

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

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

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

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**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.

