ) new evidence suggesting that the matter is materially more, or less, serious than may have seemed apparent when the original decision was made; or
- ii ) the death or serious illness of the person against whom the allegation is made; or
- iii) the resignation from the authority of the person against whom the allegation was made.

#### 2.14 Options on receiving an investigation report (Regulation 17)

a) On receiving a report from the Monitoring Officer the Committee (or Sub-Committee) must make one of the following findings:

- i ) it accepts the findings or no failure to comply with the code of conduct; or
- ii ) the matter should be considered at a hearing under regulation 18; or
- iii) the matter should be referred to the Adjudication Panel for England for determination. This can only happen where it is felt that the sanctions available to the Standards Committee are inadequate and the Adjudication Panel has agreed to take it.

b) There are also requirements relating to the notification and publication of its findings.

#### 2.15 The hearing (Regulations 18-20)

a) Hearings should take place within 3 months of the report from an ethical standards officer being received by the Monitoring Officer or the completion of the Monitoring Officers report.

b) Hearings are to be conducted as the committee (sub-committee) see fit, subject to it having regard to the relevant guidance issued by the Standards Board.

c) The subject of the investigation must have had the report at least fourteen days before the hearing and must have the opportunity to attend to give or call evidence and to be represented.

d) The Committee (Sub-Committee) may limit the number of witness if appropriate.

e) The Committee (Sub-Committee) may adjourn, on one occasion, for the Monitoring Officer to seek further information.

f) At any time before the conclusion of the hearing the Committee (Sub-Committee) may, where the case under consideration was investigated by an ethical standards officer, ask that officer to take it back for further investigation. If the ethical standards officer does not agree the Committee (Sub-Committee) must continue with the hearing.

#### 2.16 Findings and sanctions (Regulations 19 & 20)

a) The Committee (Sub-Committee) can find that the subject:

- i ) has not breached the code of conduct, or,
  - ii) has breached the code.
- b) If the Committee (Sub-Committee) decide that the subject has breached the code of conduct the Committee (Sub-Committee) can, in the case of a subject who is no longer a Member, only censure the person.
- c) If the Committee (Sub-Committee) decide that the subject has breached the code of conduct the Committee (Sub-Committee) may make any combination of the following:
  - i ) Censure;
  - ii ) Restrict access to the premises or resources for up to 6 months;
  - iii) Partially suspend for up to 6 months, or until training or conciliation is complete;
  - iv ) Suspend for up to 6 months, or until training or conciliation is complete;
  - v ) Require an apology;
  - vi ) Require training;
  - vii) Submission to a process of conciliation.
- d) The findings are to be notified to various bodies and publicised in the press.

#### 2.16 Appeals (Regulations 21 - 25)

- a) A person against whom a failure to comply with the Council's code of conduct has been found may, within 21 day, seek permission from the President or Deputy President of the Adjudication Panel for England to appeal and, where appropriate, for the suspension of any sanction pending an appeal.
- b) Regulations 22 to 25 deal with the conduct of appeals, composition and procedure of appeal tribunals, failure of a Member to attend an appeal and the outcomes of appeal.

2.17 The establishment of sub-committees for the different stages of the assessment, review and determination of complaints relating to the conduct of Members is a two stage. The first stage is the formal establishment of the sub-committees. The second is the selection of Members and independent members to sit on the sub-committees when they are required.

2.18 Due to the timing and possible conflicts of interest / prejudicial interests it is not appropriate to allocate Members and independent members to sub-committees. It will be necessary to allocate them when the need for the sub-committee, and the subject matter of the complaint are known, so that appropriate Members and independent members are allocated who can sit within the timescales specified by law. Initial assessment must be within 20 working days of receipt and the parties informed

2.19 To allow the necessary flexibility the authority to allocate Members and independent members to sub-committees should be delegated to the Monitoring Officer in consultation with the Chair or, in their absence, the Vice Chair of the Standards Committee.

### 3.0 Proposals

- 3.1 In the light of the new legislation it is proposed that the Standards Committee establish three Sub-Committees.
- 3.2 That the Sub-Committees shall consist of four persons of whom two shall be independent members, so that if one becomes unavailable the other may continue as chairperson, and two Councillors.
- 3.3 That it be proposed to Council, through the Constitution and Audit Committee, that the membership of the Standards Committee be increased by a further two independent members to allow for times when one or more of the independent members are unavailable or have a prejudicial interest in a matter.
- 3.4 That the authority to allocate Members and independent members to sub-committees for assessment, review and determination of complaints should be delegated to the Monitoring Officer in consultation with the Chair or, in their absence, Vice Chair of the Standards Committee.

#### **4.0 Legal**

- 4.1 Sections 183 to 195 of The Local Government & Public Involvement in Health Act, 2007, amend the Local Government Act 2000, providing for local assessment, review and determination
- 4.2 The Standards Committee (England) Regulations 2008 provide the framework for the constitution of Standards Committees, Sub-Committees and the method of determining complaints against Members.

#### **5.0 Financial implications**

- 5.1 There are no financial implications from this report however if the complaints are made then costs are likely to be occurred in the investigation(s).
- 5.2 There will be advertising and sundry recruitment expenses for the additional independent members which will be found from existing budgets

#### **6.0 Recommendation**

- 6.1 That the Standards Committee establish three Sub-Committees to consider complaints against Members. That the Sub-Committees are named:
  - a) The Assessment Sub-Committee;
  - b) The Review Sub-Committee; and
  - c) The Local Determinations Sub-Committee
- 6.2 That the membership of the Sub-Committees shall consist of two elected Members and two independent members
- 6.3 That the Constitution and Audit Committee be recommended to recommend to Council that the membership of the Standards Committee be increased to include two additional independent members.
- 6.4 That the authority to allocate Members and independent members to sub-committees for assessment, review and determination of complaints should be

delegated to the Monitoring Officer in consultation with the Chair or, in their absence, Vice Chair of the Standards Committee.

## **Local Government Act 1972**

### **Background Papers:**

*Local Government Act, 2000*

*Local Government & Public Involvement in Health Act, 2007*

*Local Assessment of Complaints – Standards Boards Guidance, 2008*

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## **Schedule of other matters**

### **1.0 Council Priority**

1.1 This report does not seek to meet any particular council priorities

### **2.0 Specific Action Plans**

2.1 (A) Matter considered and no issues identified

(B) Matter considered and no issues identified

### **3.0 Sustainability Issues**

3.1 Matter considered and no issues identified [Details of any sustainability issues, checklist to be completed and submitted to Community Wellbeing]

### **4.0 Equality Issues**

4.1 Matter considered and no issues identified

### **5.0 Community Safety issues (Section 17)**

5.1 Maintaining the good conduct of Members assists in promoting community safety.

### **6.0 Human Rights Issues**

6.1 The provisions of the new regulations and the local determination of complaints will have to comply with Article 6 of the Convention

### **7.0 Reputation**

7.1 The Council is required to be in a position to deal with complaints about Member's conduct. An open and efficient process will improve the reputation of the Council. An inefficient system will be detrimental to the Council's reputation.

## **8.0 Consultations**

8.1 (A) None

8.2 (B) Matter considered and no issues identified

## **9.0 Risk assessment**

9.1 The Council will be in breach of its statutory duty if it fails to establish a sub-committee for the local assessment of complaints and a sub-committee for the review of decisions not to take any action on a complaint.

9.2 The Council will be in breach of its statutory duty if it is not able to have an independent member chairing the sub-committees and committee.

## **10.0 Health & Safety Issues**

10.1 Matter considered and no issues identified

## **11.0 Procurement Strategy**

11.1 Matter considered and no issues identified

## **12.0 Partnership working**

12.1 Matter considered and no issues identified at present, but opportunities may arise for joint working in future.

