





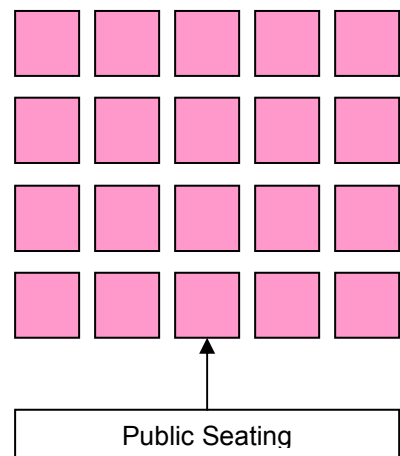
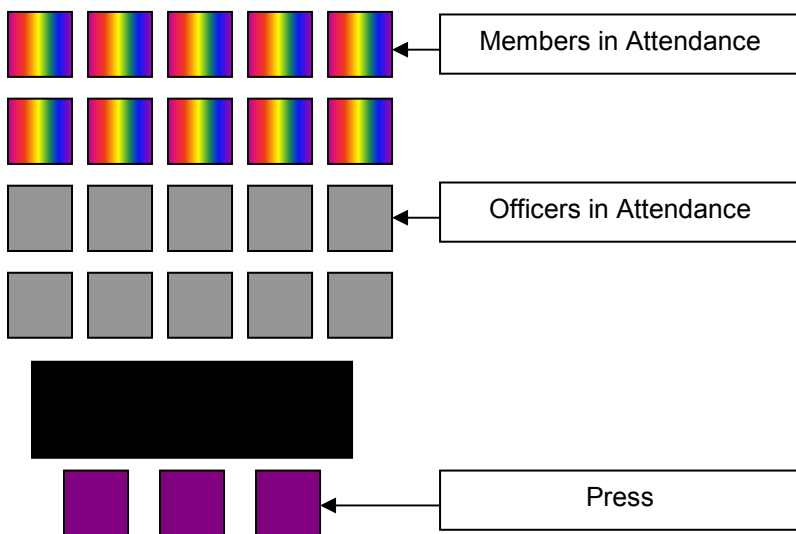
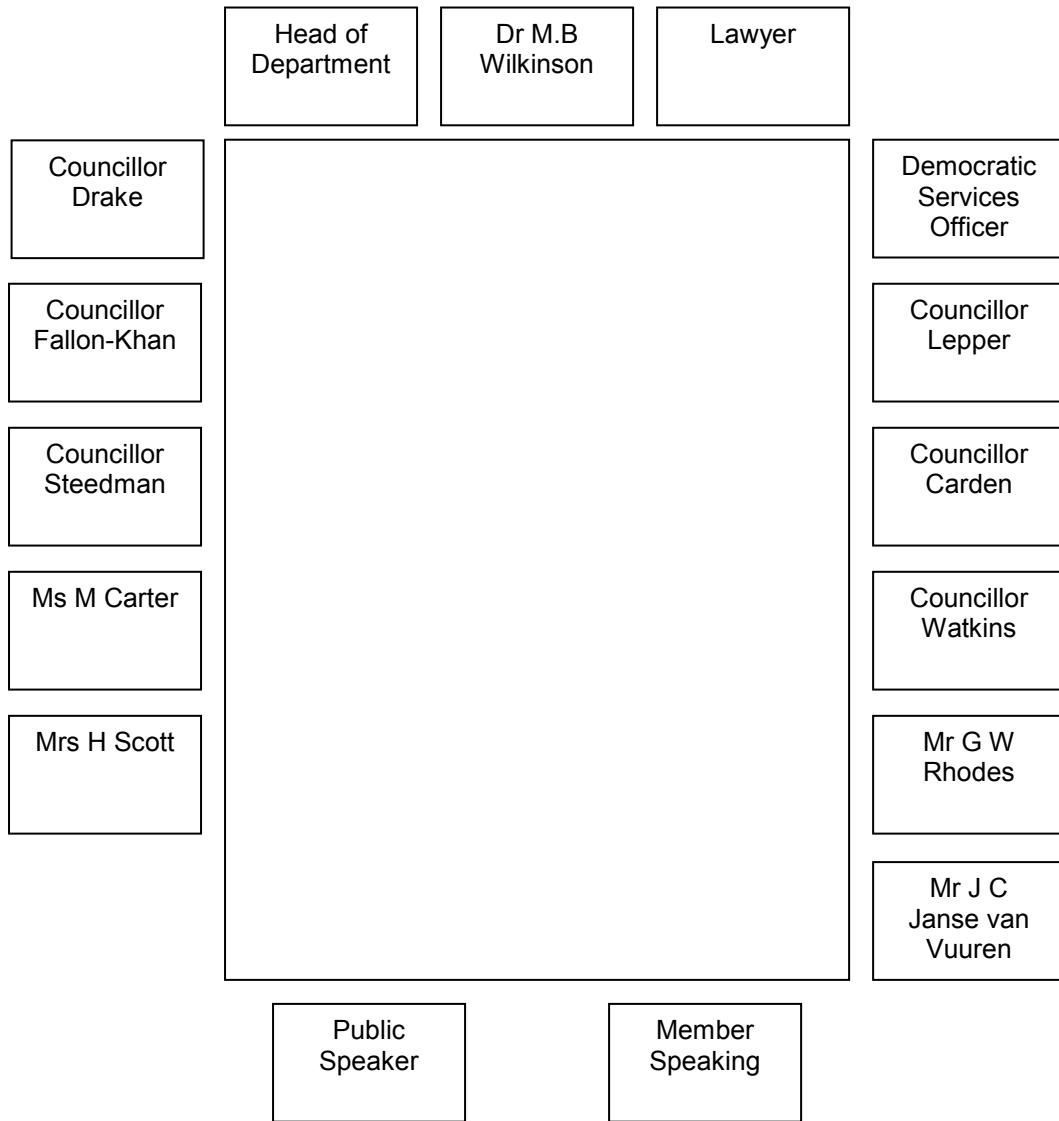
Brighton & Hove  
City Council

# Standards Committee

Title:	<b>Standards Committee</b>
Date:	<b>23 May 2008</b>
Time:	<b>5.00pm</b>
Venue	<b>Committee Room 3, Hove Town Hall</b>
Members:	<b>Councillors:</b> Carden, Drake, Kennedy, Lepper, Simson and Watkins  <b>Independent Members:</b> Dr M Wilkinson (Chairman), Ms M Carter and Mrs H Scott  <b>Rottingdean Parish Council Representatives:</b> Mr J C Janse van Vuuren and Mr G W Rhodes
Contact:	<b>Penny Jennings</b> Senior Democratic Services Officer 01273 291065 penny.jennings@brighton-hove.gov.uk

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	<b>An Induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter and infra red hearing aids are available for use during the meeting. If you require any further information or assistance, please contact the receptionist on arrival.</b>
	<b>FIRE / EMERGENCY EVACUATION PROCEDURE</b> <b>If the fire alarm sounds continuously, or if you are instructed to do so, you must leave the building by the nearest available exit. You will be directed to the nearest exit by council staff. It is vital that you follow their instructions:</b> <ul style="list-style-type: none"><li>• You should proceed calmly; do not run and do not use the lifts;</li><li>• Do not stop to collect personal belongings;</li><li>• Once you are outside, please do not wait immediately next to the building, but move some distance away and await further instructions; and</li><li>• Do not re-enter the building until told that it is safe to do so.</li></ul>

# Democratic Services: Meeting Layout



AGENDA

**56. PROCEDURAL BUSINESS**

- (a) Declaration of Substitutes - Where Councillors are unable to attend a meeting, a substitute Member from the same Political Group may attend, speak and vote in their place for that meeting.
- (b) Declarations of Interest by all Members present of any personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- (c) Exclusion of Press and Public - To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

*NOTE: Any item appearing in Part 2 of the Agenda states in its heading the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.*

*A list and description of the exempt categories is available for public inspection at Brighton and Hove Town Halls.*

**57. NEW ARRANGEMENTS, RELATIVE TO STANDARDS COMMITTEE (ENGLAND) REGULATIONS 2008 FOR DEALING WITH COMPLAINTS MADE AGAINST MEMBERS OF THE COUNCIL** **1 - 68**

(copy attached).

Contact Officer: John Heys  
Ward Affected: All Wards

Tel: 29-1549

**58. ITEMS TO GO FORWARD TO COUNCIL**

To consider items to be submitted to the 17<sup>th</sup> July 2008 Council meeting for information. In accordance with Procedure Rule 20.3a, the Committee may determine that any item is to be included in the agenda for the Council meeting.

**59. TO CONSIDER WHETHER OR NOT THE ABOVE ITEM SHOULD REMAIN EXEMPT FROM DISCLOSURE**

## STANDARDS COMMITTEE

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

The closing date for receipt of public questions and deputations for the next meeting is 12 noon on the fifth working day before the meeting.

Agendas and minutes are published on the council's website [www.brighton-hove.gov.uk](http://www.brighton-hove.gov.uk). Agendas are available to view five working days prior to the meeting date.

Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

For further details and general enquiries about this meeting contact Penny Jennings, (01273 291065, email [penny.jennings@brighton-hove.gov.uk](mailto:penny.jennings@brighton-hove.gov.uk)) or email [democratic.services@brighton-hove.gov.uk](mailto:democratic.services@brighton-hove.gov.uk)

Date of Publication - Thursday, 15 May 2008

**Brighton & Hove City Council**

**For general release**

**Meeting: Standards Committee**

**Date: 23 May 2008**

**Report of: Director, Strategy and Governance**

**Subject: Local Assessment of Complaints**

**Ward(s) affected: All**

**1. Purpose of the report**

- 1.1 To agree new arrangements and procedures for the local assessment of ethical standards complaints against Members.

**2. Recommendations**

- 2.1 That the Committee
- (a) approves the proposed arrangements and procedures for dealing with ethical standards complaints against Members, as set out in **Sections 1 to 6, attached as appendices** to this report and
  - (b) gives authority to the Director of Strategy and Governance (as Monitoring Officer):-
    - (i) to make any necessary amendments to the arrangements and procedures and
    - (ii) to make appointments of independent persons to the Standards Committee on a temporary basis for dealing with particular complaints, from independent person(s) who serve on other authorities' Standards Committees.

**3. Information/background**

- 3.1 The Committee is already aware that the Local Government and Public Involvement in Health Act 2007 transfers from the Standards Board for England (SBE) to local authorities the duty of receiving and assessing complaints that Members have breached local Codes of Conduct.
- 3.2 The Government has considered comments, including those of the Council, in relation to the proposed Regulations needed to give effect to this. The relevant Regulations - the Standards Committee (England) Regulations, SI 2008 Number 1085 - have now been made and came into force on 8 May 2008.

- 3.3 For information and to assist with the decision-making which is now needed in order to implement the new assessment regime, an extract from SBE Bulletin Number 38 which summarises the new Regulations is attached at the end of this report (**Annex A**).
- 3.4 The SBE also published issued guidance on 2 May 2008. The Council must have regard to this guidance when it sets up its new procedures. A copy of this guidance (“Local Assessment of Complaints”) is attached to this report (**Annex B**).
- 3.5 The Council has already adopted formal procedures for (1) investigating and (2) determining complaints. These are based on specimen forms of procedure which were circulated by Peter Keith-Lucas, one of the legal experts in this field. It appears that the time scale has been too short for him to issue a similar procedure for the initial assessment of complaints, although no doubt this will appear in due course, along with amended versions of the other procedures.
- 3.6 It is important to have some procedures to work to in the interim as, on and from 8 May 2008, the Council was required to exercise the complaints assessment function. It is a shame that the Government did not take into account the comments that there should be a proper timescale between the making of the Regulations and them coming into force.
- 3.7 The Standards Committee has full delegated authority from the Council to make the necessary arrangements and adopt appropriate procedures for the local assessment of complaints.
- 3.8 This report proposes basic arrangements but it is envisaged that a further report will be needed in due course when there has been more time for the implications of the Regulations and Guidance to be understood. In particular, it will be necessary to make consequential amendments to the Council’s current procedures for investigating and determining complaints.
- 3.9 The proposed procedures, based closely on the SBE guidance, have been split up under a number of different sections and each one is set out in a separate Appendix to this report, as follows:  
**Section 1** - Introduction  
**Section 2** – Publicity for complaints procedure  
**Section 3** – Procedures for receiving & processing of complaints of Member misconduct  
**Section 4** – Criteria for decisions by the Assessment Panel and the Assessment Review Panel  
**Section 5** – Points in relation to Panel procedures for assessing / re-assessing complaints  
**Section 6** – Monitoring by Standards Board for England

- 3.10 It is recommended that the Committee considers and approves the proposals in the Sections, with any amendments which appear to be appropriate and also gives power to the Director of Strategy and Governance (the Monitoring Officer) to make amendments, principally so that any minor inconsistencies and drafting errors, which may have gone unnoticed because of the limited time available to write this report, can be corrected.
- 3.11 A further point has been added to the recommendations to make it clear that the Director of Strategy and Governance may also exercise the power to appoint anyone who is an independent person serving on the Standards Committee of another authority as an additional independent person. This power would be exercised to make temporary appointments to deal with particular complaints, for example if the independent persons on the Council's Standards committee were unavailable or conflicted out of a particular case.
- 3.12 The above-mentioned recommendation stems from an unexpected inclusion in the recently made Regulations. As this report was being drafted, the SBE issued a second Guidance document called "the Role and Make-up of Standards Committees". This Guidance did not go into much detail about the new powers to appoint independent persons from other authorities' Standards Committees, but did indicate that they are aimed at facilitating temporary appointments. Examples given are where a permanent independent person is unwell or there is a conflict of interest. It also pointed out that these appointments do not need to be put to full Council for approval.
- 3.13 As the powers are intended chiefly for emergency use, it would be appropriate to delegate them to the Director of Strategy and Governance rather than leave them only with the Standards Committee.
- 3.14 There will be a report to a future meeting of Committee about the Guidance on "the Role and Make-up of Standards Committees".

#### **4.0 Consultation**

- 4.1 As the Government has published and brought the Orders & Regulations into force with minimal time for implementation, consultation has been limited to relevant officers.

## Appendix 1

<b>Meeting/Date</b>	Standards Committee – 23 May 2008
<b>Report of</b>	Director, Strategy & Governance
<b>Subject</b>	Local Assessment of Complaints
<b>Wards affected</b>	All

### **Financial implications**

There are no immediate financial implications in relation to this report, but the changes to the ethical standards regime mentioned will result in additional work at the Council's level. It is not clear whether all this work can be absorbed within existing financial resources.

*Finance Officer consulted:*

### **Legal implications**

The legal implications are dealt with in the report.

*Lawyer consulted: John Heys 8 May 2008*

<b>Corporate/Citywide implications</b>	<b>Risk assessment</b>
The changes to the ethical standards regime mentioned in the report will apply throughout the City	No specific risk assessment has been carried out.
<b>Sustainability implications</b>	<b>Equalities implications</b>
There are no direct sustainability implications in connection with this report.	There are no direct equalities implications in connection with this report.
<b>Implications for the prevention of crime and disorder</b>	
There are no direct implications arising from the report.	

### **Background paper**

No unpublished papers have been relied upon to a material extent in writing this report.

### **Contact Officer**

John Heys, Principal Solicitor : ext 1549



**BRIGHTON & HOVE CITY COUNCIL  
ROTTINGDEAN PARISH COUNCIL**

**LOCAL ASSESSMENT OF CODE OF CONDUCT COMPLAINTS**

**Section 1**

**Introduction**

1. The following administrative procedures in sections 2 to 6 have been agreed with the Standards Committee as part of the processes and procedures for dealing with complaints about member conduct. They are based on the requirements of the Local Government Act 2000 (as amended) and relevant Regulations and Guidance. The Monitoring Officer has been given delegated authority by the Standards Committee to make amendments to these procedures and will exercise this discretion within any limitations imposed by the legislation.

2. In all sections of these procedures:-

“Code” means the Council’s Code of Conduct for members.

“Council” means Brighton & Hove City Council.

"independent person" means a person who is not a member or officer of the Council or the Parish Council who has been appointed to the Standards Committee of the Council.

“member” means any member of the Council, which includes co-optees with voting rights and any member of the Parish Council.

“Monitoring Officer” means the Director of Strategy and Governance or any other person acting on his behalf.

“Parish Council” means Rottingdean Parish Council.

"the Regulations" means the Standards Committee (England) Regulations 2008 and any other regulations applicable to these procedures.

“SCO” means “Standards and Complaints Officer” and is deemed to include a reference to the Monitoring Officer, as all members of the Standards and Complaints team are authorised by the Monitoring Officer to act for him.

“SBE” means the Standards Board for England.

“subject member” means a member who is the subject of a complaint.

## Section 2

### Publicity for complaints procedure

1. In accordance with the Regulations and the guidance from the SBE, the arrangements set out in this section indicate the address to which written allegations of breaches of the Code should be sent and the steps which the Council considers are reasonable to bring details of the address and the complaints procedure to members of the public.
2. The address for these purpose will be:- The Standards Committee, c/o the Standards and Complaints Team, Brighton & Hove City Council, FREEPOST SEA2560, Brighton, BN1 1ZW.
3. The Council will publish a notice (see item 5(b) below) detailing where Code complaints should be sent and the notice will also make it clear that the Council is responsible for dealing with any Code complaints relating to the Parish Council.
4. The guidance suggests various ways that the Council should publicise the new arrangements so that members of the public know how to make a complaint and points out that the Council must also update this information and continue to publicise the complaints procedure regularly.
5. The Standards and Complaints team have made the following publicity arrangements in accordance with the guidance:-
  - (a) Details of how complaints about members should be made have been posted on the Council's website and it is also currently a featured item on the front page of the website.
  - (b) Arrangements have been made for a notice to be included in the next issue of the Council's paper (Citynews) to be circulated in June.
  - (c) A message has been circulated to council staff about the new arrangements, via a posting on the Council's intranet site (the Wave).
  - (d) Written notification has been sent to the Citizens Advice Bureau with interim details of the new arrangements.
  - (e) Publicity information has been sent to the Secretary of the Parish Council.
6. Further publicity action to be carried out as soon as possible by the Standards and Complaints team will be:-
  - (a) New leaflets and posters will be produced in the same design as existing information used to publicise the corporate and social care complaints procedures.
  - (b) These will be circulated to the Parish Council and all council reception areas, libraries, Citizens Advice Bureaux and community groups.

(c) Other periodic, general awareness initiatives will be carried out by S&C to satisfy the requirement for updating / regular publicity about the Code complaints process.

## Section 3

### **Procedures for receiving & processing of complaints of member misconduct**

- 1.0 This section should be read in conjunction with sections 4 and 5 in particular.
- 2.0 Procedures for dealing with complaints alleging a member may have breached the Code will be integrated into the Council's existing complaints framework.
- 3.0 Complaints about member conduct will be administered by officers of the Standards and Complaints Team who will provide administrative support to the Monitoring Officer and act as points of contact for the Standards Committee, Assessment Panel and the Assessment Review Panel.
- 4.0 Complaints must be received in writing but where that would place an unreasonable barrier for a person wishing to make a complaint the SCO will arrange for a verbal complaint to be transcribed for approval by the complainant or their representative.
- 5.0 Support will be provided for people who wish to make a complaint where English is not their first language.
- 6.0 Complaints received anonymously will be presented to the Assessment Panel only if they contain documentary or photographic evidence to support a serious or significant allegation.
- 7.0 A complaint may not necessarily be made in writing. For example, it may be a concern raised verbally with the SCO. In such cases the complainant should be asked whether they want formally to put the matter in writing to the Standards Committee. If the complainant does not, then the SCO should consider options for informal resolution to satisfy the complainant.
- 8.0 Complaints received will be analysed by a SCO to decide which complaint processes is most appropriate.
- 9.0 Some complaints may need to be processed through more than one of the Council's complaint processes, for example as corporate complaints, statutory complaints, complaints in relation to freedom of information rules etc. However, as far as possible the SCO will endeavour to process the complaint only through the most appropriate procedure.
- 10.0 If the SCO identifies that the complaint is in relation to the Code it will be referred to the Assessment Panel.

- 11.0 The SCO will notify the Committee Administrator who will arrange for the Assessment Panel to sit normally within 20 working days of the Council receiving the complaint. The SCO will supply any necessary papers to the Committee Administrator so that they can be forwarded to Panel members prior to the date of the meeting. There is no prescribed timescale for the papers to be sent out as the usual access to information rules do not apply (see Section 5) but the Committee Administrator will aim to send out the papers at least 2 working days in advance of the meeting.
- 12.0 The SCO will present a summarised report of the complaint to the Assessment Panel (see paragraph 17.0).
- 13.0 Where a number of complaints are received about the same matter the SCO will present one report to the Assessment Panel drawing together all the relevant information and highlighting any substantively different or contradictory information. The Assessment Panel will, however, make separate decisions in relation to each complaint.
- 14.0 When a formal complaint has been received the SCO has discretion to:-
- Acknowledge receipt of the complaint in writing, normally within 5 working days;
  - Inform the subject member that a complaint has been made about him/her by sending notification to the subject member stating:-
    - a complaint has been made;
    - the name of the complainant (unless confidentiality has been requested by the complainant and the Assessment Panel has not yet considered whether or not to grant it);
    - the relevant paragraphs of the Code that may have been breached;
    - that a written summary of the complaint will be provided to the subject member when the Assessment Panel has met to consider the complaint as only the Panel has power, under Section 57C(2) of the Local Government Act 2000 to give a written summary of the allegation to the subject member;
    - the date of that meeting if known.
- 15.0 The discretion set out at paragraph 14 above will usually be exercised shortly before the hearing date. However, the discretion will not be exercised if the SCO considers that the Panel may decide to withhold from the subject member the summary which it otherwise needs to give after making its decision, on the ground that it would be against the public interest to do so or it would prejudice any future investigation. (See Section 4 for “Criteria for withholding from subject member a summary of the complaint”.)

- 16.0 The SCO will not normally supply any further information at this stage to the subject member. If the SCO considers that further information might be disclosed, he/she will need to be satisfied he/she has legal power to do so bearing in mind the restrictions on disclosure in:-
- Section 63 of the Local Government Act 2000 as modified by Regulation 12
  - Data Protection Act 1998

### **Pre- assessment reports and enquiries**

- 17.0 The CSO will prepare a short summary of the complaint for the Assessment Panel stating:-
- Whether the complaint is within the Panel's jurisdiction;
  - The paragraphs of the Code the complaint may relate to, or which have been identified by the complainant;
  - A summary of key aspects of the complaint;
  - Any further information obtained by the SCO, e.g.
    - A declaration of office form and undertaking to observe the Code;
    - Minutes of meetings;
    - Member's entry in register of interests
    - Information from Companies House or Land Registry;
    - Other easily obtainable documents

and the SCO may also contact the complainant for clarification if unable to understand the document submitted. However, pre-assessment enquiries will not be carried out in such a way as to amount to an investigation. For example they will not extend to interviewing potential witnesses, the complainant or the subject member.

### **Decisions of the Assessment Panel**

- 18.0 The Assessment Panel is required to reach one of the three following decisions on a complaint about a member's actions in relation to the Code of Conduct:-
- referral of the complaint to the monitoring officer of the authority concerned, which under section 57A(3) of the Local Government Act 2000 referral, as amended, may be another authority;
  - referral of the complaint to the SBE;
  - no action should be taken in respect of the complaint
- and will it will base its decisions on the criteria that have been agreed for making assessments (see section 4).

- 19.0 However, the Assessment Panel is permitted to consider intermediate options beyond no action but not as far as investigation. These are referred to as "other action" and criteria are set out in Section 4 under "Circumstances in which decisions may be to take action short of investigation ("other action")".

### **Referral for Investigation**

- 20.0 If the Assessment Panel decides that a complaint it has considered should be forwarded to the Monitoring Officer for investigation all relevant parties will be informed by the SCO of the decision, if appropriate advising who will be responsible for conducting the investigation. However, the Assessment Panel does not have to supply the subject member with a summary of the complaint if it decides doing so would be against the public interest or would prejudice any further investigation. (See Section 4 for “Criteria for withholding from subject member a summary of the complaint”.)
- 21.0 If the Assessment Panel believes a complaint should be investigated by the SBE the matter will be referred to them as quickly as possible via the SCO.
- 22.0 If the SBE decline to investigate they will return it to the Assessment Panel who will then assess the complaint.

### **No Action**

- 23.0 As soon as possible, and normally within 5 working days, after making the decision to take no action over the complaint the Assessment Panel will give all parties notice of its decision and the reasons for that decision.
- 24.0 All relevant parties will be informed of that decision by the SCO on behalf of the Assessment Panel.
- 25.0 A copy of that decision will be provided to the Parish Clerk if the subject member is a member of the Parish Council.
- 26.0 Where no potential breach of the Code is disclosed by the complaint the complainant will be advised by the SCO of their right to ask for a review. The SCO will inform the complainant they should submit their reason for requesting the review in writing and that should be received within 30 working days from the date the initial assessment is received.

### **Review of the assessment**

- 27.0 If a request for a review is received by the SCO all parties will be notified.
- 28.0 The SCO will notify the Committee Administrator who will arrange for the Assessment Review Panel to sit normally within 20 working days of the Council receiving the complaint. It must in any case carry out the review within 3 months of receiving the request. The SCO will present a summarised report of the complaint to the Assessment Review Panel. (see paragraph 17.0).

- 29.0 There may be cases where further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint. In such cases, the Assessment Review Panel will consider carefully if it is more appropriate to pass this to an Assessment Panel to be handled as a new complaint. In this instance, the Assessment Review Panel will still need to make a formal decision that the review request will not be granted. For example, a review may be more appropriate if a complainant wishes to challenge that:-
- (a) not enough emphasis has been given to a particular aspect of the complaint;
  - (b) there has been a failure to follow any published criteria;
  - (c) there has been an error in procedures.
- However, if more information or new information of any significance is available, and this information is not merely a repeat complaint, then a new complaint rather than a request for review may be more suitable.

### **Decision of the Assessment Review Panel**

- 30.0 The Assessment Review Panel will base its decisions on the criteria that have been agreed for making assessments (see Section 4). As soon as possible after reaching its decision the Assessment Review Panel will notify all parties of its decision and the reasons for its decision.
- 31.0 If the decision is to refer to SBE or the Monitoring Officer for investigation all parties will be informed and will be provided with a summary of the complaint normally within 5 working days unless the Assessment Review Panel decides that doing so would be against the public interest or would prejudice any further investigation. (See Section 4 for “Criteria for withholding from subject member a summary of the complaint”.)
- 32.0 If the Assessment Review Panel decides that a complaint they have considered should be forwarded to the Monitoring Officer for investigation the SCO will if appropriate also advise who will be responsible for conducting the investigation.
- 33.0 If the Assessment Review Panel believes a complaint should be investigated by the SBE the matter will be referred to them as quickly as possible via the SCO
- 34.0 If the SBE decline to investigate they will return it to the Assessment Review Panel who will then assess the complaint.
- 35.0 If the Assessment Review Panel decides to take no action over a complaint they will give notice to the SCO who will advise the relevant parties of the decision normally within 5 working days.



- 36.0 If the subject member is a member of the Parish Council the SCO will also advise the Parish Clerk of the decision normally within 5 working days.
- 37.0 Where no potential breach of the Code is disclosed by the complaint the complainant will be advised by a SCO on behalf of the Assessment Review Panel.

### **Additional items**

- 38.0 People who make repetitive or vexatious complaints will be responded to by the SCOs in the way outlined by the Council's corporate procedure for dealing with such matters. Issues that have previously been dealt with will not be responded to but any new allegations will be considered. The Panel procedures for such complaints are dealt with further in Section 4 under the heading "Multiple and vexatious complaints".
- 39.0 All complaints will be recorded by the SCO on the Council's complaints management system. This will include all details of persons involved, relevant dates, issues of complaint, relevant paragraphs of the Code and outcomes. Any such information which is required by the legislation to remain confidential will only be disclosed to the extent that the law permits.
- 40.0 Documents relating to complaints that the Assessment Panel or the Assessment Review Panel have decided not to investigate will be kept by SCO for a minimum of twelve months. The summary required to be kept by the Panel will be kept for a minimum of 6 years (see Section 5 "Access to meetings and decision making")
- 41.0 Documents relating to complaints that have resulted in further action will be kept for by SCO for a minimum of 6 years. The summary required to be kept by the Panel will be kept for a minimum of 6 years (see Section 5 "Access to meetings and decision making")
- 42.0 A SCO will not take part in the complaint process if there is a potential conflict of interest.
- 43.0 If a Panel decides to refer a matter to the Monitoring Officer for investigation, the SCO who has taken part in the assessment/assessment review process will not be appointed to investigate the matter.

**Criteria for decisions by the Assessment Panel and the Assessment Review Panel**

**Initial tests**

1. Before assessment of a complaint begins, the Assessment Panel or Assessment Review Panel should be satisfied that the complaint meets the following tests:-
  - (a) it is a complaint against one or more named members of the Council or Parish Council;
  - (b) the named member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
  - (c) the complaint, if proven, would be a breach of the Code under which the member was operating at the time of the alleged misconduct.
2. If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant must be informed that no further action will be taken in respect of the complaint.
3. If the complaint passes these tests, the Panel will go on to consider whether to take no action, whether to refer the complaint for investigation, or whether refer it to the Monitoring Officer for other action.

**Assessment criteria**

4. The Standards Committee has developed criteria against which the Assessment Panel and the Assessment Review Panel assess new complaints and decide what action, if any, to take. The aim of these criteria is to reflect local circumstances and priorities, to be simple, clear and open, to ensure fairness for both the complainant and the subject member, and to protect the Panel members from accusations of bias. These criteria can be reviewed and amended as necessary but this will not be done during consideration of a matter.
5. In drawing up the assessment criteria, the Standards Committees has born in mind
  - (a) the importance of ensuring that complainants are confident that complaints about member conduct are taken seriously and dealt with appropriately and
  - (b) that deciding to investigate a complaint or to take other action will cost both public money and the officers' and elected members' time. This is an important consideration as it is appropriate to take into account the public benefit in investigating complaints which are less serious, politically motivated, malicious or vexatious.

## **Circumstances in which decisions may be to take no action or refer the complaint to another authority's Monitoring Officer**

6. In reaching their decisions on the action to be taken in relation to complaints, the Assessment Panel and the Assessment Review Panel will ask themselves the following questions and consider the following response statements:

**Q: Has the complainant submitted enough information to satisfy the Panel that the complaint should be referred for investigation or other action?**

If the answer is **no**: "The information provided was insufficient to make a decision as to whether the complaint should be referred for investigation or other action. So unless, or until, further information is received, the Panel is taking no further action on this complaint."

**Q: Is the complaint about someone who is no longer a member of the Council or Parish Council, but is a member of another authority? If so, does the Panel wish to refer the complaint to the monitoring officer of that other authority?**

If the answer is **yes**: "Where the member is no longer a member of our Council or the Parish Council but is a member of another authority, the complaint will be referred to the standards committee of that authority to consider."

**Q: Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?**

If the answer is **yes**: "The matter of complaint has already been subject to a previous investigation or other action and there is nothing more to be gained by further action being taken."

**Q: Is the complaint about something that happened so long ago that there would be little benefit in taking action now?**

If the answer is **yes**: "The period of time that has passed since the alleged conduct occurred was taken into account when deciding whether this matter should be referred for investigation or further action. It was decided under the circumstances that further action was not warranted."

**Q: Is the complaint too trivial to warrant further action?**

If the answer is **yes**: "The matter is not considered to be sufficiently serious to warrant further action."

**Q: Does the complaint appear to be simply malicious, politically motivated or tit-for-tat or is the complainant in some other way to be regarded as a vexatious complainant (see below)?**

If the answer is **yes**: “The matter appears to be simply malicious, politically motivated, tit-for-tat or vexatious, and not sufficiently serious, and it was decided that further action was not warranted”.

**Q: Is there any other good reason why no action should be taken in relation to the complaint?**

If the answer is **yes**: “The matter is not considered to warrant further action because [and state the reason].”

**Circumstances in which decisions may be to take action short of investigation ("other action")**

7. When the Panel considers a new complaint, it can decide that other action to an investigation should be taken and it can refer the matter to the Monitoring Officer to carry this out. It may not always be in the interests of good governance to undertake or complete an investigation into an allegation of misconduct. The Panel must consult its Monitoring Officer before reaching a decision to take other action.

8. The suitability of other action is dependent on the nature of the complaint. Certain complaints that a member has breached the Code will lend themselves to being resolved in this way. They can also indicate a wider problem at the Council or Parish Council. Deciding to deal pro-actively with a matter in a positive way that does not involve an investigation can be a good way to resolve matters that are less serious. Other action can be the simplest and most cost effective way of getting the matter resolved, helping the Council or Parish Council to work more effectively, and of avoiding similar complaints in the future.

9. The Panel can choose this option in response to an individual complaint or a series of complaints. The action decided upon does not have to be limited to the subject member or members. In some cases, it may be less costly to choose to deal with a matter in this way rather than through an investigation, and it may produce a more effective result.

10. It is not possible to set out all the circumstances where other action may be appropriate, but an example could be where the Council or Parish Council appeared to have a poor understanding of the Code and related procedures. Evidence for this may include:

- (a) a number of members failing to comply with the same paragraph of the Code;
- (b) officers giving incorrect advice;
- (c) failure to adopt the Code;
- (d) inadequate or incomplete protocols for use of authority resources.

11. Other action may also be appropriate where a breakdown in relationships within the Council or Parish Council was apparent, evidence of which could include:

- a) a pattern of allegations of disrespect, bullying or harassment;
- b) factionalised groupings within the Council or Parish Council;

- c) a series of 'tit-for-tat' allegations;
- d) ongoing employment issues, which may include resolved or ongoing employment tribunals, or grievance procedures.

12. The Panel is encouraged to consider other action on a practical basis, taking into account the needs of the Council and the Parish Council. Everyone involved in the process will need to understand that the purpose of other action is not to find out whether the member breached the Code – the decision is made as an alternative to investigation. If the Monitoring Officer embarks on a course of other action, he should emphasise to the parties concerned that no conclusion has been reached on whether the subject member failed to comply with the Code.

13. Complaints that have been referred to the Monitoring Officer for other action should not then be referred back to the Panel if the other action is perceived to have failed. This is unfair to the subject member, and a case may be jeopardised if it has been discussed as part of a mediation process. There is also a difficulty with defining 'failure' in terms of the other action undertaken. The decision to take other action closes the opportunity to investigate and the Panel should communicate this clearly to all parties.

14. Accordingly the normal practice of the Panel will be to require the parties involved to confirm in writing that they will co-operate with the process of other action proposed before making the final decision to proceed. If it adopts this approach, the Panel will write to the relevant parties outlining:

- (a) what is being proposed;
- (b) why it is being proposed;
- (c) why they should co-operate;
- (d) what the standards committee hopes to achieve.

15. Whatever approach to other action that the Panel adopts, it will ensure that all parties are clear about what is, and what is not, going to happen in response to the complaint.

16. The following are some examples of alternatives to investigation:

- (a) arranging for the subject member to attend a training course;
- (b) arranging for that member and the complainant to engage in a process of conciliation;
- (c) instituting changes to the procedures of the Council or Parish Council if they have given rise to the complaint.

### **Circumstances in which decisions may be to refer the complaint to the Monitoring Officer for investigation**

17. If the Panel concludes that none of the above circumstances apply, it will refer the complaint to the Monitoring Officer for investigation, unless it considers that the circumstances warrant the referral of the complaint to the SBE, taking account of the criteria set out below.

### **Circumstances in which decisions may be to refer the matter to the SBE**

18. There will sometimes be issues in a case, or public interest considerations, which make it difficult for the Panel to deal with the case fairly and speedily. In such cases, the Panel may wish to refer a complaint to the SBE to be investigated by an ethical standards officer.

19. The Panel will take the following matters into account in deciding which cases to refer to the SBE in the public interest:

- (a) Does the Panel believe that the status of the member or members, or the number of members about whom the complaint is made, would make it difficult for the Panel to deal with the complaint? For example, is the member a group leader, elected mayor or a member of the Council's cabinet or standards committee?
- (b) Does the Panel believe that the status of the complainant or complainants would make it difficult for the Panel to deal with the complaint? For example, is the complainant a group leader, elected mayor or a member of the Council's cabinet or standards committee, the chief executive, the monitoring officer or other senior officer?
- (c) Does the Panel believe that there is a potential conflict of interest of so many members of the Panel and the Standards Committee that it could not properly monitor the investigation?
- (d) Does the Panel believe that there is a potential conflict of interest of the Monitoring Officer or other officers and that suitable alternative arrangements cannot be put in place to address the conflict?
- (e) Is the case so serious or complex, or involving so many members, that it cannot be handled locally?
- (f) Will the complaint require substantial amounts of evidence beyond that available from the Council or Parish Council's documents, its members or officers?
- (g) Is there substantial governance dysfunction in the Council or its Standards Committee?
- (h) Does the complaint relate to long-term or systemic member/officer bullying which could be more effectively investigated by someone outside the Council?
- (i) Does the complaint raise significant or unresolved legal issues on which a national ruling would be helpful?
- (j) Might the public perceive the Council to have an interest in the outcome of a case? For example if the Council could be liable to be judicially reviewed if the complaint is upheld.
- (k) Are there exceptional circumstances which would prevent the Council or its Standards Committee and Panels 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?

### **Circumstances in which complaints may be withdrawn**

20. There may be occasions when complainants ask to withdraw their complaints prior to the Panel having made decisions on them. In these circumstances, the Panel will decide whether to grant such requests.

21. The Panel will take into account any reasons put forward by the complainant in connection with a request to withdraw and, without limiting its discretion, the Panel will have regard to following considerations in particular:
- (a) Does the public interest in taking some action on a complaint outweigh the complainant's desire to withdraw it?
  - (b) Is a complaint such that action can be taken on it, for example an investigation, without the complainant's participation?
  - (c) Is there an identifiable underlying reason for the request to withdraw a complaint? For example, is there information to suggest that the complainant may have been pressured by the subject member, or an associate of theirs, to withdraw the complaint?

22. If the Panel decides that these questions are answered in the affirmative, it is less likely to allow a complaint to be withdrawn.

### **Multiple and vexatious complaints**

23. Unfortunately, a small number of people abuse the complaints process. Vexatious or persistent complaints or complainants can usually be identified through the following patterns of behaviour, which may become apparent in the complaints process:-

- (a) repeated complaints making the same, or broadly similar, complaints against the same member or members about the same alleged incident;
- (b) use of aggressive or repetitive language of an obsessive nature;
- (c) repeated complaints that disclose no potential breach of the Code;
- (d) where it seems clear that there is an ulterior motive for a complaint or complaints;
- (e) where a complainant refuses to let the matter rest once the complaints process (including the review stage) has been exhausted.

24. The Standards Committee's general policy is that people who make repetitive or vexatious complaints will be responded to in the ways set out in the Council's Corporate Complaints procedures. However, even where restrictions are placed on an individual's contact with the authority, the individual cannot be prevented from submitting a complaint. New allegations must still be considered as they may contain a complaint that requires some action to be taken.

25. Nevertheless, if the Panel has already dealt with substantially the same complaint by the same person and the Monitoring Officer does not believe that there is any new evidence, then any subsequent complaint will not be considered. The guiding principle is that the Panel will consider every new complaint that it receives in relation to the Code but it will not carry out more than one assessment and assessment review into a complaint from the same person which is basically the same complaint.

### **Complaints about members of more than one authority**

26. This section deals with the issue relating to what should happen if a complaint is made against an individual who is a member of more than one authority – often known as a dual-hatted member.

27. In such cases, the member may have failed to comply with more than one authority's Code. For example, an individual who is a member of the Council and of the Fire Authority could be the subject of complaints that they have breached the Codes of both authorities. As such, it would be possible for both the Assessment Panels of the both the authorities to receive complaints against the member.

28. Where a complaint is received about a dual-hatted member, the SCO should check if a similar allegation has been made to the other authority, or authorities, on which the member serves.

29. Decisions on which Assessment Panel should deal with a particular complaint must then be taken by the Assessment Panels themselves, following discussion with each other. They may take advice as necessary from the SBE.

30. This will allow for a cooperative approach, including sharing knowledge and information about local circumstances, and cooperation in carrying out investigations to ensure resources are used effectively.

### **Criteria for withholding from subject member a summary of the complaint**

31. If the Assessment Panel decides to take no action over a complaint, then as soon as possible after making the decision it must give notice in writing of the decision and set out clearly the reasons for that decision. Where no potential breach of the Code is disclosed, the Assessment Panel must explain in the decision notice what the allegation was and why they believe this to be the case. This notice must be given to the relevant parties, ie the complainant, the subject member, and the Parish Council's clerk if the subject member is a Parish Councillor.

32. If the Assessment Panel decides that the complaint should be referred to the Monitoring Officer or to the SBE, it must send a summary of the complaint to the relevant parties. It should state what the allegation was and what type of referral it made, for example whether it referred the complaint to the Monitoring Officer or to the SBE for investigation. The decision notice must not explain why a particular referral decision has been made. However, after it has made its decision, the Assessment Panel does not have to give the subject member a summary of the complaint, if it decides that doing so would be against the public interest or would prejudice any future investigation.

33. This could happen where it is considered likely that the subject member may intimidate the complainant or the witnesses involved. It could also happen where early disclosure of the complaint may lead to evidence being compromised or destroyed.



34. The Assessment Panel should take advice from the Monitoring Officer in deciding whether it is against the public interest to inform the subject member of the details of the complaint made against them. It should also take advice from the Monitoring Officer in deciding whether informing the subject member of the details of the complaint would prejudice a person's ability to investigate it.

35. The Monitoring Officer will need to help the Assessment Panel to consider the potential risks to the investigation. This is to determine whether the risk of the case being prejudiced by the subject member being informed of the details of the complaint at that stage may outweigh the fairness of notifying the subject member.

36. The Assessment Panel can use its discretion to give limited information to the subject member if it decides this would not be against the public interest or prejudice any investigation. Any decision to withhold the summary must be kept under review as circumstances change.

**Points in relation to Panel procedures for assessing / re-assessing complaints**

**Composition of Panels and conflicts of interest**

1. As required by the relevant Regulations, the Standards Committee has established two sub-committees:-
  - the Assessment Panel to carry out the initial assessment of complaints received by the Standards Committee and
  - the Assessment Review Panel to deal with any request the Standards Committee receives from a complainant to review its decision to take no action in relation to a complaint.
2. The Assessment Panel and the Assessment Review Panel will each consist of three members of the Standards Committee (the minimum number for Panels). This will include at least one independent person.
3. If a complaint relates to a member of the Parish Council, the assessment Panel or Assessment Review Panel will include in its number a member of the Parish Council.
4. The Assessment Panel and the Assessment Review Panel will be chaired by an independent person.
5. As neither of the Panels is required to have fixed membership or a fixed chair, the Committee Administrator, consulting the Chairman of the Standards Committee as appropriate, will arrange attendance in accordance with the availability of members of the Standards Committee and any other relevant factors such as actual or potential conflicts of interest.
6. In certain situations, a Panel member might initially be involved with the assessment or assessment review of a case that is then referred to the SBE or to the Monitoring Officer. The case might then be referred back to the Panel to consider again. In such circumstances, the member may continue their participation in the assessment/assessment review process.
7. However, Panel members who have been involved in decision making on the initial assessment of a complaint must not take part in the review of that decision. This is to minimise the risk of conflicts of interest and ensure fairness for all parties.
8. Standards Committee members involved in a complaint's initial assessment, or in an assessment review can take part in any subsequent determination hearing. The purpose of the initial assessment decision or assessment review is simply to decide whether any action should be taken on the complaint – either as an investigation or some other action. The Assessment and Assessment Review Panels make no findings of fact.

Therefore, a member involved at the initial stage or the review stage may participate in a subsequent hearing, because a conflict of interest does not automatically arise.

9. The assessment/assessment review processes must be conducted with impartiality and fairness. In some cases a member of the Standards Committee may be disqualified by law from being involved in a case, for example because of a personal and prejudicial interest under the Code. There will also be cases where it would not be appropriate for a member of the Standards Committee to be involved in the processes, even if not disqualified from doing so by law. A member of the Standards Committee should not participate in the processes on either Panel if he/she is

- (a) a complainant,
- (b) closely associated with someone who is a complainant,
- (c) a potential witness or victim relating to a complaint or
- (d) otherwise directly or indirectly connected with a complaint.

10. Regulations give authorities new power to appoint anyone who is an independent person serving on the Standards Committee of another authority to their own Standards Committees. The Monitoring Officer has been given authority by the Standards Committee to exercise this power in order to appoint additional independent persons to serve on the Council's Assessment Panel and Assessment Review Panel. The power will be exercised to make temporary appointments to deal with particular complaints, for example if the independent persons on the Council's Standards Committee were unavailable or conflicted out of a particular case.

### **Access to meetings and decision making**

11. Initial assessment decisions, and any subsequent review of decisions to take no further action on a complaint must be conducted in closed meetings. These are not subject to the notice and publicity requirements under the Local Government Act 1972.

12. Such meetings may have to consider unfounded and potentially damaging complaints about members, which it would not be appropriate to make public. As such, Assessment and Assessment Review Panels are not subject to the following rules:-

- (a) rules regarding notices of meetings;
- (b) rules on the circulation of agendas and documents;
- (c) rules over public access to meetings;
- (d) rules on the validity of proceedings.

13. Instead, the Panels will comply with Regulation 8 of the Regulations, which sets out what must be done after a Panel has considered a complaint. The Regulations require a written summary to be produced which must include:-

- (a) the main points considered
- (b) the conclusions on the complaint
- (c) the reasons for the conclusion

14. The summary must be written having regard to the SBE's guidance and may give the name of the subject member unless doing so is not in the public interest or would prejudice any subsequent investigation.

15. The written summary must be made available for the public to inspect at the Council's offices for six years and given to the Parish Council if concerned in the case. The summary does not have to be available for inspection or sent to the Parish Council until the subject member has been sent the summary and usually the summary will be sent to the subject member before such action is taken.

16. In limited situations, a Panel can decide not to give the written summary to the subject member when a referral decision has been made. If this is the case, public inspection and Parish Council notifications will usually occur when the written summary is eventually given to the subject member during the investigation process. (See section 3 which contains further details of the notification requirements in relation to decisions of the Panels.)

### **Confidentiality of the complainant**

17. As a matter of fairness and natural justice, a member should usually be told who has complained about them. However, there may be instances where the complainant asks for their identity to be withheld. Such requests should only be granted in exceptional circumstances and at the discretion of the Panels. The Panels should consider the request for confidentiality alongside the substance of the complaint itself.

18. The criteria by which the Panels will consider requests for confidentiality will include the following:-

- (a) The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed;
- (b) The complainant is an officer who works closely with the subject member and they are afraid of the consequences to their employment or of losing their job if their identity is disclosed (this should be covered by the authority's whistle-blowing policy);
- (c) The complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed. In such circumstances, the Panels may wish to request medical evidence of the complainant's condition.

19. In certain cases, such as allegations of bullying, revealing the identity of the complainant may be necessary for investigation of the complaint. In such cases the complainant may also be given the option of requesting a withdrawal of their complaint.

20. When considering requests for confidentiality, the Panels will also consider whether it is possible to investigate the complaint without making the complainant's identity known.

21. If a Panel decides to refuse a request by a complainant for confidentiality, it may wish to offer the complainant the option to withdraw, rather than proceed with their identity being disclosed. In certain circumstances, the public interest in proceeding with an investigation may outweigh the complainant's wish to have their identity withheld from the subject member. The Panel will decide where the balance lies in the particular circumstances of each complaint.

### **General**

22. Other points about the Panel procedures are incorporated in the Section 3.

**Monitoring by Standards Board for England**

1. The SBE has not as yet specified what information it will require from the Council in carrying its function as a regulator.
2. The SCOs have, however, make a number of assumptions about the data and monitoring information likely to be required and also that which it is likely the Council will find useful for its own purposes to collect.
3. It is therefore proposed that the Standards and Complaints Team will record details of:
  - Numbers of complaints received;
  - Decisions and outcomes, including requests for reviews;
  - Compliance with timescales;
  - Paragraphs of the Code that have accounted for complaints and frequency they arise;
  - Any emerging patterns of behaviour or themes arising from complaints received;
  - Sources of complaint, that is other members, members of the public etc;
  - Equalities monitoring data.
4. This information will be included in regular 'Complaints Update' reports to the Standards Committee.

## **Annexes A and B**

### **Standards Board for England publications**

**Annex A – Extract from Bulletin 38, summarising the Standards Committee (England) Regulations 2008**

**Annex B – Guidance – Local Assessment of Complaints**

These papers will be circulated as separate documents to members of the Standards Committee.





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Welcome to Issue 38 of the *Bulletin*.

Local assessment has arrived. From 8 May 2008, the new, more locally-based standards framework gives standards committees responsibility for the initial assessment of all allegations that a member of their authority may have breached the Code of Conduct. It also gives them responsibility for any subsequent investigations, decisions and sanctions. This is except where cases cannot be handled locally because of their seriousness, conflicts of interest or other public interest reasons.

Detailed regulations prescribe how the revised standards framework will work in practice. We use this *Bulletin* to summarise, in detail, the content of the Standards Committee (England) Regulations 2008. I hope that you find this useful.

As we set out in the last *Bulletin*, the Standards Board has been working hard to produce comprehensive guidance on the new standards framework. Now that the government has confirmed the detail of the regulations, we are reviewing and completing this guidance to make the transition to the new system as smooth as possible for authorities. We have already published a toolkit of template documents on our website to assist you with the local assessment of complaints. We will publish our local assessment guidance on the website by 8 May 2008.

Finally, I am sad to say that this is my final *Bulletin*, as I retire as Chief Executive of the Standards Board in June. My successor, Glenys Stacey, started work in April and looks forward to meeting as many of you as possible. I leave at an exciting time, as the responsibility for upholding high standards of member conduct moves to the heart of local government. I know that you will rise to the challenge. I would like to thank all of you for your commitment and hard work during my time at the Standards Board. It has been a pleasure working with you and I wish you every success in the operation of the new arrangements.



**David Prince**  
Chief Executive

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## **Standards Committee (England) Regulations 2008: A summary**

The following article summarises in detail the content of the Standards Committee (England) Regulations 2008.

### **Composition of standards committees**

At least 25% of a standards committee must be made up of independent members. No more than one member of an authority's standards committee can be a member of the executive.

Where an authority must have parish representatives it must now ensure that it has at least two who are not also members of the authority. Previously one was enough.

### **Appointments to standards committees**

Normally, a person cannot be appointed as an independent member of a standards committee unless:

- the appointment is approved by a majority of the members of the authority
- the appointment is advertised in a local newspaper circulating in the area
- the person has submitted an application to the authority
- the person has not been a member or officer of the authority within the previous five years and is not a relative or close friend of a member or officer of the authority

The new regulations do not change this, but add that advertisements can be placed in any other publications or websites the authority considers appropriate.

However, they do provide that a person who is an independent member of one standards committee may be appointed as an independent

member of another. This is unless they have been a member or officer of it in the preceding five years or are a relative or close friend of a member or officer of that authority.

An independent member of another authority can be appointed for a specific period of time. Alternatively, they can be appointed to deal with a particular allegation or set of allegations against a member. The term of office of such an independent member can then be fixed accordingly.

An authority can adopt whatever procedures it thinks fit to appoint such independent members and members of parish councils. It must consider the Standards Board for England's standards committee guidance, to be published in May, when making these appointments.

Where a person who is appointed as an independent person becomes a member or officer of any authority, or becomes a relative of a member or officer of that authority, they can no longer be a member of the standards committee.

### **Sub-committees of standards committees**

The standards committee of an authority must appoint a sub-committee chaired by an independent member to carry out initial assessments of allegations. This is under Section 57A of the Local Government Act 2000.

It must also appoint a sub-committee chaired by an independent member to carry out reviews under Section 57B of the Local Government Act 2000. If the standards committee appoints a sub-committee to hold hearings, that sub-committee must be chaired by an independent member. Nothing in the regulations requires a sub-committee of a standards committee to have fixed membership or chairmanship.

## Validity of proceedings

For a meeting of the standards committee to be valid at least three members must be present, one of whom must be an independent member. The independent member must chair the meeting. For a meeting of a standards committee sub-committee to be valid at least three members of the standards committee must be present, including normally at least one elected member and one independent member. In either case, if parish issues are being discussed, one of the three members present must be a parish representative. An independent member must usually chair a sub-committee meeting.

No member who took part in the initial assessment of an allegation can attend a sub-committee meeting that is considering a review of a decision to take no further action on a matter.

At least one parish or town council representative must attend a standards committee meeting, or a standards committee sub-committee meeting, convened to consider a matter relating to a member of a parish or town council.

## Application of the Local Government Act 1972

The existing rules about publicity and access to documents apply, except that initial assessment hearings and reviews are excluded from the scope of Part VA of the Local Government Act 1972. They are replaced with the following requirements:

- After the meeting, the sub-committee must produce a written summary. The written summary must record the main points considered, the conclusions reached and the reasons for them. It must be prepared having considered the Standards Board for England's standards committee guidance, which is to be published in May.

- The sub-committee may also give the name of any member subject to allegations unless such disclosure is not in the public interest or would prejudice any investigation. The record must be available for inspection by members of the public at the offices of the authority for six years after the meeting and must be given to any parish or town council involved.

## Written allegations

Standards committees must publish details of the address or addresses that written allegations should be sent to. Standards committees themselves can choose how they do this. They must also take reasonable steps to ensure that the public are kept aware of address details and that any changes to them are published promptly.

In addition, standards committees must publish details of the procedures they will follow.

A standards committee must take account of relevant guidance issued by the Standards Board when complying with these obligations.

## Modification of duty to provide written summaries to members subject to allegations

Under Section 57C(2) of the Local Government Act 2000, a standards committee must take reasonable steps to give a written summary of the complaint to the member subject to the allegation. The new regulations provide that this duty does not arise if the standards committee decides that giving a written summary would be contrary to the public interest. Standards committees also need not provide a written summary if it would prejudice any person's ability to investigate the allegation.

The standards committee must take account of any guidance issued by the Standards Board when reaching a decision. It may also consider any advice received from the monitoring officer or any ethical standards officer concerned.

Once the monitoring officer or ethical standards officer has advised the standards committee that it would no longer be against the public interest or prejudicial to any investigation, a written summary must be provided. In any event this must be done before any consideration by the standards committee or sub-committee of a report or recommendation from a monitoring officer or ethical standards officer about that allegation.

### Modification of Section 63 of the Local Government Act 2000

Section 63 of the Local Government Act 2000 has been modified so that the confidentiality requirements in that section are applied to information gathered by the monitoring officer in the course of an investigation. The monitoring officer can disclose this information if it is for the purposes of carrying out their functions under the legislation, or for enabling a standards committee, a sub-committee or an appeals tribunal to do so.

### Referral of matters to a monitoring officer for other action

There may be occasions where a matter is referred to a monitoring officer by a sub-committee of a standards committee or an ethical standards officer, with a direction to take steps other than carry out an investigation. The sub-committee can only make such a referral after consulting the monitoring officer. Other action can include arranging training, conciliation or anything else that appears appropriate.

The monitoring officer must submit a written report to the sub-committee or ethical standards officer within three months, giving details of what action has been taken or is proposed to be taken. If the standards committee is not satisfied with the action specified in the report, it must give a further direction to the monitoring officer.

If the ethical standards officer concerned is not satisfied with the action specified in the report, they may ask the monitoring officer to publicise a statement. This statement should be published in at least one newspaper circulating in the area of the authority concerned. This should give details of the direction given by the ethical standards officer, the reasons why the ethical standards officer is dissatisfied with the action taken, and the monitoring officer's response to those reasons.

### Referral of matters to a monitoring officer for investigation

Where a matter is referred to the monitoring officer for investigation, the monitoring officer must inform the following parties that the matter has been referred for investigation:

- any member subject to an allegation
- the person who made the allegation
- the standards committee of any other authority concerned
- any parish or town council or other authority concerned

The monitoring officer must also consider any relevant guidance issued by the Standards Board, and must comply with any relevant direction given by it.

The monitoring officer can make enquiries of anyone and require them to provide information or explanations that the monitoring officer thinks necessary. In addition, they may require any of the authorities concerned to provide advice and assistance as reasonably needed, and, except for parish and town councils, to meet the reasonable costs of doing so.

If any of the authorities concerned is a parish council, the monitoring officer may require its responsible authority to meet any reasonable costs it incurs. The monitoring officer may also require any of the authorities concerned to allow reasonable access to documents they possess,

which the monitoring officer may find necessary to conduct the investigation.

Following an investigation, a monitoring officer must make one of the following findings:

- Finding of failure – there has been a failure to comply with the Code of Conduct of the authority concerned or, as the case may be, of any other authority concerned.
- Finding of no failure – there has not been a failure to comply with the Code of Conduct of the authority concerned or, as the case may be, of any other authority concerned.

The monitoring officer must prepare a written report concerning the investigation and findings. They must then send that report to the member subject to the allegation and refer the report to the standards committee. The report can also be sent to any other authority that the member belongs to, if they request it. The monitoring officer must refer the report to the standards committee in instances where an investigation report is sent to the monitoring officer by an ethical standards officer.

**References back from the monitoring officer**

In cases referred to a monitoring officer for investigation after an initial assessment, the monitoring officer can refer that matter back to the standards committee concerned if:

- 1) as a result of new evidence or information, the monitoring officer believes both of the following:
  - The matter is materially more or less serious than may have seemed apparent to the standards committee when it made its decision on the initial allegation.
  - The standards committee would have made a different decision had it been

aware of that new evidence or information.

- 2) the member subject to the allegation has died, is seriously ill or has resigned from the authority concerned, and the monitoring officer believes that it is consequently no longer appropriate to continue with an investigation

If a matter is referred back to a sub-committee under this regulation, the sub-committee must make a decision as if the matter had been referred to it for initial assessment. It can remove the ability of the monitoring officer to refer the matter back again.

**Consideration of reports by standards committee**

Where a monitoring officer refers a report to the standards committee of any authority, it must consider that report and make one of the following findings:

- Finding of acceptance – it accepts the monitoring officer’s finding of no failure to comply with the Code of Conduct.
- The matter should be considered at a hearing of the standards committee.
- The matter should be referred to the Adjudication Panel for England for determination.

A standards committee can only refer a case to the Adjudication Panel if:

- 1) it decides that the action it could take against the member would be insufficient were a finding of failure to be made
- 2) the President or Deputy President of the Adjudication Panel has agreed to accept the referral

The standards committee must give written notice of a finding of acceptance to the parties involved, as soon as possible after making it. It must arrange for the decision to be published in at least one local newspaper and, if the committee deems it appropriate, on its website and any other publication. If the member subject to the allegation requests that the decision not be published, then the standards committee must not publish it anywhere.

### Hearings by a standards committee

A standards committee can conduct a hearing using whatever procedures it considers appropriate in the circumstances. But the meeting must be conducted with regard to relevant guidance issued by the Standards Board.

The hearing must be held within three months of the date of which the monitoring officer has received a report referred by an ethical standards officer or the date that the report is completed, if it was prepared by the monitoring officer.

If it cannot be held within three months of the above, it must be held as soon as possible thereafter.

The hearing must not be held until at least 14 days after the date that the monitoring officer sent the report to the member subject to the allegation, unless the member concerned agrees to the hearing being held earlier.

Any member who is the subject of a report being considered by the standards committee must be given the opportunity to present evidence and make representations at the hearing orally. Alternatively, they can make representations in writing, personally or through a representative. The representative can be a barrister, solicitor or, with the consent of the standards committee, anyone else.

A standards committee may arrange for witnesses that it thinks appropriate to attend and a member subject to an allegation may arrange to call any number of witnesses. It may also place a limit on the number of witnesses a member calls if it believes that the number is unreasonable.

If the member subject to the allegation fails to attend a hearing, the standards committee may make a decision in their absence. This is unless it is satisfied that there is sufficient reason for the member subject to the allegation failing to attend. It may alternatively adjourn the hearing to another date.

A standards committee may, at any stage prior to the conclusion of the hearing, adjourn the hearing and require the monitoring officer to seek further information. Alternatively, it may require the monitoring officer to carry out further investigation on any point it specifies. However, the standards committee cannot adjourn the hearing more than once.

If a standards committee receives a report from an ethical standards officer, it may adjourn the hearing at any stage before it concludes, and refer it back to the ethical standards officer for further investigation. It must set out its reasons for doing this.

The ethical standards officer must respond to the request within 21 days and can accept or refuse it. If the request is refused, the standards committee must continue the hearing within three months or as soon as possible thereafter.

### Standards committee findings

Following a hearing, a standards committee will make one of the following findings about the member subject to the allegation:

- The person had not failed to comply with the Code of Conduct.

- The person had failed to comply with the Code of Conduct but that no action needs to be taken.
- The person had failed to comply with the Code of Conduct and that a sanction should be imposed.

If the member subject to the allegation is no longer a member of any authority, the committee can only censure that person. Otherwise, it must impose any one or a combination of the following sanctions:

- Censure.
- Restriction for up to a maximum of six months of that member’s access to the premises and/or resources of the authority. This is provided that any such restrictions are reasonable and proportionate to the nature of the breach, and do not unduly restrict the person’s ability to perform their functions as a member.
- Partial suspension of that member for up to a maximum of six months.
- Suspension of that member for up to a maximum of six months.
- A requirement that the member submit a written apology in a form specified by the standards committee.
- A requirement that the member undertake training as specified by the standards committee.
- A requirement that the member undertake conciliation as specified by the standards committee.
- Partial suspension of the member for up to a maximum of six months or until such time as the member submits a written apology in a form specified by the standards committee.

- Partial suspension of the member for up to a maximum of six months or until such time as the member undertakes any training or conciliation specified by the standards committee.
- Suspension of the member for up to a maximum of six months or until such time as the member submits a written apology in a form specified by the standards committee.
- Suspension of the member for up to a maximum of six months or until such time as that member undertakes such training or conciliation as the standards committee specifies.

Normally any sanction imposed must start immediately following its imposition. However, the standards committee can decide that any sanction will start on any specified date up to six months after the imposition of that sanction.

### Notification of standards committee findings

The notification provisions under the new regulations are similar to the ones under the previous regulations. All interested parties, including the Standards Board, should be notified of a decision along with the reasons for it. The standards committee must arrange for a notice to be published in a local newspaper and, if the committee thinks it appropriate, on its website and any other publication. If the member concerned is found not to have failed to comply with the Code of Conduct, a summary must not be published anywhere if the member so requests.

Where the standards committee finds that the member has failed to comply with the Code, the notice to the member concerned must include the right to appeal in writing against the decision to the President of the Adjudication Panel for England.

### Appeals

The member who is the subject of a finding can

ask for permission to appeal within 21 days of receiving notification of the committee’s decision. They can also apply for the suspension of any sanction imposed until such time as any appeal is decided.

Any appeal must specify whether the appeal is against the finding or the sanction or both. It must also specify:

- the grounds of the appeal
- whether any application for suspension of any sanction is made
- whether the person consents to the appeal being dealt with in writing only

The application for permission to appeal or to suspend a sanction will be decided by the President of the Adjudication Panel for England. In the absence of the President this will be decided by the Deputy President, unless they consider that special circumstances render a hearing desirable.

If permission is refused, or if a suspension of a sanction is not granted, the notice given to the member concerned will give the reasons.

The conduct of appeals, the composition of appeals tribunals and the procedures to be followed are essentially the same as under the previous regulations.

### Outcome of appeals

Where an appeals tribunal dismisses a standards committee’s finding, the committee’s decision, including any sanction imposed, will cease to have effect from the date of the dismissal.

Where an appeals tribunal upholds the finding of a standards committee that there has been a breach of the Code of Conduct but that no sanction should be imposed, it may confirm the committee’s decision to impose no sanction. Alternatively, it may impose any sanction which was available to that standards committee.

Where an appeals tribunal upholds a standards committee’s finding, or part of a finding, that there has been a breach of the Code of Conduct, it may confirm any sanction imposed by that committee. Alternatively, it may substitute any other sanction which was available to that standards committee.

Normally any sanction imposed must start immediately following its imposition by the appeals tribunal. However, an appeals tribunal can decide that any sanction imposed should start on any specified date up to six months after the imposition of that sanction.

The appeals tribunal must arrange for a summary of its decision to be published in one or more newspapers circulating in the area of the authorities concerned.

### Complaints from the public

As local authorities prepare to receive and assess complaints about member conduct, we are passing on our advice about dealing with complaints from members of the public. Although these formed the majority of the complaints we received, the fact that most members of the public are not specialists in local government, the Code of Conduct or in making a complaint means that they will need support.

Our experience suggests that if members of the public do not understand the process, including the possible or likely outcomes if their complaint is upheld, then they are more likely to be unhappy about the outcomes of cases. Feedback we have received also suggests that not all local authorities are making information readily available on how to make a complaint. This will be a statutory requirement from May this year.

In short, our key recommendations based on our experience of dealing with complaints from the public are:



- Complaint materials should be easily available and the complaint process should be made very clear from the start.
- Complaint materials and responses to complaints need to be clear and concise. They should explain exactly what can and cannot be done, including an outline of the powers available.
- Complaint materials should assume complainants are unfamiliar with how to make a complaint, the Code of Conduct and the authority's complaint process.

### **Update on the new local reporting system**

In the last issue of the *Bulletin* we provided a brief overview of the new reporting mechanism that monitoring officers will use to notify us about local activity relating to the standards framework each quarter.

We aim to launch the system on 8 May 2008. To ensure that it works well, we have recently carried out some external testing. We advertised for volunteers in the ACSeS (Association of Council Secretaries and Solicitors) bulletin and were delighted by the number of monitoring officers who got in touch and expressed an interest.

Each volunteer was asked to submit a mock quarterly return using real, but anonymised, case information and to report back on their experience. The exercise has proven invaluable and the feedback has been encouraging. Aside from some issues with speed that are being attended to, monitoring officers have confirmed that the system is easy to use and that the questions being asked are clear and understandable.

The next stage for us is to implement some of the tweaks and improvements suggested by our external testers and to compile a user guide to accompany the system launch documentation.

All monitoring officers will be contacted via email ahead of the introduction of the new system, with information about how to log on and instructions about how and when to submit their return.

In addition to the user guide, we plan to provide telephone and email support to monitoring officers who are making information returns. This will ensure that the process is as uncomplicated and painless as possible.

### **Forthcoming event**

#### **The National Association of Local Councils Conference 2008**

Winter Gardens, Eastbourne  
Tuesday 20 to Thursday 22 May 2008

At this year's National Association of Local Councils (NALC) event, we will have policy staff on hand to answer your questions at exhibition stand four.

Our new Chief Executive Glenys Stacey, and independent Board Member Councillor Shirley Flint, will also be delivering a presentation and answering questions.

### **Press toolkit**

The Standards Board's press office is preparing a toolkit to help local authority press offices deal with media interest in referrals, investigations and hearings once the local framework comes into effect.

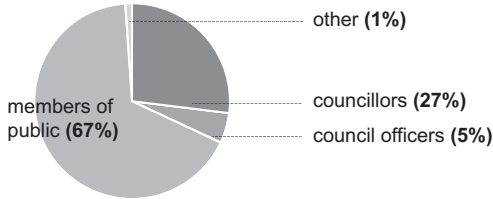
It will include advice on how to publicise the changes in the ethical framework, raise awareness of standards committees' work, and offer help on dealing with enquiries about complaints and investigations reactively. The toolkit will also include FAQs, guidelines, templates for press releases and best practice advice. The toolkit is currently being drafted in light of the regulations, and will be issued directly to local authority press offices.

## Referral and investigation statistics

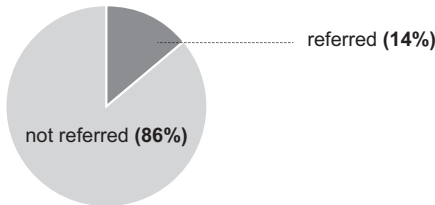
The Standards Board for England received 3,624 allegations between 1 April 2007 and 31 March 2008, compared to 3,549 during the same period in 2006-2007.

The following charts show referral and investigation statistics during the above dates.

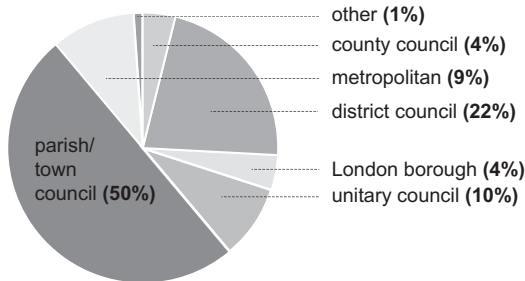
Source of allegations received



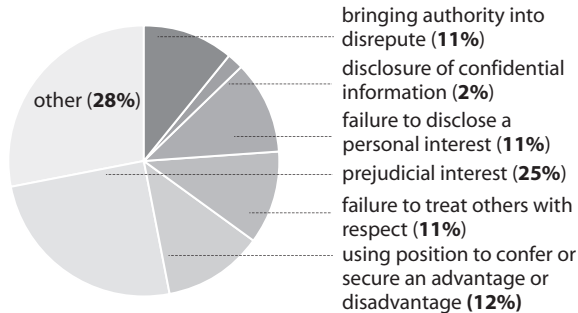
Allegations referred for investigation



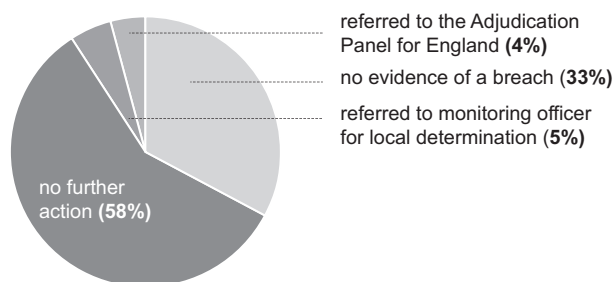
Authority of subject member in allegations referred for investigation



Nature of allegations referred for investigation



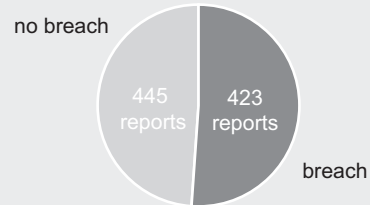
Final findings



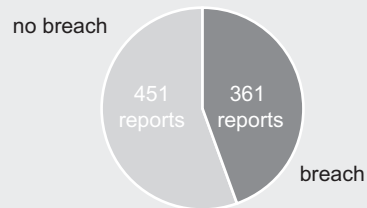
## Local investigation statistics

For the period 1 April 2007 to 31 March 2008, ethical standards officers referred 291 cases for local investigation, which is 55% of all cases referred for investigation. Since 1 April 2007 there have been eight appeals to the Adjudication Panel for England following standards committee hearings. Since November 2004 we have referred 1,097 cases for local investigation – please see below for a statistical breakdown of the cases that have been determined.

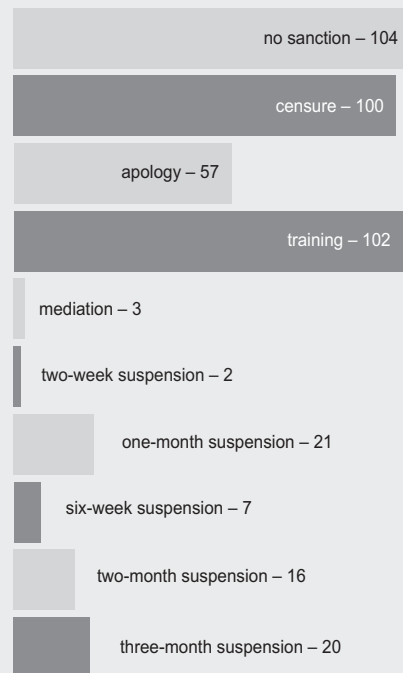
Monitoring officers' recommendations following local investigations



Standards committee hearings



Standards committee determinations



# LOCAL ASSESSMENT OF COMPLAINTS

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- assessment
- decision
- review
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# introduction

This guidance is designed to help members and officers in relevant authorities who are involved in the assessment of complaints that a member may have breached the Code of Conduct.

It details each stage of the assessment of complaints and offers suggestions for effective practice. In addition, it provides a toolkit of useful document templates that may be used or adapted by authorities as required.

The guide is aimed primarily at members of standards committees and monitoring officers, but will also provide a useful reference tool for all members and officers involved in the assessment of complaints.

It applies to:

- district, unitary, metropolitan, county and London borough councils
- English police authorities
- fire and rescue authorities (including fire and civil defence authorities)
- the London Fire and Emergency Planning Authority
- passenger transport authorities
- the Broads Authority
- national park authorities
- the Greater London Authority
- the Common Council of the City of London
- the Council of the Isles of Scilly

Each authority must develop effective procedures to fulfil its legislative requirements. Members and officers involved in the assessment of complaints must take this guidance into account when doing so.

You can contact the Standards Board for England on **0845 078 8181** or email **[enquiries@standardsboard.gov.uk](mailto:enquiries@standardsboard.gov.uk)**

# introduction

## Regulations

The Standards Board for England has issued this guidance to reflect the Standards Committee (England) Regulations 2008 (the regulations) in respect of the local assessment of complaints. These regulations derive from the Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007.

The regulations set out the framework for the operation of a locally based system for the assessment, referral, investigation and hearing of complaints of member misconduct. Under the regulations, standards committees must take this guidance into account.

The regulations do not cover joint working between authorities. The government plans to issue more regulations to provide a framework for authorities to work jointly on the assessment, referral, investigation and hearing of complaints of misconduct by their members.

## Background

More than 100,000 people give their time as members of authorities. The majority do so with the very best motives, and they conduct themselves in a way that is beyond reproach. However, public perception tends to focus on a minority who in some way abuse their positions or behave badly.

Anyone who considers that a member may have breached the Code of Conduct may make a complaint to that member's local

standards committee. Each complaint must then be assessed to see if it falls within the authority's legal jurisdiction. A decision must then be made on whether some action should be taken, either as an investigation or some other form of action.

When a matter is referred for investigation or other action, it does not mean that the committee assessing the complaint has made up its mind about the allegation. It simply means that the committee believes the alleged conduct, if proven, may amount to a failure to comply with the Code and that some action should be taken in response to the complaint.

The process for dealing with matters at a local level should be the same for all members. It must be fair and be seen to be fair.

## Responsibilities

The assessment of complaints that a member may have breached the Code of Conduct is a new function for standards committees. It was previously undertaken centrally by the Standards Board for England.

Where a member is the subject of an allegation, we shall refer to that member as a **subject member**.

We shall use the term **independent member** to describe a person – not a member or officer of that or any other relevant authority – who is appointed to an authority's standards committee. Independent members work with the

## 4 LOCAL ASSESSMENT OF COMPLAINTS

# introduction

authority to develop and maintain standards of conduct for members and are appointed under Section 53 of the Local Government Act 2000 and Regulation 5 of the regulations. At least 25% of the members of a standards committee must be independent members.

In order to carry out its functions efficiently and effectively, the standards committee must establish sub-committees. Creating sub-committees will allow the separate functions involved in the handling of cases to be carried out without conflicts of interest. These functions are:

- the **initial assessment** of a complaint received by the standards committee
- any **request** a standards committee receives from a complainant **to review its decision to take no action in relation to a complaint**

The standards committee must establish a sub-committee which is responsible for assessing complaints that a member may have breached the Code. We shall refer to this as the **assessment sub-committee**.

The assessment sub-committee will need to consist of no less than three members of the standards committee, including an independent member. They must also be chaired by an independent member. A complainant may make a request for a review of a standards committee's decision where it decides to take no further action on a complaint. The standards committee must establish a sub-committee which is responsible for carrying out these reviews.

We shall refer to this as the **review sub-committee**.

This committee will also need to consist of no less than three members of the standards committee, including an independent member. They must also be chaired by an independent member.

There should be a minimum of three independent members on the standards committee to ensure that there is an independent member available without a conflict of interest for both the assessment and review sub-committees.

The standards committee can then effectively carry out these statutory functions, allowing for the situation of one independent member of the standards committee being absent or unavailable.

If the authority is responsible for any parish or town councils there should also be a minimum of three parish or town council representatives on the standards committee. This will ensure that there is a parish or town council representative available without a conflict of interest for both the assessment and review sub-committees when a complaint is considered about a member of a parish or town council.

The assessment and review sub-committees are not required to have fixed membership or a fixed chair.

Standards committee members who have been involved in decision making on the initial assessment of a complaint must not





# introduction

take part in the review of that decision. This is to minimise the risk of conflicts of interest and ensure fairness for all parties.

Standards committee members involved in a complaint's initial assessment, or in a review of a standards committee's previous decision to take no further action, can take part in any subsequent standards committee hearing.

The purpose of the initial assessment decision or review is simply to decide whether any action should be taken on the complaint – either as an investigation or some other action. The assessment and review sub-committees make no findings of fact. Therefore, a member involved at the initial stage or the review stage may participate in a subsequent hearing, because a conflict of interest does not automatically arise.

# pre-assessment

## Publicising the complaints system

Each authority is required to publish a notice detailing where Code of Conduct complaints should be sent to. This is to ensure that members of the public are aware of the change of responsibility for handling Code complaints and what the process entails. If an authority is responsible for parish and town councils, the notice should make this clear.

The complaints system may be publicised through:

- an authority's website
- advertising in one or more local newspapers
- an authority's own newspaper or circular
- notices in public areas such as local libraries or authority reception areas

It is important that the public notice reaches as many people as possible so that members of the public know how to complain if necessary.

The standards committee must also continue to publicise regularly the address that misconduct complaints should be sent to. In addition, the standards committee needs to alert the public to any changes in such arrangements.

Authorities need to think carefully about how publicity for their complaints system is worded. This is to ensure that members of the public are clear about how to complain, who to complain to, and if there may be an alternative to a formal complaint to the standards committee.

Authorities should also consider whether their constitution requires an amendment to reflect the introduction of the local assessment of complaints. The constitution should make it clear that the citizen's right is to complain to the local standards committee and not to the Standards Board for England.

The standards committee must publish, in whatever manner it considers appropriate, details of the procedures it will follow in relation to any written allegation received about a member.

## The submission of complaints and accessibility

There are two main ways in which authorities can set up procedures for the submission of complaints that a member may have breached the Code of Conduct:

- Authorities may choose to integrate the making of Code complaints into the existing complaints framework. This will mean that when a complaint is received, it can be analysed to decide which of the complaints processes is most appropriate. The authority can then advise the complainant accordingly.
- Authorities may choose to develop a separate process for Code complaints so the process for such complaints is distinct from all other complaints.

When deciding which option is most appropriate, authorities should consider that some complainants will not know where to direct their complaint.

## LOCAL ASSESSMENT OF COMPLAINTS 7

# pre-assessment

Some complaints may also need to be considered through more than one of an authority's complaint processes.

Officers dealing with incoming complaints will need to be alert to a complaint that a member may have breached the Code. If a written complaint specifies or appears to specify that it is in relation to the Code, then it should be passed to the assessment sub-committee for consideration.

Where an authority is responsible for parish and town councils, it should make this clear. It should also consider whether a separate complaint form or section of a complaint form should be used.

Where an existing complaint system is used, complaint forms may need to be amended to take into account complaints under the Code. Alternatively, authorities that choose to develop a separate system for the submission of Code complaints may produce a separate complaint form for this.

Without using a separate complaint form, authorities may find it sufficient to give clear guidelines as to the information that complainants need to provide.

This should include:

- the complainant's name, address and other contact details
- complainant status, for example, member of the public, fellow member or officer

- who the complaint is about and the authority or authorities that the member belongs to
- details of the alleged misconduct including, where possible, dates, witness details and other supporting information
- equality monitoring data if applicable, for example nationality of the complainant
- a warning that the complainant's identity will normally be disclosed to the subject member. **Note:** in exceptional circumstances, if it meets relevant criteria and at the discretion of the standards committee, this information may be withheld.

Complaints must be submitted in writing. This includes fax and electronic submissions. However, the requirement for complaints to be submitted in writing must be read in conjunction with the Disability Discrimination Act 2000 and the requirement to make reasonable adjustments.

An example of this would be in assisting a complainant who has a disability that prevents them from making their complaint in writing. In such cases, authorities may need to transcribe a verbal complaint and then produce a written copy for approval by the complainant or the complainant's representative.

Authorities should also consider what support should be made available to

## 8 LOCAL ASSESSMENT OF COMPLAINTS

# pre-assessment

complainants where English is not the complainant's first language.

When a complaint is addressed to the authority's monitoring officer, the monitoring officer should determine whether the complaint should be directed to the assessment sub-committee or whether another course of action is appropriate. If the complaint is clearly not about member conduct, then the monitoring officer does not have to pass it to the assessment sub-committee.

A complaint may not necessarily be made in writing, for example it may be a concern raised with the monitoring officer verbally. In such cases, the monitoring officer should ask the complainant whether they want to formally put the matter in writing to the standards committee. If the complainant does not, then the monitoring officer should consider the options for informal resolution to satisfy the complainant.

## **Acknowledging receipt of a complaint**

The monitoring officer has the discretion to take the administrative step of acknowledging receipt of a complaint and telling the subject member that a complaint has been made about them. When considering whether to do so, they should bear in mind the standards committee's procedures with regard to withholding summaries. Please see the section on **Notification requirements** on **page 18** for further information.

The notification can say that a complaint has been made, and state the name of the

complainant (unless the complainant has requested confidentiality and the standards committee has not yet considered whether or not to grant it) and the relevant paragraphs of the Code of Conduct that may have been breached. It should also state that a written summary of the allegation will only be provided to the subject member once the assessment sub-committee has met to consider the complaint, and the date of this meeting, if known.

If a monitoring officer chooses to tell a subject member, the monitoring officer will need to be satisfied that they have the legal power to disclose the information they choose to reveal. In particular, the monitoring officer will need to consider any of the restrictions set out in Section 63 of the Local Government Act 2000 and as modified by Regulation 12 of the regulations. These are the provisions which deal with restrictions on disclosure of information. Additionally, the impact of the Data Protection Act 1998 should be considered.

Only the standards committee has the power, under Section 57C(2) of the Local Government Act 2000, as amended, to give a written summary of the allegation to a subject member.

The administrative processes that the authority adopts should be agreed with the standards committee as part of the processes and procedures that they must publish.

# pre-assessment

## Pre-assessment reports and enquiries

Authorities may decide that they want the monitoring officer, or other officer, to prepare a short summary of a complaint for the assessment sub-committee to consider. This could, for example, set out the following details:

- whether the complaint is within jurisdiction
- the paragraphs of the Code of Conduct the complaint might relate to, or the paragraphs the complainant has identified
- a summary of key aspects of the complaint if it is lengthy or complex
- any further information that the officer has obtained to assist the assessment sub-committee with its decision – this may include:
  - a) obtaining a copy of a declaration of acceptance of office form and an undertaking to observe the Code
  - b) minutes of meetings
  - c) a copy of a member's entry in the register of interests
  - d) information from Companies House or the Land Registry
  - e) other easily obtainable documents

Officers may also contact complainants for clarification of their complaint if they are unable to understand the document submitted.

Pre-assessment enquiries should not be carried out in such a way as to amount to an investigation. For example, they should not extend to interviewing potential witnesses, the complainant, or the subject member.

Officers should not seek opinions on an allegation rather than factual information as this may prejudice any subsequent investigation. They should also ensure their report does not influence improperly the assessment sub-committee's decision or make the decision for it.

# assessment

## Initial tests

Before assessment of a complaint begins, the assessment sub-committee should be satisfied that the complaint meets the following tests:

- it is a complaint against one or more named members of the authority or an authority covered by the standards committee
- the named member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time
- the complaint, if proven, would be a breach of the Code under which the member was operating at the time of the alleged misconduct

If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant must be informed that no further action will be taken in respect of the complaint.

## Developing assessment criteria

The standards committee or its assessment sub-committee will need to develop criteria against which it assesses new complaints and decides what action, if any, to take. These criteria should reflect local circumstances and priorities and be simple, clear and open. They should ensure fairness for both the complainant and the subject member.

Assessing all new complaints by established criteria will also protect the committee members from accusations of bias. Assessment criteria can be reviewed and amended as necessary but this should not be done during consideration of a matter.

In drawing up assessment criteria, standards committees should bear in mind the importance of ensuring that complainants are confident that complaints about member conduct are taken seriously and dealt with appropriately. They should also consider that deciding to investigate a complaint or to take other action will cost both public money and the officers' and members' time. This is an important consideration where the matter is relatively minor.

Authorities need to take into account the public benefit in investigating complaints which are less serious, politically motivated, malicious or vexatious. Assessment criteria should be adopted which take this into account so that authorities can be seen to be treating all complaints in a fair and balanced way.

To assist in developing the criteria for accepting a complaint or for deciding to take no further action on it, a standards committee or assessment sub-committee may want to ask itself the following questions and consider the following response statements. These will provide a good foundation for developing assessment criteria in the context of local knowledge and experience:

# assessment

**Q: Has the complainant submitted enough information to satisfy the assessment sub-committee that the complaint should be referred for investigation or other action?**

If the answer is **no**: “The information provided was insufficient to make a decision as to whether the complaint should be referred for investigation or other action. So unless, or until, further information is received, the assessment sub-committee is taking no further action on this complaint.”

**Q: Is the complaint about someone who is no longer a member of the authority, but is a member of another authority? If so, does the assessment sub-committee wish to refer the complaint to the monitoring officer of that other authority?**

If the answer is **yes**: “Where the member is no longer a member of our authority but is a member of another authority, the complaint will be referred to the standards committee of that authority to consider.”

**Q: Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?**

If the answer is **yes**: “The matter of complaint has already been subject to a

previous investigation or other action and there is nothing more to be gained by further action being taken.”

**Q: Is the complaint about something that happened so long ago that there would be little benefit in taking action now?**

If the answer is **yes**: “The period of time that has passed since the alleged conduct occurred was taken into account when deciding whether this matter should be referred for investigation or further action. It was decided under the circumstances that further action was not warranted.”

**Q: Is the complaint too trivial to warrant further action?**

If the answer is **yes**: “The matter is not considered to be sufficiently serious to warrant further action.”

**Q: Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?**

If the answer is **yes**: “The matter appears to be simply malicious, politically motivated or tit-for-tat, and not sufficiently serious, and it was decided that further action was not warranted”.

The assessment criteria that the standards committee adopts should be made publicly available.

# decision

## Initial assessment decisions

The assessment sub-committee should complete its initial assessment of an allegation within an average of 20 working days, to reach a decision on what should happen with the complaint.

The assessment sub-committee is required to reach one of the three following decisions on a complaint about a member's actions in relation to the Code of Conduct:

- referral of the complaint to the monitoring officer of the authority concerned, which under section 57A(3) of the Local Government Act 2000, as amended, may be another authority
- referral of the complaint to the Standards Board for England
- no action should be taken in respect of the complaint

New rules have been made about what the assessment sub-committee must do when a decision has been made. Please see the section on **Access to meetings and decision making** on **page 22** for further information.

The time that the assessment sub-committee takes to carry out its initial assessment of a complaint is key in terms of being fair to the complainant and the subject member. It is also in the public interest to make a timely decision within an average of 20 working days. The assessment sub-committee should

therefore aim to achieve this target wherever possible.

## Referral for local investigation

When the assessment sub-committee considers a new complaint, it can decide that it should be referred to the monitoring officer for investigation.

The monitoring officer must write to the relevant parties informing them of the decision and, if appropriate, advising who will be responsible for conducting the investigation. Please see the section on **Notification requirements** on **page 18** for further information.

## Referral to the Standards Board for England

In most cases, authorities will be able to deal with the investigation of complaints concerning members of their authorities and, where relevant, the parish and town councils they are responsible for.

However, there will sometimes be issues in a case, or public interest considerations, which make it difficult for the authority to deal with the case fairly and speedily. In such cases, the assessment sub-committee may wish to refer a complaint to the Standards Board to be investigated by an ethical standards officer.

If the assessment sub-committee believes that a complaint should be investigated by the Standards Board, it must take immediate steps to refer the matter. It would be helpful if the assessment



# decision

sub-committee let us know the paragraph or paragraphs of the Code of Conduct that it believes the allegation refers to and the reasons why it cannot be dealt with locally.

We may accept cases for investigation by an ethical standards officer, take no action, or refer cases back to the standards committee which referred them. When deciding which of these actions to take, we will be principally concerned with supporting the ethical framework nationally and locally.

We will take the following matters into account in deciding which cases we should accept in the public interest:

- Does the standards committee believe that the status of the member or members, or the number of members about whom the complaint is made, would make it difficult for them to deal with the complaint? For example, is the member a group leader, elected mayor or a member of the authority's cabinet or standards committee?
- Does the standards committee believe that the status of the complainant or complainants would make it difficult for the standards committee to deal with the complaint? For example, is the complainant a group leader, elected mayor or a member of the authority's cabinet or standards committee, the chief executive, the monitoring officer or other senior officer?
- Does the standards committee believe that there is a potential conflict of interest of so many members of the standards committee that it could not properly monitor the investigation?
- Does the standards committee believe that there is a potential conflict of interest of the monitoring officer or other officers and that suitable alternative arrangements cannot be put in place to address the conflict?
- Is the case so serious or complex, or involving so many members, that it cannot be handled locally?
- Will the complaint require substantial amounts of evidence beyond that available from the authority's documents, its members or officers?
- Is there substantial governance dysfunction in the authority or its standards committee?
- Does the complaint relate to long-term or systemic member/officer bullying which could be more effectively investigated by someone outside the authority?
- Does the complaint raise significant or unresolved legal issues on which a national ruling would be helpful?
- Might the public perceive the authority to have an interest in the outcome of a case? For example if the authority could be liable to be judicially reviewed if the complaint is upheld.
- Are there exceptional circumstances which would prevent the authority or its

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# decision

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?

We will normally inform the monitoring officer within ten working days whether we will accept a case or whether we will refer it back to the standards committee, with reasons for doing so. There is no appeal mechanism against our decision.

## **Referral back to a standards committee from the Standards Board for England**

If we decline to investigate a complaint referred to us, we will normally send it back to the authority's standards committee with the reasons why. The standards committee must then decide what action should be taken next.

The assessment sub-committee must again take an assessment decision and should complete this within an average of 20 working days.

This may be a decision not to take any further action, to refer the matter for local investigation, or to refer the matter for some other form of action. As the assessment sub-committee initially decided that the matter was serious enough to be referred to the Standards Board for investigation, it is likely that it will still think that it should be investigated.

However, if the circumstances of the complaint have changed since the

assessment sub-committee's original decision, it may be reasonable to take a different decision. This decision will again need to be communicated to relevant parties in the same way as the original decision was. Please see the section on **Notification requirements** on **page 18** for further information.

If we decline to investigate a case referred to us, we may, in the circumstances, offer guidance or give a direction to the standards committee, which may assist with the standards committee's decision.

In exceptional circumstances, we may decide to take no further action on a complaint referred to us by a standards committee. This is likely to be where circumstances have changed so much that there would be little benefit arising from investigation or other action, or because we do not consider that the complaint discloses a breach of the Code of Conduct.

## **Referral for other action**

When the assessment sub-committee considers a new complaint, it can decide that other action to an investigation should be taken and it can refer the matter to the monitoring officer to carry this out. It may not always be in the interests of good governance to undertake or complete an investigation into an allegation of misconduct. The assessment sub-committee must consult its monitoring officer before reaching a decision to take other action.

# decision

The suitability of other action is dependent on the nature of the complaint. Certain complaints that a member has breached the Code of Conduct will lend themselves to being resolved in this way. They can also indicate a wider problem at the authority concerned. Deciding to deal pro-actively with a matter in a positive way that does not involve an investigation can be a good way to resolve matters that are less serious. Other action can be the simplest and most cost effective way of getting the matter resolved, helping the authority to work more effectively, and of avoiding similar complaints in the future.

The assessment sub-committee can choose this option in response to an individual complaint or a series of complaints. The action decided upon does not have to be limited to the subject member or members. In some cases, it may be less costly to choose to deal with a matter in this way rather than through an investigation, and it may produce a more effective result.

It is not possible to set out all the circumstances where other action may be appropriate, but an example is where the authority to which the subject member belongs appears to have a poor understanding of the Code and authority procedures. Evidence for this may include:

- a number of members failing to comply with the same paragraph of the Code
- officers giving incorrect advice
- failure to adopt the Code
- inadequate or incomplete protocols for use of authority resources

Other action may also be appropriate where a breakdown in relationships within the authority is apparent, evidence of which may include:

- a) a pattern of allegations of disrespect, bullying or harassment
- b) factionalised groupings within the authority
- c) a series of 'tit-for-tat' allegations
- d) ongoing employment issues, which may include resolved or ongoing employment tribunals, or grievance procedures

The assessment sub-committee is encouraged to consider other action on a practical basis, taking into account the needs of their own authority and of the parish and town councils which they serve. Everyone involved in the process will need to understand that the purpose of other action is not to find out whether the member breached the Code – the decision is made as an alternative to investigation. If the monitoring officer embarks on a course of other action, they should emphasise to the parties concerned that no conclusion has been reached on whether the subject member failed to comply with the Code.

Complaints that have been referred to the monitoring officer for other action should not then be referred back to the standards committee if the other action is perceived to have failed. This is unfair to the subject member, and a case may be jeopardised if it has been discussed as part of a mediation process. There is also a difficulty with defining 'failure' in terms of

# decision

the other action undertaken. The decision to take other action closes the opportunity to investigate and the assessment sub-committee should communicate this clearly to all parties.

Standards committees may find it helpful to introduce a requirement for the parties involved to confirm in writing that they will co-operate with the process of other action proposed. An example of this would be writing to the relevant parties outlining:

- what is being proposed
- why it is being proposed
- why they should co-operate
- what the standards committee hopes to achieve

However authorities choose to take this forward, the important thing is that all parties are clear about what is, and what is not, going to happen in response to the complaint.

The following are some examples of alternatives to investigation:

- arranging for the subject member to attend a training course
- arranging for that member and the complainant to engage in a process of conciliation
- instituting changes to the procedures of the authority if they have given rise to the complaint

Standards committees may find that resolving a matter in this way is relatively

quick and straightforward compared to a full investigation.

## Decision to take no action

The assessment sub-committee can decide that no action is required in respect of a complaint. For example, this could be because the assessment sub-committee does not consider the complaint to be sufficiently serious to warrant any action. Alternatively, it could be due to the length of time that has elapsed since the alleged conduct took place and the complaint was made. The decision reached by the assessment sub-committee and the reasons for it should adhere to the assessment criteria that the standards committee or assessment sub-committee have agreed.

It is important to underline that where no potential breach of the Code of Conduct is disclosed by the complaint, no matter what its source or whoever the subject member, no action can be taken by the standards committee in respect of it. The matter of referral for investigation or other action therefore does not arise.

The complainant should be advised of their right to ask for a review of a decision to take no action. They should be told that they can exercise this right by writing to the standards committee with their reasons for requesting a review. The complainant should be advised of the date by which their review request should be received by the standards committee.

# decision

That date is 30 working days after the initial assessment decision is received.

## **Notification requirements – local assessment decisions**

If the assessment sub-committee decides to take no action over a complaint, then as soon as possible after making the decision it must give notice in writing of the decision and set out clearly the reasons for that decision. Where no potential breach of the Code is disclosed, the assessment sub-committee must explain in the decision notice what the allegation was and why they believe this to be the case. This notice must be given to the relevant parties.

The relevant parties will be the complainant and the subject member. If the subject member is a parish or town councillor, their parish or town council must also be notified. We suggest that the standards committee sends out its decision notice within five working days of the decision being made.

If the assessment sub-committee decides that the complaint should be referred to the monitoring officer or to the Standards Board for England, it must send a summary of the complaint to the relevant parties. It should state what the allegation was and what type of referral it made, for example whether it referred the complaint to the monitoring officer or to the Standards Board for investigation. The decision notice must explain why a particular referral decision has been made. After it has made its decision, the assessment sub-committee does not have

to give the subject member a summary of the complaint, if it decides that doing so would be against the public interest or would prejudice any future investigation.

This could happen where it is considered likely that the subject member may intimidate the complainant or the witnesses involved. It could also happen where early disclosure of the complaint may lead to evidence being compromised or destroyed. The assessment sub-committee needs to take such possibilities into account when developing with its monitoring officer any process that notifies a member about a complaint made against them.

The assessment sub-committee should take advice from the monitoring officer in deciding whether it is against the public interest to inform the subject member of the details of the complaint made against them. It should also take advice from the monitoring officer in deciding whether informing the subject member of the details of the complaint would prejudice a person's ability to investigate it.

The monitoring officer will need to carry out an assessment of the potential risks to the investigation. This is to determine whether the risk of the case being prejudiced by the subject member being informed of the details of the complaint at that stage may outweigh the fairness of notifying the subject member. An example of this is allowing the subject member to preserve any evidence. The monitoring officer should then advise the assessment sub-committee accordingly.

# decision

The assessment sub-committee can use its discretion to give limited information to the subject member if it decides this would not be against the public interest or prejudice any investigation. Any decision to withhold the summary must be kept under review as circumstances change.

# review

## Reviews of 'no further action' decisions

If the assessment sub-committee decides not to take any action on a complaint, then the complainant has a right of review over that decision.

The review sub-committee must carry out its review within a maximum of three months of receiving the request. We recommend that the review sub-committee adopts a policy of undertaking the review within the same timescale as the initial assessment decision is taken, aiming to complete the review within an average of 20 working days.

The review must be, and must be seen to be, independent of the original decision. Members of the assessment sub-committee who made the original decision must not take part in the review of that decision. A separate review sub-committee, made up of members of the standards committee, must consider the review.

The review sub-committee should apply the same criteria used for initial assessment. The review sub-committee has the same decisions available to it as the assessment sub-committee.

There may be cases where further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint. In such cases, the review sub-committee should consider carefully if it is more appropriate to pass this to the assessment sub-committee to be handled as a new

complaint. In this instance, the review sub-committee will still need to make a formal decision that the review request will not be granted.

For example, a review may be more appropriate if a complainant wishes to challenge that:

- not enough emphasis has been given to a particular aspect of the complaint
- there has been a failure to follow any published criteria
- there has been an error in procedures

However, if more information or new information of any significance is available, and this information is not merely a repeat complaint, then a new complaint rather than a request for review may be more suitable.

## Notification requirements – reviews of local assessment decisions

If the standards committee receives a review request from the complainant, it must notify the subject member that it has received the request. We recommend that all relevant parties are notified when a review request is received.

When the review sub-committee reviews the assessment sub-committee's decision it has the same decisions available to it that the assessment sub-committee had. It could be decided that no action should be taken on the complaint. In this case, the review sub-committee must, as soon as

# review

possible after making the decision, give the complainant and the subject member notice in writing of both the decision and the reasons for the decision. If the subject member is a parish or town councillor, the review sub-committee must also give written notice to the parish or town council.

If it is decided that the complaint should be referred to the monitoring officer or to the Standards Board for England, the standards committee should write to the relevant parties telling them this and letting them have a summary of the complaint. The decision notice must explain why that particular referral decision has been made.

We recommend that the review sub-committee sends out its decision notice within five working days of the decision being made.



# other issues to consider

## making

Initial assessment decisions, and any subsequent review of decisions to take no further action on a complaint, must be conducted in closed meetings. These are not subject to the notice and publicity requirements under Part 5 of the Local Government Act 1972.

Such meetings may have to consider unfounded and potentially damaging complaints about members, which it would not be appropriate to make public. As such, a standards committee undertaking its role in the assessment or review of a complaint is not subject to the following rules:

- rules regarding notices of meetings
- rules on the circulation of agendas and documents
- rules over public access to meetings
- rules on the validity of proceedings

Instead, Regulation 8 of the regulations sets out what must be done after the assessment or review sub-committee has considered a complaint. The new rules require a written summary to be produced which must include:

- the main points considered
- the conclusions on the complaint
- the reasons for the conclusion

The summary must be written having regard to this guidance and may give the name of the subject member unless doing so is not in the public interest or would prejudice any subsequent investigation.

The written summary must be made

available for the public to inspect at the authority's offices for six years and given to any parish or town council concerned. The summary does not have to be available for inspection or sent to the parish or town council until the subject member has been sent the summary.

In limited situations, a standards committee can decide not to give the written summary to the subject member when a referral decision has been made and, if this is the case, authorities should put in place arrangements which deal with when public inspection and parish or town council notifications will occur. This will usually be when the written summary is eventually given to the subject member during the investigation process. Please see the section on **Notification requirements** on **page 18** for further information.

Review of a decision to take no further action on a complaint is not subject to access to information rules in respect of local government committees.

In addition, authorities must have regard to their requirements under Freedom of Information and Data Protection legislation.

## Withdrawing complaints

There may be occasions when the complainant asks to withdraw their complaint prior to the assessment sub-committee having made a decision on it.

In these circumstances, the assessment

# other issues to consider

sub-committee will need to decide whether to grant the request. It would be helpful if the assessment sub-committee had a framework by which to consider such requests. The following considerations may apply:

- Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
- Is the complaint such that action can be taken on it, for example an investigation, without the complainant's participation?
- Is there an identifiable underlying reason for the request to withdraw the complaint? For example, is there information to suggest that the complainant may have been pressured by the subject member, or an associate of theirs, to withdraw the complaint?

## Multiple and vexatious complaints

An authority may receive a number of complaints from different complainants about the same matter. Authorities should have procedures in place to ensure that they are dealt with in a manner that is a practical use of time and resources.

A number of complaints about the same matter may be considered by the assessment sub-committee at the same meeting. If so, an officer should be asked to present one report and recommendation that draws together all the relevant information and highlights any

substantively different or contradictory information. However, the assessment sub-committee must still reach a decision on each individual complaint and follow the notification procedure for each complaint.

Unfortunately, a small number of people abuse the complaints process. Authorities may want to consider developing a policy to deal with this. For example, they could bring it within the scope of any existing authority policies on vexatious or persistent complainants, or take action to limit an individual's contact with the authority.

However, standards committees must consider every new complaint that they receive in relation to the Code of Conduct. If the standards committee has already dealt with the same complaint by the same person and the monitoring officer does not believe that there is any new evidence, then a complaint does not need to be considered.

A person may make frequent allegations about members, most of which may not have any substance. Despite this, new allegations must still be considered as they may contain a complaint that requires some action to be taken.

Even where restrictions are placed on an individual's contact with the authority, they cannot be prevented from submitting a complaint.

Vexatious or persistent complaints or complainants can usually be identified through the following patterns of behaviour, which may become apparent in

# other issues to consider

the complaints process:

- repeated complaints making the same, or broadly similar, complaints against the same member or members about the same alleged incident
- use of aggressive or repetitive language of an obsessive nature
- repeated complaints that disclose no potential breach of the Code
- where it seems clear that there is an ulterior motive for a complaint or complaints
- where a complainant refuses to let the matter rest once the complaints process (including the review stage) has been exhausted

There are ways that authorities can reduce the resources expended. For example, they can allow a vexatious complainant to deal with only one named officer or refuse email communication. Authorities can also include a statement in their referrals criteria that malicious or tit-for-tat complaints are unlikely to be investigated unless they also raise serious matters. This will allow authorities to decide not to investigate or take other action on such complaints if appropriate.

## Case history

Authorities should consider developing a complaints management system. Records of all complaints and their outcomes should be retained in line with the

authority's records management policy. This policy may need to be amended to reflect the authority's new responsibilities in the local assessment of complaints.

Documents that relate to complaints that the assessment sub-committee decided not to investigate should be kept for a minimum of 12 months after the outcome of any review that has been concluded. This is in case of legal challenges, and also in order to meet the Standards Board for England's monitoring requirements.

Authorities should set a time limit for records retention after the outcome of any hearing or result of further action in respect of a complaint is known. This should be set in accordance with the authority's own file retention policy and in accordance with the principles of data protection.

Authorities should keep details of cases in a format that is easy to search by complainant name, by member name, and by authority where an authority is responsible for parish and town councils. Authorities may also want to search by paragraph of the authority's Code of Conduct.

Old cases may be relevant to future complaints if they show a pattern of behaviour. Authorities will also be able to identify complaints about the same matter that have already been considered by the standards committee.

Authorities will need to consider records

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# other issues to consider

management alongside the law on keeping records of committees.

## Confidentiality

As a matter of fairness and natural justice, a member should usually be told who has complained about them. However, there may be instances where the complainant asks for their identity to be withheld. Such requests should only be granted in exceptional circumstances and at the discretion of the assessment sub-committee. The assessment sub-committee should consider the request for confidentiality alongside the substance of the complaint itself.

Authorities should develop criteria by which the assessment sub-committee will consider requests for confidentiality. These may include the following:

- The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed.
- The complainant is an officer who works closely with the subject member and they are afraid of the consequences to their employment or of losing their job if their identity is disclosed (this should be covered by the authority's whistle-blowing policy).
- The complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed. In such circumstances, standards committees

may wish to request medical evidence of the complainant's condition.

In certain cases, such as allegations of bullying, revealing the identity of the complainant may be necessary for investigation of the complaint. In such cases the complainant may also be given the option of requesting a withdrawal of their complaint.

When considering requests for confidentiality, the assessment sub-committee should also consider whether it is possible to investigate the complaint without making the complainant's identity known.

If the assessment sub-committee decides to refuse a request by a complainant for confidentiality, it may wish to offer the complainant the option to withdraw, rather than proceed with their identity being disclosed. In certain circumstances, the public interest in proceeding with an investigation may outweigh the complainant's wish to have their identity withheld from the subject member. The assessment sub-committee will need to decide where the balance lies in the particular circumstances of each complaint.

## Anonymous complaints

Authorities should publish a statement setting out how complaints received anonymously will be dealt with. The assessment sub-committee may decide that an anonymous complaint should only be referred for investigation or some other action if it includes documentary or photographic evidence indicating an

# other issues to consider

exceptionally serious or significant matter. If so, this needs to be included in the standards committee's assessment criteria.

## Members with conflicts of interest

**Note:** this section does not deal with any interests which may arise under the Code of Conduct, which members must also keep in mind and deal with as appropriate.

A member of the standards committee who was involved in any of the following decisions **can** be a member of the committee that hears and determines the complaint at the conclusion of an investigation:

- the initial assessment decision
- a referral back for another assessment decision
- a review of an assessment decision

The assessment decision relates only to whether the complaint discloses something that needs to be investigated or referred for other action. It does not determine whether the conduct took place or whether it was a breach of the Code. The standards committee hearing the case will decide on the evidence before it as to whether the Code has been breached and, if so, if any sanction should apply.

The assessment process must be conducted with impartiality and fairness. There may be cases where it would not be appropriate for a member to be involved in

the process, even if not disqualified from doing so by law. Any member who is a complainant or one of the following should not participate in the assessment process:

- anyone closely associated with someone who is a complainant
- a potential witness or victim relating to a complaint

In certain situations, a standards committee member might initially be involved with the initial assessment of a case that is then referred to the Standards Board for England or to the authority's monitoring officer. The case might then be referred back to the standards committee to consider again. In such circumstances, the member may continue their participation in the assessment process.

However, a standards committee member who is involved at these assessment stages of the process, either initially or following a referral back from the Standards Board or monitoring officer, must not participate in the review of that decision.

Authorities should ensure that their standards committee has sufficient independent members, and parish or town representatives where applicable, for the framework to operate effectively. This should allow for circumstances where members are unable to participate for reasons of conflict of interest.

## Officers with conflicts of interest

# other issues to consider

An officer who has previously advised a subject member or who has advised the complainant about the issues giving rise to a complaint should consider whether they can properly take part in the assessment process. For example, a conflict of interest could mean that the officer will not be able to:

- draft letters
- prepare reports
- contact complainants
- attend the final hearing of that complaint

The officer should also consider whether they should stand aside due to their prior involvement, which has been such that others involved may view them as biased. Officers should take legal advice if they have any doubts.

If the officer has taken part in supporting the assessment or hearing process then they should not be involved in the investigation of that matter. This is so that the officer can minimise the risk of conflicts of interest that may arise and ensure fairness for all parties.

The monitoring officer should act as the main adviser to the standards committee unless the monitoring officer has an interest in a matter that would prevent them from performing the role independently.

If the monitoring officer is unable to take part in the assessment process, their role should be delegated to another

appropriate officer of the authority, such as the deputy monitoring officer. Similarly, the role of any other officer who is unable to take part in the assessment process should be taken by another officer.

Smaller authorities may find it useful to make reciprocal arrangements with neighbouring authorities. This is to ensure that an experienced officer is available to deputise for the monitoring officer if they are unable to take part in the assessment process.

## Personal conflicts

Members and officers should take care to avoid any personal conflicts of interest arising when participating in the consideration of a complaint that a member may have breached the Code of Conduct. The provisions of the authority's Code relating to personal and prejudicial interests apply to standards committee members in meetings and hearings.

Anyone who has a prejudicial interest or who is involved with a complaint in any way should not take part in the assessment or review sub-committee. Decisions made in an assessment or review sub-committee should not be influenced by anything outside the papers and advice put before the members in that committee. The members should not discuss complaints with others who are not members of the committee which deals with the assessment or review. Discussions between members should only take place at official meetings. Authorities should have clear guidelines in

# other issues to consider

place on when a member or officer should not take part in the assessment of a complaint because of personal interests. These may include consideration of the following:

- The complaint is likely to affect the well-being or financial position of that member or officer or the well-being or financial position of a friend, family member or person with whom they have a close association.
- The member or officer is directly or indirectly involved in the case in any way.
- A family member, friend or close associate of the member or officer is involved in the case.
- The member or officer has an interest in any matter relating to the case. For example, it concerns a member's failure to declare an interest in a planning application in which the member or officer has an interest. This is despite the fact that the outcome of any investigation or other action could not affect the decision reached on the application.

## Complaints about members of more than one authority

The introduction of the local assessment of complaints may raise an issue relating to what should happen if a complaint is made against an individual who is a member of more than one authority – often known as a dual-hatted member.

In such cases, the member may have

failed to comply with more than one authority's Code of Conduct. For example, an individual who is a member of a district council and a police authority may be the subject of complaints that they have breached the Code of both authorities. As such, it would be possible for both the assessment sub-committee of the district council and the assessment sub-committee of the police authority to receive complaints against the member.

Where a complaint is received about a dual-hatted member, the monitoring officer of the authority should check if a similar allegation has been made to the other authority, or authorities, on which the member serves.

Decisions on which standards committee should deal with a particular complaint must then be taken by the standards committees themselves, following discussion with each other. They may take advice as necessary from the Standards Board for England.

This will allow for a cooperative approach, including sharing knowledge and information about local circumstances, and cooperation in carrying out investigations to ensure resources are used effectively.

Authorities should also consider whether they need to establish a data sharing protocol with other relevant authorities. The government and the Information Commissioner's Office have produced guidance on such protocols. Visit [www.ico.gov.uk](http://www.ico.gov.uk) for further details on the work of the Information Commissioner.

