

METROPOLITAN BOROUGH OF WIRRAL

STANDARDS COMMITTEE – 27 JUNE 2006

REPORT OF THE MONITORING OFFICER

LOCAL INVESTIGATION OF STANDARDS COMPLAINTS

1. **Executive Summary**

Members are asked to approve the draft Protocol attached to this report as appendix 1 and agree that investigations referred to the Monitoring Officer should be conducted in accordance with the Protocol and the statutory guidance.

2. **Background**

Members are aware that the Standards Board for England may refer complaints of Councillor misconduct to the Monitoring Officer for local investigation instead of investigation by the Standards Board's Ethical Standards Officers (ESO) before a complaint is determined by the Standards Committee. The Standards Board has published guidance, which is attached as Appendix 2.

3. **Receipt of Complaint**

Once a complaint is received by the Standards Board, it has to decide first whether it appears to relate to a possible failure to comply with the Members' Code of Conduct, and then whether it merits investigation.

4. **Local Investigation**

4.1 Where the case is referred to the Standards Board for investigation, it goes to the ESO who decides whether to allocate it to one of the Standards Board's own investigators or refer it to the Authority's Monitoring Officer. The ESO will not refer matters for investigation where the serious nature means that it is likely to require a sanction in excess of the Standards Committee's maximum of three months suspension. The Standards Board have highlighted further criteria as follows:-

- (i) the matter does not appear to need the heavier penalties available only to the Adjudication Panel for England;
- (ii) the allegation is of an entirely local nature and does not raise matters of principle;
- (iii) the initial investigation by an ESO deals with governance issues of the Authority rather than misconduct of an individual Councillor.

4.2 Once the Monitoring Officer receives a referred complaint, he or she notifies the Councillor and the Complainant and arranges for investigation by an Investigating Officer. The investigating officer could, for example, be the Monitoring Officer or a member of his or her staff, an external investigator or a senior officer of Internal Audit.

4.3 The investigating officer is required to produce a full report setting out conclusions as to the facts and whether in his or her opinion the Councillor failed to comply with the Code.

5. **Investigation**

5.1 If the investigating officer concludes that there has not been a failure to comply with the Code, he or she will submit a report to the Standards Committee which will consider it and any representations from the Councillor and will either:-

- (i) accept the conclusions and take no further action; or
- (ii) decide that the matter should be considered at a formal hearing.

5.2 If the conclusion of the investigating officer is that there has been a failure to comply with the Code, then the matter must go to formal hearing stage direct.

6. **Referral back to the Standards Board**

Once a matter is under investigation, it is, of course, possible that it will be considered by the investigating officer to be more serious than originally contemplated. The Standards Board's Case Tribunal has powers to impose sanctions of up to one year's suspension or up to five years disqualification and therefore may be considered to be the appropriate Forum of any hearing of this nature. The Standards Committee has a limited power to suspend members for up to three months. Therefore, the investigating officer may at any time during the course of any investigation report to the Monitoring Officer who can request the ESO to take back responsibility for investigation. The ESO has the power to make a final decision on whether or not to take up responsibility.

7. **The Hearing**

7.1 Where a matter has been dealt with by local investigation, the hearing must be completed within three months of the date on which the investigating officer presents his or her final report to the Monitoring Officer.

7.2 If the Standards Committee feels during the course of a hearing that it needs to adjourn to obtain additional evidence in order to come to a decision on a matter, then it may do so and request the Monitoring Officer to provide such further information or carry out further investigations as it stipulates. However, the Committee can only do so once on any particular matter.

8. **Sanctions**

8.1 The Standards Committee may impose any one or any combination of the following sanctions in a particular case:-

- (i) censure
- (ii) restriction of access to Council premises or use of Council resources for up to three months;
- (iii) a requirement to give a written apology;
- (iv) a requirement to undergo training;
- (v) a requirement to undertake conciliation;
- (vi) suspension or partial suspension for a period of up to three months;
- (vii) suspension or partial suspension until the Councillor undertakes training or conciliation or provides a written apology.

8.2 The Standards Committee is also allowed by regulations to invite the Standards Board to take back responsibility for a matter at any stage. This situation may arise where the Committee felt that its maximum sanction would not be enough, or whether there were conflict of interest issues which would render it impossible to proceed with a hearing. Again, the ESO has the final decision on whether to resume responsibility and a request cannot be made once the hearing has been completed.

9. **Composition of the Standards Committee in hearing complaints**

At its meeting on 22 March 2006, this Committee indicated that it would favour hearings to be conducted by three members of the Standards Committee. Members felt that the hearings should be chaired by an independent member and comprise two elected members, drawn from parties other than that of which the Councillor complained of is a member. The Committee is asked to consider whether it wishes this proposal to have effect permanently.

10. **Equal Opportunities Implications**

There are none arising directly from this report.

11. **Human Rights Implications**

There are none arising directly from this report.

12. **Local Agenda 21 Implications**

There are none arising directly from this report.

13. **Community Safety Implications**

There are none arising directly from this report.

14. **Planning Implications**

There are none arising directly from this report.

15. **Recommendations**

Members are asked to:-

- (1) Adopt the procedure set out in Appendix 1 with respect to the determination of any matter referred to the Monitoring Officer for local investigation.
- (2) Decide upon the composition of the Committee for local hearings, as set out in paragraph 9 above.

MARK REANEY

Monitoring Officer

MER/LW.
15 June 2006

STANDARDS COMMITTEE

HEARING PROCEDURES

1. Introduction

This procedure is intended to provide the Standards Committee with an efficient and effective hearing process for the determination of any matter referred to the Committee. This will help the Committee to deal with all the issues that need to be resolved in any way that is fair to the Member and to any person who may be involved.

2. Interpretation

2.1 “Committee” also refers to “a Standards Sub-Committee” or any sub-committee or panel established to hear and determine any matter.

2.2 “Investigator” means the Ethical Standards Officer (ESO) who referred the report to the Authority, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the Investigator mean (subject to paragraph 3 below) the Monitoring Officer or other investigating officer, and his or her nominated representative.

2.3 “Legal Adviser” means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the Authority, or someone appointed for this purpose from outside the authority.

2.4 “Member” means the Member of the Authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Member’s nominated representative.

2.5 “Model Code” means the Code of Conduct for Councillors and Voting Co-opted Members adopted by the Authority.

3. Representation

The Member may be represented or accompanied during the meeting by a solicitor, barrister or, with the permission of the Committee, another person.

4. Legal Advice

The Committee may take legal advice from its Legal Adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee may be shared with the Member and the Investigator if they are present.

5. Setting the Scene

After all the members and everyone involved have been formally introduced, the Chair should explain how the Committee is going to run the hearing.

6. **Preliminary Procedural Issues**

The Committee should then resolve any issues or disagreement about how the hearing should continue, which have not been resolved during the pre-hearing process.

7. **Making Findings of Fact**

- 7.1 After dealing with any preliminary issues, the Committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the Investigator's report.
- 7.2 If there is no disagreement about the facts, the Committee can move on to the next stage of the hearing.
- 7.3 If there is a disagreement, the Investigator, if present should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Committee's permission, the Investigator may call any necessary supporting witnesses to give evidence. The Committee may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigator.
- 7.4. The member should then have the opportunity to make representations to support his or her version of the facts and, with the Committee's permission, to call any necessary witnesses to give evidence.
- 7.5 At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the Investigator to challenge any evidence put forward by witnesses called by the Member.
- 7.6 If the Member disagrees with most of the facts, it may make sense for the Investigator to start by marking representations on all the relevant facts, instead of discussing each fact individually.
- 7.8 If the Member disagrees with any relevant fact in the Investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the Investigator is not present, the Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Member's explanation for not raising the issue at an earlier stage, the Committee may then:-
 - (a) continue with the hearing, relying on the information in the Investigator's report;
 - (b) allow the Member to make representations about the issue, and invite the Investigator to respond and call any witnesses, as necessary; or
 - (c) postpone the hearing to arrange for appropriate witnesses to be present or for the Investigator to be present if he or she is not already.

7.9 The committee will usually move to another room to consider the representations and evidence in private.

7.10 On their return, the Chair will announce the Committee's findings of fact.

8. **Did the Member fail to follow the Code?**

8.1 The Committee then needs to consider whether or not, based on the facts it has found, the Member has failed to follow the Code of Conduct.

8.2 The Member should be invited to give relevant reasons why the Committee should not decide that he or she has failed to follow the Code.

8.3 The Committee should then consider any verbal or written representations from the Investigator.

8.4 The Committee may, at any time, question anyone involved on any point they raise in their representations.

8.5 The Member should be invited to make any final relevant points.

8.6 The Committee will then move to another room to consider the representations.

8.7 On their return, the Chair will announce the Committee's decision as to whether or not the Member has failed to follow the Code of Conduct.

9. **If the Member has not failed to follow the Code of Conduct**

If the Committee decides that the Member has not failed to follow the code of Conduct, the Committee can move on to consider whether it should make any recommendations to the Authority.

10. **If the Member has failed to follow the Code**

10.1 If the Committee decides that the Member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigator and the Member as to:-

- (a) whether or not the Committee should set a penalty; and
- (b) what form any penalty should take.

10.2 The Committee may question the Investigator and the Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

10.3 The Committee will then move to another room to consider whether or not to impose a penalty on the Member and, if so, what the penalty should be.

10.4 On their return, the Chair will announce the Committee's decision.

11. **Adjournment**

11.1 The Committee may at any stage prior to the conclusion of the hearing, adjourn the hearing and require the Monitoring Officer to seek further information or undertake further investigation on any point specified by the Committee. The Committee shall not adjourn a hearing more than once for this purpose.

11.2 The Committee may, at any stage prior to the conclusion of the hearing adjourn the hearing and make a written request, to the Ethical Standards Officer concerned, that the matter be referred back to the Ethical Standards officer for investigation, indicating the Committee's reason(s) for making such request.

12. **Recommendations to the Authority**

After considering any verbal or written representations from the Investigator, the Committee will consider whether or not it should make any recommendations to the Authority, with a view to promoting high standards of conduct among Members.

13. **The Written Decision**

The Committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision within two weeks after the end of the hearing. It is good practice to prepare the full written decision in draft on the day of the hearing before people's memories fade.

14. **Admission of and disclosure of information to the media and public**

14.1 The hearing will normally be conducted in public (except when the Committee retires to consider any matter as prescribed in this procedure) unless the Committee is satisfied in accordance with the relevant provisions that it is appropriate for the Committee to exclude the press and public from any part of the proceedings, and resolve accordingly.

14.2 Any documents submitted to the Committee during or for the purposes of the hearing will normally be available for public inspection, along with the agenda for and minutes of the Committee meeting which constitutes the hearing, unless the Committee is satisfied in accordance with the relevant provisions that any such document (in whole or part) should not be disclosed, and resolves accordingly.

15. **Regulations**

15.1 This procedure shall be applied subject to and in accordance with the Local Government Act 2000, Part III, any re-enactment thereof, and any regulation or order made thereunder.

15.2 Not all referrals from an Ethical Standards Officer will require investigation.

- (1) Under the regulations, an Ethical Standards Officer could direct the Monitoring Officer to take some other form of action at local level other than investigation or determination. This is most likely to happen in situations where a case has broad relevance for the ethical governance of an authority. Examples include, making recommendations to the Standards Committee about wider issues for the authority raised by the

case or ensuring that the parties concerned attempt some form of reconciliation.

- (2) The Monitoring Officer must report back to the Ethical Standards Officers within three months or receiving the directions on the outcome of the actions taken or with details of the proposed actions to be taken.
- (3) If the Ethical Standards Officer is not satisfied with the action taken or proposed to be taken, he may require the Monitoring Officer to arrange for the publication of a statement giving details of the direction and reasons for not fully implementing the direction.

MER/LW
15 June 2006