

WIRRAL COUNCIL

STANDARDS COMMITTEE – 30 JUNE 2008

REPORT OF THE DEPUTY CHIEF EXECUTIVE/DIRECTOR OF CORPORATE SERVICES

LOCAL ASSESSMENT

1. Executive Summary

The Local Government and Public Involvement in Health Act 2007 (“the Act”) provides, among other things, for a revised ethical framework for local government. I reported to this committee 28 January and 31 March 2008 on the implications of the changes (minutes 32 and 39 refer). The relevant provisions came in to force on 8 May 2008. Annual Council approved the necessary amendments to the terms of reference to this committee necessitated by the changes in the law (minute 10 refers). This report sets out for the committee’s consideration the impact of the changes and seeks approval for the steps necessary to implement the changes.

2. Background

2.1 The Act makes a number of key changes to the ethical framework under which local authorities will operate. These are:

- Standards Committees will be responsible for receiving allegations and deciding whether any action needs to be taken (referred to as ‘local assessment’).
- Standards Committees must be chaired by an independent member.
- Standards Committees will report periodically to the Standards Board for England (“SBE”).
- Standards Committees will be allowed to enter into joint working arrangements with other Standards Committees.
- The SBE will be responsible for monitoring and ensuring the effectiveness of local arrangements, including supporting authorities which are experiencing difficulties and driving up their performance.

2.2 The proposals represent a significant change from the current roles and responsibilities. There have been relatively few complaints to the SBE in respect of Wirral members. However, these proposals will still require consideration of the potential impact on the workload of the Standards Committee and the Monitoring Officer (“MO”). At present initial assessments and investigations are carried out by the SBE. Although there is currently provision for referral by the SBE to the local authority for local assessment this has never happened with a Wirral case. Therefore, even if the current low rate of allegations being made continues there will be an increase in workload for

the MO and the Committee. There is also a need for specific training for members of the Committee on the new regime and carrying out assessments.

2.3 The new provisions were brought in to force on 8 May by the Standards Committee (England) Regulations 2008 (“the Regulations”). The timetable for implementation provided by the Regulations has given very little time to adapt to the changes. Therefore, there are a number of matters which need to be urgently addressed, these are:

- The requirement for an independent chair (this will be considered under item 1 on the Agenda);
- The amended Terms of Reference of the Committee;
- The requirement to set up panels to consider local assessment;
- The format for publicising complaints processes;
- Criteria to be applied in considering whether a complaint should be investigated;
- A Protocol for dealing with Complaints;
- The need for training for members on local assessment; and
- The possible financial implications for the Corporate Services Department to enable it to respond to the requirement for local assessment.

2.4 The SBE has issued, “Guidance on the Role and Make up of Standards Committees,” which is attached as Appendix 1 of this report. The SBE has also issued, “Guidance on the Local Assessment of Complaints,” which is attached as Appendix 2 to this report.

2.5 The Appointment of an Independent Member as Chair

The appointment of the Chair is considered at item 1 on the Agenda. It is now a legal requirement that the Standards Committee must at all times be chaired by an independent member. I have suggested that in order to provide additional support to independent members then a Merseyside Independent Members Forum be created. All independent members of the Merseyside local authorities would be invited to be members. This would create a forum which would enable independent members to derive mutual support and share best practice.

2.6 Amended Terms of Reference

The previous Terms of Reference for the Committee are attached as Appendix 3 to this report. The revised terms of reference are attached as Appendix 4.

2.7 Panels

2.7.1 The new provisions require that the Council set up 3 separate sub-committees to deal with certain aspects of complaints. These are to deal with:

- (a) the initial assessment of a complaint;
- (b) requests to review the outcome of an initial assessment where no further action is proposed; and
- (c) hearings of complaints.

2.7.2 Attached as Appendix 5 to this report are proposed terms of reference for 3 separate panels to operate as these sub-committees.

2.7.3 On receipt of a complaint an Initial Assessment Panel must be convened to consider the complaint. The SBE Guidance suggests that on average complaints should be considered within 20 working days of receipt. The Initial Assessment Panel must consist of at least 3 members of the Standards Committee, including at least 1 elected member and at least 1 independent member. The panel must be chaired by an independent member. The Initial Assessment Panel will consider what action to take. The options are:

- Decide that no action should be taken;
- Refer the case to the SBE;
- Refer the case to the Monitoring Officer (“MO”) for investigation or alternative action; or
- Refer the case to another authority if the member concerned is no longer a member of the authority but is a member of the other authority.

2.7.4 In considering what action, if any should be taken the Initial Assessment Panel should have regard to assessment criteria. Suggested Assessment Criteria based on the Guidance issued by the SBE are set out in paragraph 2.8.

2.7.5 The rules on access to information do not apply to Initial Assessment or Review Panels and the MO is under a duty to keep confidential the details of the complaint. The Initial Assessment Panel is under a duty to provide a written summary to the Complainant and the member involved, if it determines that no further action should be taken. It is suggested that a Protocol for Dealing with Complaints is implemented. The details of this are referred to in paragraph 2.10 below.

2.7.6 If the Initial Assessment Panel determines that no further action should be taken then the Complainant may, within 30 working days of receipt of the decision, request a review. The Review must be carried out by the Review Panel, which must meet within 3 months of receipt of the request.

2.7.7 The Review Panel must consist of at least 3 members of the Standards Committee, including at least 1 elected member and at least 1 independent member. The panel must be chaired by an independent member. No member who was part of the Initial Assessment Panel, the decision of which is being reviewed, may attend the meeting of the Review Panel.

2.7.8 If the matter proceeds to an investigation then the MO shall investigate the complaint or make arrangements for it to be investigated and report the outcome. This report will be considered initially by the Initial Assessment Panel which will consider whether a hearing should be conducted by the Hearings Panel. This must take place within 3 months of the completion of the MO or Ethical Standards Officer (“ESO”) Report. If the Hearings Panel concludes that there has been a breach then there are a range of remedies available. The maximum sanction which a Standards Committee or sub-committee may impose has been increased to 6 months suspension.

2.8 The Format for Publicising Complaints Processes

The Regulations require councils to publicise the arrangements for making complaints of breaches of the Code of Conduct. The SBE guidance states that this **could** be through;

The 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.

Attached as Appendix 6 are documents to be placed on the Council’s website. The Committee is invited to consider whether further steps should be taken to publicise the arrangements.

2.9 Assessment Criteria

The Committee must adopt assessment criteria which will be applied in determining whether or not a complaint will be investigated. The SBE Guidance contains suggested criteria. It is proposed that these are adopted by this committee. The proposed criteria are attached as Appendix 7.

2.10 A Protocol for Dealing with Complaints

2.10.1 There are a number of issues which arise in dealing with Complaints. A proposed protocol for dealing with these issues is attached as Appendix 8.

2.11 Training

It is recommended that all members of the Standards Committee receive training on local assessment. The Members Training Steering Group has approved training in this area. Given the fact that the provisions have now come in to force with a limited implementation period there is a pressing need for this training for Standards Committee members. The training has been scheduled through the members training programme on 16 July 2008. This training is open to all members but it is essential that as many members of the Standards Committee as possible attend training.

3. **Financial and Staffing Implications**

3.1 There have been a relatively small number of complaints made to the SBE about Wirral members since the Code of Conduct was introduced. However, if

complaints are made then the costs of conducting Panels and carrying out investigations could be significant. At this stage it is proposed that the costs of implementing the new system are closely monitored, with a view to containing them within existing budgets.

4. **Local Member Support**

There are no implications for individual wards arising directly from this report.

5. **Equal Opportunity Implications**

There are none arising directly from this report.

6. **Human Right Implications**

There are none arising directly from this report.

7. **Local Agenda 21 Implications**

There are none arising directly from this report.

8. **Community Safety Implications**

There are none arising directly from this report.

9. **Planning Implications**

There are none arising directly from this report.

10. **Background Papers**

There are no background papers which are not appended to this report.

11. **Recommendation**

That

- (1) the proposal to seek to establish a Merseyside Forum for Independent members be approved;
- (2) the amended terms of reference of the committee be noted;
- (3) the establishment of the sub-committees be approved with the terms of reference contained within Appendix 5;
- (4) the documentation to be placed on the Council's website be endorsed and the committee gives views on any other means of publication of the scheme;
- (5) the assessment criteria contained within Appendix 7 are approved;
- (6) the Protocol for dealing with complaints attached as Appendix 8 of this report be approved;
- (7) the Terms of Reference of the sub-committees, the assessment criteria and the protocol for dealing with complaints be referred to Cabinet and Council as part of the review of the Constitution; and
- (8) Committee notes the training event to be held on 16 July 2008.

The Standards Committee – Existing Terms of Reference

9.1 Standards Committee

The Council meeting will establish a Standards Committee.

9.2 Composition

(a) **Membership** - The Standards Committee will be composed of:

- six Councillors, not more than one of whom is a member of the Executive (other than the Leader) and
- three persons who are not councillors or officers of the Council or of any other body having a Standards Committee (independent members).

(b) **Independent members** - Independent members will be entitled to vote at meetings.

(c) **Chairing the Committee** - A member of the Executive may not chair the Committee.

9.3 Role and Function

The Standards Committee will have the following roles and functions:-

- (a) promoting and maintaining high standards of conduct by Councillors, co-opted members and church and parent governor representatives;
- (b) assisting the Councillors and co-opted members and church and parent governor representatives to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) monitoring the operation of the Members' Code of Conduct;
- (e) advising, training or arranging to train Councillors, co-opted members and church and parent governor representatives on matters relating to the Members' Code of Conduct;
- (f) granting dispensations to Councillors and co-opted members and church and parent governor representatives from requirements relating to interests set out in the Members' Code of Conduct;

(g) dealing with any reports from a case tribunal or interim case tribunal, and any report from the Monitoring Officer on any matter which is referred by an Ethical Standards Officer to the Monitoring Officer.

(h) monitoring and reviewing as necessary the operation of whistleblowing procedures;

(i) considering reports arising from external inspections, audit investigations, Ombudsman investigations where maladministration is found, legal challenges and other sources which cast doubt on the honesty or integrity of the Council or its members;

(j) to consider and make recommendations on such other matters as the Committee itself thinks appropriate or which are referred to it by Council, which further the aim of promoting and maintaining the highest standards of conduct within the Authority;

(k) approve the payment of compensation involving sums in excess of £800 (or less, if considered appropriate) to settle complaints of maladministration, provided the amount of compensation to be offered has been approved informally by the Local Ombudsman.

The Standards Committee – New Terms of Reference

9.1 Standards Committee

The Council meeting will establish a Standards Committee.

9.2 Composition

(a) **Membership** - The Standards Committee will be composed of:

- six Councillors, not more than one of whom is a member of the Executive (other than the Leader) and
- three persons who are not councillors or officers of the Council or of any other body having a Standards Committee (independent members).

(b) **Independent members** - Independent members will be entitled to vote at meetings.

(c) **Chairing the Committee** – The committee must be chaired by an independent member.

9.3 Role and Function

The Standards Committee will have the following roles and functions:-

- (a) promoting and maintaining high standards of conduct by Councillors, co-opted members and church and parent governor representatives;
- (b) assisting the Councillors and co-opted members and church and parent governor representatives to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) monitoring the operation of the Members' Code of Conduct;
- (e) advising, training or arranging to train Councillors, co-opted members and church and parent governor representatives on matters relating to the Members' Code of Conduct;
- (f) granting dispensations to Councillors and co-opted members and church and parent governor representatives from requirements relating to interests set out in the Members' Code of Conduct;
- (g) dealing with any reports from a case tribunal or interim case tribunal, and any report from the Monitoring Officer on any matter which is referred by an Ethical Standards Officer to the Monitoring Officer.

(h) monitoring and reviewing as necessary the operation of whistleblowing procedures;

(i) considering reports arising from external inspections, audit investigations, Ombudsman investigations where maladministration is found, legal challenges and other sources which cast doubt on the honesty or integrity of the Council or its members;

(j) to consider and make recommendations on such other matters as the Committee itself thinks appropriate or which are referred to it by Council, which further the aim of promoting and maintaining the highest standards of conduct within the Authority;

(k) approve the payment of compensation involving sums in excess of £800 (or less, if considered appropriate) to settle complaints of maladministration, provided the amount of compensation to be offered has been approved informally by the Local Ombudsman.

(l) establishing such sub-committees as are required or allowed by the Standards Committee (England) Regulations 2008 to deal with the initial assessment, review and hearing of complaints made alleging that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Council's Code of Conduct for Members.

Wirral Standards Committee – Terms of Reference of Panels (Sub-Committees)

Wirral Council is required to establish sub-committees of its Standards Committee to exercise certain functions under the Standards Committee (England) Regulations 2008. The terms of reference for the panels which will do so are set out below. Each panel shall be a sub-committee of the Standards Committee. Members of each panel must be a member of the Standards Committee.

A. Terms of Reference of the Standards Initial Assessment Panel

- 1 The Standards Initial Assessment Panel will, subject to paragraph 2 below, initially assess all written complaints received by Council's Monitoring Officer on the appropriate Complaints Form.
2. The Standards Initial Assessment Panel will only have jurisdiction to consider written allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Council's Code of Conduct for Members.
3. The Standards Initial Assessment Panel after consideration of a complaint may:-
 - i). decide that no action should be taken in respect of the allegation;
 - ii) ask for additional information from the complainant on the allegation before concluding the initial assessment;
 - iii). if applying the assessment criteria it considers an investigation should be carried out, refer the allegation to the Council's Monitoring Officer, with an instruction that he arranges for an investigation of the allegation or directs that he arranges training, conciliation or such other appropriate action as might be permitted by the relevant legislation;
 - iv). If, applying the matters set out in the Protocol for Dealing with Complaints it is appropriate, refer the allegation to the Standards Board for England for investigation; or
 - v). where the allegation is in respect of a person who is no longer a member of the Council, but is a member of another relevant authority (as defined in Section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other authority,

and shall authorise the Monitoring Officer to take all reasonable steps to implement its decision(s), with reasons, and to notify the person making the allegation and the member concerned of that decision.

4. In the event of there being a local investigation under paragraph 3(iii), the Standards Initial Assessment Panel shall determine, with reasons, whether:
 - i). it accepts the Monitoring Officer's finding of no failure to observe the Code of Conduct;

- ii). the matter should be referred for a hearing of the Standards Committee;
or
 - iii). the matter should be referred to the Adjudication Panel for determination.
5. The Standards Initial Assessment Panel shall also consider under Sections 1 and 2 of the Local Government and Housing Act 1989: -
- (a) any application received from any officer of the Council for exemption from political restriction in respect of the post held by that officer and may direct the Council that the post shall not be considered to be a politically restricted post and that the post be removed from the list maintained by the Council under Section 2(2) of that Act; and
 - b) upon the application of any person or otherwise, consider whether a post should be included in the list maintained by the Council under Section 2(2) of the 1989 Act, and may direct the Council to include a post in that list.
6. **Composition** - The Standards Initial Assessment Panel shall comprise of 3 members. One of whom shall be an independent member of the Standards Committee who shall be the Chair of the Panel and two elected members of the Council who are members of the Standards Committee.
7. **Quorum** - The quorum for a meeting of the Standards Initial Assessment Panel shall be 3 members (with an independent member as Chair) who must be present throughout the course of the meeting.
8. **Frequency of Meetings** - The Standards Initial Assessment Panel will only meet if it needs to initially assess an allegation at that meeting or consider the outcome of an investigation under paragraph 4 above, or consider any application under paragraph 5 above.

B. Terms of Reference of the Standards Review Panel

1. Upon the request of a person who has made an allegation that a member of the Council has failed, or may have failed, to comply with the Council's Code of Conduct, the Standards Review Panel will convene to review a decision of the Standards Initial Assessment Panel that no action is taken in respect of that allegation.
2. The Standards Review Panel may:
 - i). decide that no action should be taken in respect of the allegation;
 - ii) ask for additional information from the complainant on the allegation before concluding the initial assessment;
 - iii). if applying the assessment criteria it considers an investigation should be carried out, refer the allegation to the Council's Monitoring Officer, with an instruction that he arranges for an investigation of the allegation or directs that he arranges training, conciliation or such other appropriate action as might be permitted by the relevant legislation;
 - iv). If, applying the matters set out in the Protocol for Dealing with Complaints it is appropriate, refer the allegation to the Standards Board for England for investigation; or
 - v). where the allegation is in respect of a person who is no longer a member of the Council, but is a member of another relevant authority (as defined in Section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other authority,

and shall authorise the Monitoring Officer to take all reasonable steps to implement its decision(s), with reasons, and to notify the person making the allegation and the member concerned of that decision.

3. **Composition** - The Standards Review Panel shall comprise of 3 members of the Standards Committee who were not members of the Standards Initial Assessment Panel. One of the members of the Standards Review Panel shall be an independent member of the Standards Committee who shall be the Chair of the Panel and two elected members of the Council who are members of the Standards Committee.

No member of the Standards Initial Assessment Panel which made the decision which is the subject of the review by the Standards Review Panel may be present during the course of the consideration of that case by the Standards Review Panel.

4. **Quorum** - The quorum for a meeting of the Standards Review Panel shall be all 3 members (with an independent member as Chair) who must be present throughout the course of the meeting.
5. **Frequency of Meetings** - The Standards Review Panel shall meet as and when required to review any decision of the Standards Initial Assessment Panel within 3 months of the receipt of the request for such a review from the person who made the allegation.

C. Terms of Reference of the Standards Hearings Panel

1. In the event that a hearing of the Standards Committee is required, the Standards Hearing Panel shall be convened to hear and determine any allegation that a member of the Council has failed, or may have failed, to comply with the Council's Code of Conduct.
2. **Composition** - The Standards Hearings Panel shall comprise of 5 members of the Standards Committee. Two of the members of the Standards Hearings Panel shall be independent members of the Standards Committee (one of whom shall Chair the Panel) and three elected members of the Council who are members of the Standards Committee, being one member from each political group.
4. **Quorum** - The quorum for a meeting of the Standards Hearings Panel shall be 3 members (with an independent member as Chairman of the Panel), and at least two elected members of the Council (who are members of the Standards Committee).
5. **Frequency of Meetings** - The Standards Hearings Panel shall meet as and when required to consider, hear and determine any allegation(s) against an elected or co-opted member of the Council.

MEMBERSHIP OF THE PANELS

Each panel shall comprise of members of the standards committee. Every member of the Standards Committee may be selected to sit on any panel, as and when required.

The membership of the panels shall be chosen as follows;

Initial Assessment Panel

The Chair shall be the Chair of the Standards Committee unless he/she is not available in which case it shall be the vice chair or such other independent member of the committee as is available.

The elected members shall be any 2 elected members of the Standards Committee, no member who belongs to the same political group as the member who is the subject of the complaint shall be appointed to the panel, the 2 elected members shall be selected on a rota basis, subject to availability, 1 shall be selected from each of the other political groups.;

Review Panel

The Chair shall be the Chair of the Standards Committee unless he/she is not available or has been a member of the Initial Assessment Panel which made the decision which is the subject of the review, in which case it shall be the vice chair or such other independent member of the committee as is available.

The elected members shall be any 2 elected members of the Standards Committee, no member who belongs to the same political group as the member who is the subject of the complaint shall be appointed to the panel, the 2 elected members shall be selected on a rota basis, subject to availability, 1 shall be selected from each of the other political groups. No elected member who was a member of the Initial Assessment Panel which made the decision which is the subject of the review may be a member of the Review Panel.

Hearings Panel

Two of the members of the Standards Hearings Panel shall be independent members of the Standards Committee (one of whom shall Chair the Panel) and three elected members of the Council who are members of the Standards Committee, being one member from each political group.

CODE OF CONDUCT FOR MEMBERS: INFORMATION FOR POTENTIAL COMPLAINANTS

Changes to the complaints procedure

From 8 May 2008 the responsibility for considering complaints that a member or co-opted member of Wirral Council may have breached the Code of Conduct for Members has moved to the Standards Committee of the Council.

What this means to you

After 8 May 2008 if you want to complain about the conduct of a member or co-opted member of Wirral Council, you must submit your complaint to the Council's Monitoring Officer, contact details are given below.

The Standards Committee can only deal with complaints about the behaviour of a member. It will not deal with complaints about things that are not covered by the members' Code of Conduct. If you make a complaint it must be about why you think a member has not followed the Code of Conduct. It will not deal with complaints about any officers of the Council or actions by Council Departments. If you have any complaints of that nature you should address them through the relevant complaints procedure.

If you want to make a complaint you will have to complete the necessary complaint form and provide any evidence which you have to substantiate your complaint. The form is available on the Council's website or can be obtained from the Council's Monitoring Officer or any One Stop Shop.

If you are unsure about the process please contact the Monitoring Officer before submitting any complaint.

Guidance on making a complaint is also available from the website of the Standards Board for England at: <http://www.standardsboard.gov.uk/Makingacomplaint/>

What you should do if you wish to submit a complaint

If you need any general advice raise it with the Council's Monitoring Officer

Fully complete the Complaints Form. Only written complaints will be considered, however, if you have any difficulties in completing the form please contact the Monitoring Officer.

Submit the completed written complaint by post, e-mail or fax as soon as possible to the Monitoring Officer, contact details set out below.

Address for the Submission of a Complaint

Simon Goacher
Acting Monitoring Officer and Proper Officer
Wallasey Town Hall
Brighton Street
Wallasey
Wirral CH44 8ED

Tel: 0151 691 8498
Fax: 0151 691 8482
E-mail: simongoacher@wirral.gov.uk

Procedure

1. Your written complaint will be considered by the Standards Initial Assessment Panel. The Panel will decide whether or not to refer your complaint for investigation. Please note that you will not be asked to attend this meeting which will not be held in public session. A decision will be made within twenty working days and you will be notified of the outcome.
2. If the Initial Assessment Panel decides not to investigate your complaint you may request a review of that decision by the Standards Review Panel. This will consist of three different Members and will reconsider your written complaint.
3. If the matter is referred for investigation this will be undertaken and a full report brought back to the Standards Committee for determination. If the Committee considers that there has been failure to comply with the Code of Conduct and that a sanction is appropriate a number of options are available, including censure of the Member, temporary suspension, the submission of a written apology, training or participation in conciliation.

APPENDIX 7

Wirral Standards Committee Assessment Criteria

In considering whether or not a complaint should be investigated or no further action should be taken then the Initial Assessment Panel will consider the following criteria:

1) 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 Initial Assessment Panel is taking no further action on this complaint.”

2: 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 Initial Assessment 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 authority but is a member of another authority, the complaint will be referred to the standards committee of that authority to consider.”

3) 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.”

4) 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.”

5): 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.”

6) 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”.

7) Has the Complaint been submitted anonymously?

If the answer is **yes** then the complaint will only be investigated in exceptional circumstances, for example if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

Appendix 8

Protocol for Dealing with Complaints of Breach of Code of Conduct by Members

1) Receipt of Complaint by the Monitoring Officer

On receipt of a complaint the Monitoring Officer must consider the Complaint. If the Complaint does not relate to member conduct then the Monitoring Officer will consider whether it should be dealt with through another process, for example the Corporate Complaints procedure. The Monitoring Officer may seek further clarification from the Complainant. If the matter clearly does not relate to the conduct of a member then the Monitoring Officer need not refer it to the Initial Assessment Panel and will notify the Complainant accordingly.

2) Further Clarification

If the substance of the Complaint is unclear from the form received the Monitoring Officer may seek clarification from the Complainant. This should not amount to an investigation but should merely be to seek clarification of any issues which are not clear from the Complaint Form.

3) Referral to the Initial Assessment Panel

On receipt of a complaint the Monitoring Officer shall arrange for an Initial Assessment Panel to be convened as soon as possible within 20 working days. The Monitoring Officer shall prepare a brief report setting out;

- a) whether the complaint falls within the jurisdiction of the Standards Committee;
- b) the relevant paragraphs of the Code of Conduct which the complaint relates to;
- c) if the complaint is lengthy or complex a summary of the key aspects;
- d) any further information available which might assist the Panel; for example;
 - (i) a copy of the member's declaration of office;
 - (ii) minutes of meetings;
 - (iii) a copy of the members entry in the register of interests;
 - (iv) information from Companies House or the Land Registry; and/or
 - (v) any other relevant documents which are easily obtainable.

4) Initial Tests

The Initial Assessment Panel must first consider whether the complaint meets 3 basic tests:

- a) is it a complaint against one or more named members of the authority;
- b) was the named member in office at the time of the alleged conduct and the Code of Conduct was in force at the time; and
- c) the complaint, if proven, would be a breach of the Code under which the member was operating at the time.

If the complaint fails **any** of these tests then it cannot be investigated as a breach and the complainant must be notified that no further action will be taken.

5) Initial Assessment

The Initial Assessment Panel will consider at the meeting whether or not to take any further action. In considering whether or not to do so it must consider the Assessment Criteria. The Initial Assessment Panel will base its decision purely on the information supplied by the complainant in the Complaint Form and any relevant information contained within the Monitoring Officer's covering report.

The Initial Assessment Panel may;

- a) determine that no further action should be taken;
- b) refer the matter to the Monitoring officer for investigation or alternative action;
- c) refer the complaint to the Standards Board for England ("SBE").

6) Access to Information/Meetings

Meetings of the Initial Assessment Panel and the Review Panel are not covered by the Rules on Access to Information that govern other meetings of committees. There is a responsibility to ensure confidentiality of the complainant and the member. For this reason and to ensure that there can be no suggestion of undue process the member who is the subject of the complaint will not be notified of the complaint until after the Initial Assessment Panel has considered the Complaint.

No officer or member of the Initial Assessment Panel shall disclose the existence or details of the Complaint to any other person other than those members or officers present at the Initial Assessment Panel Hearing.

The details of the date and time of meetings of the Initial Assessment and Review Panels will be published on the council's system in the usual way. However, no details of the complainant, the complaint or the member who is subject of the complaint will be published. The only people who will be present during any meeting of the Initial Assessment or Review Panels will be the members of the panels and the Monitoring Officer and/or his representative(s). The complainant and the member who is the subject of the complaint must not be present at any meeting of the Initial Assessment or Review Panel.

There will be no published minutes of the decisions of the Initial Assessment or Review Panels. However, written notifications must be sent to the relevant parties, this is considered further below.

7) Referral to the SBE

The Initial Assessment Panel may refer the matter to the SBE. The SBE will accept cases for investigation by an Ethical Standards Officer if it is considered to be in the public interest. The SBE Guidance states that in considering this it will take in to account:

- a) whether the status of the member involved would make it difficult for the complaint to be dealt with locally, e.g. if it is against the leader of the council, a group leader, a cabinet member or a member of the standards committee;
- b) whether the status of the complainant would make it difficult for the complaint to be dealt with locally, e.g. if the complainant is the leader of the council, a group leader, a cabinet member, a member of the standards committee, the Chief Executive, the Monitoring Officer or another senior officer;
- c) if there is a potential conflict of interest for so many members of the standards committee that it could not properly monitor the investigation;
- d) if there is a potential conflict of interest for the Monitoring officer or other officers and that suitable 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 for the authority's documents, members or officers;
- g) is there a substantial dysfunction in the governance of the authority or its standards committee;
- h) does the complaint relate to long term systemic member/officer bullying which could be more effectively investigated by someone outside of the authority;
- i) does the complaint raise significant or unresolved legal issues on which it would be helpful to gain a national ruling;
- j) might the authority be perceived by the public to have an interest in the outcome of the case, e.g. if the authority might be liable to be judicially reviewed if the complaint were upheld; and
- k) are there exceptional circumstances which would prevent the authority from 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 the investigation.

The Initial Assessment Panel will consider these factors in determining whether or not to refer any complaint to the SBE.

The SBE will normally make a decision on whether to accept a complaint within 10 working days. If the SBE declines to accept a case it will notify the authority setting out reasons why. If it is referred back then the Initial Assessment Panel must consider the Complaint again within 20 working days.

8) Referral for Alternative Action

The Initial Assessment Panel may refer the complaint to the Monitoring Officer to take alternative action. The Initial Assessment Panel must consult with the Monitoring Officer before doing so. The alternative action could be training, amendments to Council procedures or some form of mediation/conciliation.

9) Taking no Further Action

The Initial Assessment Panel may decide that no further action should be taken. The Initial Assessment Panel might do this on the basis that the complaint, even if substantiated, would not amount to a breach of the code.

Alternatively it may conclude that a complaint, even if on the face of it would amount to a breach, should not be investigated. In reaching that decision the Panel must have regard to the assessment criteria.

10. Notification of Decision

If the Initial Assessment Panel decides that no further action should be taken then it must give notice in writing of the decision setting out the reasons to the complainant and the member concerned. This should be done within 5 working days of the decision. The complainant must be advised of his/her right to request a review of that decision.

If the Panel decides to refer the complaint to the Monitoring Officer or the SBE it must notify the complainant and the member concerned of its decision to do so. The notification should include a summary of the complaint. It should not set out the reasons why a particular referral decision has been made.

The Panel need not give the member concerned a summary of the complaint where it would not be in the public interest to do so or it would prejudice the investigation. This might occur if there was a concern that the member might intimidate the complainant or any witnesses involved.

The member would normally be notified of the identity of the complainant. This may be withheld if it is in the public interest to do so for example if there would be a risk of intimidation or less favourable treatment if the identity is disclosed.

11. Reviews

The complainant may seek a review of a decision by the Initial Assessment Panel that no further action should be taken. The complainant must request a review within 30 working days.

On receipt of a request for a review the Monitoring Officer will convene a meeting of a Review Panel as soon as possible. The Review Panel must meet within 3 months of the request. The SBE suggests that authorities should aim to conduct a review within 20 working days.

The Review Panel must not contain any members who were involved in the decision being reviewed. No member of the Initial Assessment Panel should be present during the Review Panel meeting.

The Review Panel should apply the assessment criteria in determining whether to uphold the review. If the complainant in requesting a review provides significant additional information then it may be more appropriate for the Review Panel to treat it as a new complaint.

A review may be appropriate if the complainant wishes to challenge that;

- a) not enough emphasis has been placed on a particular aspect of the complaint;
- b) there has been a failure to follow published criteria; or
- c) there has been an error in the procedures.

The Review Panel has the same decisions available to it as the Initial Assessment Panel (see paragraph 5 above).

12. Notification of Reviews

There is a requirement to notify the member concerned that there has been a request for a review.

If the Review Panel decides that no further action should be taken it must notify the complainant and the member concerned as soon as possible of the decision and the reasons for it.

If the Panel decides to refer the complaint to the Monitoring Officer or the SBE it must notify the complainant and the member concerned of its decision to do so. The notification should include a summary of the complaint. It should not set out the reasons why a particular referral decision has been made.

The notification should be sent within 5 working days of the decision.

13. Withdrawing Complaints

A complainant may indicate that he/she wishes to withdraw his/her complaint prior to the Initial Assessment Panel having reached a decision. The Panel will need to consider whether to agree to such a request. In doing so the Panel will consider:

- a) does the public interest in taking some action outweigh the complainant's desire to withdraw?
- b) Could action be taken without the complainant's participation?
- c) Is there information to suggest that the member may have intimidated the complainant leading him/her to withdraw the complaint?

14. Multiple Complaints

Where a number of separate complaints are received about the same conduct or series of conduct then the Monitoring officer will prepare one report for consideration by the Initial Assessment Panel. The Panel may then consider all the complaints together or separately. In deciding which course to take the Panel will consider the best way to use resources in conducting any investigation which might be necessary. Although the complaints may be considered together a separate decision must be made on each.

15. Persistent and/or Vexatious Complaints

If an individual abuses the complaints process by making persistent complaints which do not raise any new issues or vexatious complaints then the Monitoring Officer may prepare a report to the Standards Committee of his own volition or at the request of a member of the committee. Restrictions may be placed on the contact which an individual has with the Council in line with the Council's policy on dealing with unreasonable persistent complainants. The Council cannot prevent an individual making complaints about councillors. However, the conduct of the complainant can be a factor in deciding how to deal with their complaint.

15. Conflict of Interests for Members

The Code of Conduct in relation to interests applies to local assessment if complaints.

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

- a) the initial assessment decision;
- b) a referral back for another assessment decision;
- c) 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 or Panel 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:

- a) anyone closely associated with someone who is a complainant;
- b) 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 SBE or to the 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 SBE or Monitoring Officer, must not participate in the review of that decision.

16. Conflict of Interests for Officers

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:

- a) draft letters;
- b) prepare reports;
- c) contact complainants;

d) 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 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.

17. 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 panel. Decisions made in an assessment or review panel 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.

Members or officers should not take part in the assessment of a complaint where they have a personal interest. In deciding whether an interest arises members and officers should consider the following:

- a) is the complaint 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?
- b) is the member or officer directly or indirectly involved in the case in any way?
- c) is a family member, friend or close associate of the member or officer involved in the case?
- d) has the member or officer any interest in any matter relating to the case. For example, it concerns a member's failure to declare an interest in 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.

18. 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 the council and the police authority may be the subject of complaints that they have breached the Codes of both authorities.

As such, it would be possible for both the Initial Assessment Panel of the 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 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 SBE.

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

19. Conducting an Investigation

In conducting an investigation the Monitoring Officer or such other person appointed by him shall do so in accordance with the Guidance issued by the SBE "Local Investigations and Other Action", which is available at, <http://www.standardsboard.gov.uk/Guidance/Investigations/>.

20. Consideration of a Report

On completion of an investigation the Monitoring Officer or Ethical Standards Officer's report will be referred to the Initial Assessment Panel for consideration. The Initial Assessment Panel will decide only whether or not there should be a hearing. If the report concludes that there has no breach of the code the Panel may decide that it is not necessary to hold a full hearing and simply advise the member concerned and the Complainant accordingly. The Panel may conclude that a hearing should take place, in which case a Hearings Panel Meeting will be convened.

The Panel may refer the matter to the Adjudication Panel for determination if it considers that the sanctions which would be available if a finding of failure to comply with the Code were made would be insufficient and the President of the Adjudication Panel agrees to accept the referral.

21. Preparing for a Hearing

A hearing must take place within 3 months of the completion of the Monitoring Officer's investigation or receipt of the Ethical Standards Officer's report. A hearing should be convened at the earliest possible opportunity.

The member concerned should be given sufficient time to prepare for any hearing. When the report has been completed the Monitoring Officer or his representative shall contact the member to ascertain whether or not the member:

- disagrees with any of the findings of fact in the ESO's report, including the reasons for any disagreements;
- wants to be represented at the hearing by a solicitor, barrister or any other person;
- wants to give evidence to the Standards Committee, either verbally or in writing;
- wants to call relevant witnesses to give evidence to the Standards Committee;
- wants any part of the hearing to be held in private;
- wants any part of the ESO's report or other relevant documents to be withheld from the public; and
- can come to the hearing.

At the same time contact should be made with the Complainant to confirm whether he/she wishes to attend the hearing. This process will be carried out in writing.

When the Monitoring Officer has received a response from the member concerned the Chair of the Standards Committee, in consultation with the legal advisor to the committee, should then write to everyone involved at least two weeks before the hearing to:

- set the date, time and place for the hearing;
- summarise the allegation;
- outline the main facts of the case that are agreed;
- outline the main facts which are not agreed;
- note whether the member concerned or the complainant will go to or be represented at the hearing;
- list those witnesses, if any, who will be asked to give evidence; and
- outline the proposed procedure for the hearing.

22. The Hearing

The hearing must not take place sooner than 14 days after the member concerned was sent a copy of the Monitoring Officer or Ethical Standards Officer's report, unless the member agrees to a shorter period.

Standards Committees and sub-committees should work fairly and in a way that encourages the confidence of members and the public. The member concerned must be given the opportunity to make representations to the

committee, either orally or, if the member chooses in writing. The member may be represented by a solicitor or counsel, or with the consent of the Panel any other person.

The Panel shall invite such witnesses as it considers appropriate to give evidence at the hearing. The member shall be given the opportunity to invite witnesses. The committee has no power to compel witnesses to attend. The committee may restrict the number of witnesses, including witnesses that the member would like to attend if it considers that the number of witnesses the member intends to call are unreasonable.

If the member concerned fails to attend a hearing of which he/she has been given notice the committee may proceed to hold the hearing in the member's absence or adjourn the hearing to another date.

Where the Panel is considering a report of the Ethical Standards Officer it may adjourn the hearing and make a written request to the Ethical Standards Officer to investigate further setting out the reasons for the request.

The Panel may adjourn to request that the Monitoring Officer carries out further investigations.

Generally hearings will take place in public unless there are grounds for exemption in accordance with the usual access to information rules.

After considering the written and oral presentations, the Panel will reach and announce its findings of fact.

23. Findings

The Panel may find:

- (a) that the member has not failed to comply with the code;
- (b) that the member has failed to comply with code but no further action needs to be taken; or
- (c) that the member has failed to comply with the Code and a Penalty should be imposed.

24. Sanctions

If the Standards Committee decides that the member has failed to follow the Code of Conduct and that the member should be penalised, it may do any one or a combination of the following:

- censure the member (this is the only penalty which may be imposed if the member is no longer a member of the authority);
- restrict the member's access to the resources of the relevant authority for up to six months, which could include limiting his or her access to the premises of the relevant authority;
- suspend or partly suspend the member for up to six months; or
- suspend or partly suspend the member for up to six months on the condition that the suspension or partial suspension will end if the

member apologises in writing, receives any training, or takes part in any conciliation that the Standards Committee orders them to. Conciliation involves an independent person helping the relevant people try to reach an agreement on the matter set out by the Standards Committee;

- require the member to apologise

Penalties may start immediately or up to six months after the hearing, if the Panel wishes.

25. Notification of Findings

The Panel will also give written notice of its findings, as soon as is reasonably practicable, reasons for its findings and any penalty to;

- (a) The member
- (b) The SBE;
- (c) The Standards Committee or any other authority concerned; and
- (d) The complainant;

It will also arrange for the notice to be published in one or more newspapers that are circulating in the area and, if considered appropriate, on the Council's website. If the Standards Committee finds that the member has not broken the Code, the member can ask the Standards Committee not to have this information published.

26. Appeal

The member who is the subject of a Panel finding has the right to apply in writing within 21 days of receipt of the notice of the decision to the President of The Adjudication Panel for England for permission to appeal against that finding.