

Meeting: STANDARDS COMMITTEE

Agenda Item:

Date: 8 July 2008

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LOCAL ASSESSMENT OF COMPLAINTS

Author - Paul Froggatt Ext No. 2212

1 PURPOSE

To make the necessary procedures for the local assessment of complaints against Members.

2 RECOMMENDATIONS

- 2.1** To establish an Assessment Sub-Committee with a quorum of three and which shall be chaired by an Independent Member. Its terms of reference shall be to perform the functions set out in Section 57A Local Government Act 2000.
- 2.2** To establish a Review Sub-Committee with a quorum of three and chaired by an Independent Member. Its terms of reference shall be to perform the functions set out in Section 57B Local Government Act 2000.
- 2.3** To note and approve the arrangements for publicising the complaints system.
- 2.4** To adopt the procedure rules for the local assessment of complaints against members, including the assessment criteria and the provisions for dealing with anonymous complaints, as set out in Appendix II to this report and make these publicly available.
- 2.5** To consider whether or not the Borough Solicitor should adopt a policy of disclosing to a Member that a complaint has been made against him or her before an Assessment Sub-Committee has considered the complaint and issued a decision.

3 BACKGROUND

- 3.1** At its February meeting this Committee considered a report on the prospective changes to the ethical standards regime for members contained in Part 10 Local Government and Public Involvement in Health Act 2007. The central procedural changes were that all allegations about Members breaching the Code of Conduct would be referred to the Standards Committee instead of an Ethical Standards Officer employed by the Standards Board for England. This report concerns the

introduction of these changes.

- 3.2** The relevant sections of the Act have now been brought into force, the necessary statutory instruments made (the Standards Committee (England) Regulations 2008) and statutory guidance has been issued by the Standards Board for England. The main piece of guidance, the "Local Assessment of Complaints" is appended to this report. (Appendix I)
- 3.3** The new requirements for the composition of standards committees has already been adopted by the Council. A third independent member has been appointed and the Committee increased to nine members. The extended role of the Standards Committee and the creation of sub-committees is now included in the most recent version of the Constitution. In addition some of the requirements of the Regulations have already been put in place (see below).
- 3.4** Following amendments to the law made in 2003 Standards Committees were required to conduct investigations and determine allegations referred to them by an Ethical Standards Officer of the Standards Board for England. Although no allegations have been referred back to this Committee, procedures for dealing with this process were considered by the Committee at the time. Further guidance has also been recently issued to Monitoring Officers on local investigations and how to conduct them but is not relevant for the purposes of this report.

4 REASONS FOR RECOMMENDED COURSE OF ACTION AND OTHER OPTIONS

4.1 Appointment of sub-committees

- 4.1.1** The Regulations require Standards Committees to appoint two sub-committees, one to make an initial assessment of a complaint ("the Assessment Sub-Committee") and the other to review a decision to take no action on a complaint at the request of the complainant ("the Review Sub-Committee"). These sub-committees have no other functions.
- 4.1.2** Some councils have diarised monthly Standards Committee meetings so that a sub-committee can be appointed if a complaint is received. It is, however, proposed that these sub-committees are appointed now for the remainder of the municipal year and if a complaint is received there will be no need for a prior meeting of the main Committee. In the unlikely event that it is not possible to convene a quorate sub-committee it may be necessary to call an urgent Standards Committee to make new appointments.
- 4.1.3** As Members will recall, the sub-committees must be chaired by an independent member and it is suggested that the initial assessment committee is composed of five members, of whom two are independents, and that the remaining members are appointed to the Review Sub-Committee.
- 4.2** Many of the usual procedural requirements for committees are disapplied for meetings of the Assessment Sub-Committee and Review Sub-Committees including notices of meetings, circulation of agendas and public access.
- 4.3** The meetings of both sub-committees will be closed to the public (though the

Committee will still need to pass the appropriate Part II Resolutions). The Regulations do, however, require production of a publicly available summary for each case which must include the main points considered, the conclusions of the sub-committee and its reasons for the decision. In limited circumstances the sub-committee can decide not to give a written summary to the Member about whom the complaint is made.

4.4 There will be no officer report in the usual sense though the Sub-Committee will be presented with the complaint, as appropriate, details of the Members' Register of Interests and other easily obtainable information relevant to the complaint.

4.5 Neither the complainant nor the member complained about should attend the meeting or give evidence as the purpose of the Committee is merely to consider whether the complaint merits an investigation or any further action.

4.6 Assessment Criteria and Procedures

4.6.1 Draft assessment procedure rules are attached at Appendix II which cover in detail the whole of the assessment process (though not the investigation or the determination of the complaint by the full Standards Committee). These have been drafted to follow the Regulations and Guidance. Some of the central issues are discussed below.

4.6.2 The Committee is required to develop assessment criteria to be applied by the sub-committee and the guidance also indicates that these should be publicised. These are contained in the draft assessment procedure rules.

4.6.3 The Guidance suggests that in considering complaints the sub-committee considers the following questions:

4.6.3.1 Is the complaint about someone who is no longer a member of the Council but is a member of another authority, if so should the complaint be referred to that other authority?

4.6.3.2 Has the complaint already been formally investigated or determined?

4.6.3.3 Is the complaint regarded as being too trivial to warrant further action, politically motivated or part of a tit for tat exchange?

4.7 These criteria may be developed or changed but not during the course of an assessment.

4.8 Generally the sub-committee will need to consider the public interest in upholding ethical standards against, where the matter is relatively minor, the cost to the public purse of conducting an investigation.

4.9 Initial assessment decisions

4.9.1 The Assessment Sub-Committee must take one of the following decisions:

4.9.1.1 refer the complaint to the Borough Solicitor (or to the Monitoring Officer of another

authority) either for investigation or with an instruction for 'other action'.

4.9.1.2 refer the complaint to the Standards Board for England

4.9.1.3 that no action should be taken

4.9.2 'Other Action' might consist of arranging for the member concerned to undertake training or for the parties to engage in conciliation.

4.9.3 The guidance (p.17) suggests that Other Action might be relatively straightforward compared with a full investigation. It also suggests the Standards Committees might require the parties to agree in writing to cooperate in the process and this provision is included in the annexed procedures.

4.9.4 The Sub-Committee might wish to take into account attempts by the complainant and the member to resolve their dispute.

4.9.5 It is suggested that anonymous complaints are only investigated where clear evidence is provided of a serious breach of the Code of Conduct. This policy is also included in the procedures.

4.10 Assessment Review

4.10.1 The Review Sub-Committee should, according to the Guidance, adopt a policy of reviewing the decision of the Assessment Sub-Committee within 20 working days of a review request (although the statutory limit is three months).

4.10.2 The Review Sub-Committee should apply the same criteria used for the original assessment. It should consider carefully before admitting information not available to the Assessment Sub-Committee as this might be better treated as the basis of a new complaint.

4.11 Officer Support and Notification

4.11.1 The Act and Regulations provide that the Monitoring Officer (Borough Solicitor) is responsible for providing or arranging support to the Standards Committee and Sub-Committees and carrying out investigations. It will be inappropriate, however, for an investigation to be carried out by the Monitoring Officer if, as is recommended, he advises the Standards Committee on the substantive hearing of a complaint (or possibly where he has advised the Member complained about). As a result the Borough Solicitor as Monitoring Officer will usually take the role of advising the Standards Committee and Sub-Committees and will delegate the investigation to the Deputy Monitoring Officer (Principal Solicitor), another officer or an external person.

4.11.2 Where a formal complaint is received the Monitoring Officer is not permitted to disclose the details of the complaint to any person other than the Standards Committee. He should, however, acknowledge receipt of the complaint and may notify the subject Member that a complaint has been received and the section of the Code covering the alleged breach. Unless the complainant requests otherwise he may also advise the Member who the complainant is. There are practical and legal difficulties in this area with some Standards Committees instructing monitoring

officers to notify the Member concerned. In other authorities monitoring officers appear to have adopted a policy of not notifying the Member until a decision notice is issued by the Assessment Sub-Committee. This may be because the notification will necessarily be incomplete and unsatisfactory. It is also possible, if not probable, that the Member will be fully aware of the details of the complaint before it is received. There could be complaints about members which are made very informally and are not addressed either to the Borough Solicitor of the Assessment Sub-Committee. In these circumstances the disclosure rules may not be relevant.

4.11.3 According to the Guidance the Monitoring Officer should carry out an initial assessment of the complaint to check that it is potentially about member conduct. There appears to be a fine distinction between this role and the initial assessment carried out by the sub-committee.

4.12 Timescales

Although the Regulations do not stipulate a timescale the Guidance states that the Assessment Sub-Committee should carry out its initial assessment of the complaint within 20 working days of receipt. The decision notice should be issued within 5 working days of being made.

4.12.1 The complainant has 30 days after receipt of the notice to request a review.

4.12.2 The Regulations require the Sub-Committee to review the decision within three months of receiving the request though the Standards Board for England guidance recommends that this should also be done within 20 working days.

4.13 Publicising the Complaints Process

4.13.1 The Council is required under the Regulations to publicise the complaints process and, according to the Guidance "it is important that the public notice reaches as many people as possible so that members of the public know how to complain ...". A notice of the complaints process in the form attached at Appendix III has been placed on the Council's web site, is on display in the Customer Service Centre and will be placed both in the Chronicle and the Comet.

4.13.2 The Council's three-stage corporate complaints system seems unsuitable for complaints against Members and a dedicated complaints form has therefore been devised, compliant with Standards Board Guidance and is also available on the Council's web site.

5 IMPLICATIONS

5.1 None at present.

APPENDICES

- Appendix I - Local Assessment of Complaints (*Standards Board for England*)
- Appendix II - Standards Committee Procedure for the Local Assessment of Complaints against Members
- Appendix III - Local Code of Conduct Complaints Process Notice