



AGENDA ITEM :7

STANDARDS COMMITTEE

9th SEPTEMBER 2008

LOCAL ASSESSMENT OF ALLEGATIONS OF MISCONDUCT BY A MEMBER

DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

1. PURPOSE OF REPORT

- 1.1. This report explains the new regime for the assessment of complaints about the conduct of Members following a transfer of functions from the Standards Board for England to local Standards Committees. The report recommends a number of actions necessary to implement the new procedures in compliance with the Local Government and Public Involvement in Health Act 2007, the Standards Committee (England) Regulations 2008 and recent Standards Board Guidance.

2. BACKGROUND

Background to the new regime

- 2.1. In the past, any complaint of misconduct by a Member had to be submitted to the Standards Board for England, which determined whether the allegation appeared to disclose a failure by the Member to comply with the Code of Conduct, and then whether the allegation merited investigation. From the 8th May 2008, all such complaints are made to the Standards Committee of the authority concerned, and a Sub-Committee of the Standards Committee has to decide whether the complaint should be investigated.
- 2.2. This report sets out the changes to the system of handling complaints against Members, and the issues which the authority needs to address in order to meet these new requirements.

Sub-Committee responsibilities

- 2.3 The legislation requires the Standards Committee to establish a Sub-Committee (the Initial Assessment Sub-Committee) that will be required to undertake the initial assessment and decide whether the complaint shows an apparent failure to comply with the Code of Conduct for Members and, if so, whether the complaint merits investigation or other action. If the Initial Assessment Sub-Committee decides to take no action in respect of an allegation, the complainant has 30 days within which to request the authority to review that decision. The Act requires the Standards Committee to set up a second Sub-Committee (the Review Sub-Committee) to conduct that review. No Member can sit on the Review Sub-Committee in respect of a complaint where they were on the Initial Assessment Sub-Committee for the initial assessment of the same complaint.
- 2.4 If the matter then goes for investigation and the Investigating Officer concludes that there has been a failure to comply with the Code of Conduct a hearing would then be held. The Standards Board recommends that such hearings should be held before a Sub-Committee (a Hearings Sub-Committee) of between three and five Members.
- 2.5 Whilst the legislation prevents the Member from sitting on both the Initial Assessment Sub-Committee and the Review Sub-Committee on the same matter (on the basis that a Member cannot fairly review his/her own decision), there is no similar statutory prohibition of a Member sitting on the Hearings Sub-Committee when that Member was previously on either the Initial Assessment Sub-Committee or the Review Sub-Committee in respect of the same matter.
- 2.6 The Council at its annual meeting in May 2008 appointed all three Sub-Committees.

Local resolution of complaints

- 2.7 Members will be well aware that both investigations and hearings can be expensive. Within the legislation, there is no formal process for local resolution of complaints, although the new regulations enable the Initial Assessment Sub-Committee to propose conciliation or some other course of action as an alternative to a formal investigation. However, where the Member concerned has acknowledged that his/her conduct was at fault and apologised, and particularly where the complainant has accepted that in the light of the apology he/she is content for the complaint not to proceed to formal investigation, the Initial Assessment Sub-Committee may determine that the matter should not proceed to investigation. Accordingly, there will be cases in which informal mediation by the Monitoring Officer before reporting to the Initial Assessment Sub-Committee may avoid the need for a local investigation and/or hearing.
- 2.8 It is therefore recommended a local protocol as set out in Appendix 2 hereto is adopted, authorising the Monitoring Officer to seek such local resolution in appropriate cases.

Filtering out irrelevant complaints

- 2.9 The Standards Board experience has been that a large number of complaints received do not relate to the Code of Conduct for Members, and it is anticipated that the publicity surrounding the new system will result in an increase in such complaints. Such requests can often be categorised as follows:-
- (a) Requests for additional service from the authority;
 - (b) Statements of policy disagreement;
 - (c) Matters relating to other authorities; or
 - (d) Matters relating to a Member's private life.
- 2.10 The 2007 Act, provides that the function of the initial assessment of complaints must be conducted by the Standards Committee, or by a Sub-Committee, but does not allow for delegation of this function to the Monitoring Officer. If the Monitoring Officer identifies that a complaint clearly falls within category (a) or (b) of paragraph 2.9 above, he/she may be able to ensure that the complaint is dealt with accordingly, responding to the complainant to explain how the matter has been dealt with, and only reporting to the Initial Assessment Sub-Committee if the complainant insists that it be dealt with at a Standards Committee. In all other cases, it will be necessary to report to the Initial Assessment Sub-Committee and for the Initial Assessment Sub-Committee to determine which of the following statutory options should apply:-
- refer the allegation to the Monitoring Officer;
 - Refer the allegation to the Standards Board for England;
 - Decide that no action should be taken in respect of the allegation; or
 - Where the allegation relates to a person who is no longer a Member of this authority but is a Member of another relevant local authority, refer the allegation to the Monitoring Officer of that other authority.

Pre-investigation

- 2.11 The Initial Assessment Sub-Committee has to decide whether the allegation appears to disclose a failure to comply with the Code of Conduct for Members, and then whether it merits investigation. Where the Sub-Committee has only the letter of complaint, it is not always easy to assess whether there is any substance to the allegation. However, there may be information which is readily available which might substantiate, or contradict, the allegation and so make it easier for the Sub-Committee to decide whether the complaint has any substance. Clearly, the Monitoring Officer cannot "investigate whether to investigate" but he/she can usefully check publicly available information between receipt of the complaint and the meeting of the Initial Assessment Sub-Committee. It is therefore recommended that the Monitoring Officer, where practicable, should obtain and inform the Initial Assessment Sub-Committee of any factual information that would facilitate its tasks of determining whether a complaint merits investigation.

Assessment criteria

- 2.12 The Standards Board Guidance states that the Initial Assessment Sub-Committee will need to develop criteria against which it assesses new complaints and decides what action, if any, to take. It is recommended that the criteria set out in Appendix 1 hereto be adopted initially and that the criteria be reviewed periodically in the light of experience and any further Guidance issued by the Board or changes in the legislation.

Notification following initial assessment

- 2.13 Where the Initial Assessment Sub-Committee decides that no action be taken on a complaint, it must take reasonable steps to give notice in writing to the complainant of the decision and the reasons for that decision. It must also give similar notification to the Member concerned of a decision not to take any action. There is no such requirement in respect of a decision to investigate or to refer a complaint to the Standards Board for England, but as a matter of policy, clearly such notification should be given unless there are exceptional circumstances where such disclosure might impede proper investigation. In practice, it will be the Monitoring Officer rather than the relevant Sub-Committee that will notify the complainant and the Member.

Review of initial assessment

- 2.14 Where the Initial Assessment Sub-Committee decides that no action should be taken on a complaint, the complainant may, within thirty days of being notified of that decision, request the Review Sub-Committee to review that decision. The Review Sub-Committee's decision is then notified to the complainant, who then has no further recourse, other than judicial review.

Decision whether to conduct a local hearing

- 2.15 Where the Monitoring Officer's investigation concludes that there has not been a failure to observe the Code of Conduct, the regulations provide for the Monitoring Officer's report to be presented to the Standards Committee (or a Sub-Committee) which then decides whether it accepts that conclusion, or whether it wishes to conduct a formal hearing. This procedure remains as before.
- 2.16 Where the Monitoring Officer's investigation concludes that there has been a failure to observe the Code of Conduct, the old regulations provided for the matter to proceed directly to a local hearing. If the Standards Committee decided that it could not fairly hear the matter or that the matter was so serious and it would merit more than the maximum three months suspension, it could request the Standards Board to take the matter back and direct it to a National Case Tribunal for hearing.
- 2.17 The new regulations add in another step. The Monitoring Officer's report now has to be reported to the Standards Committee (or a Sub-Committee), which can only decide to send it for a local hearing or to send it to a Case Tribunal. Given that the maximum local sanction is now increased to six months suspension, and the Monitoring Officer has the opportunity to refer the matter to the Standards Board at any stage prior to the completion of the investigation, the number of matters which will require to be referred to the Case Tribunal by the Standards Committee is likely to be very small. However, the new regulations require that a meeting of the

Standards Committee or Sub-Committee is held to consider the report and to take this decision before the actual hearing can be arranged. Once the decision has been taken for a local hearing, the Monitoring Officer will then undertake the pre-hearing process and a Hearings Sub-Committee will then conduct the hearing.

- 2.18 Rather than set up four different Sub-Committees, it is recommended that the functions of determining whether to accept the Monitoring Officer's finding of no breach, or to go to a local hearing or to refer the matter to a Case Tribunal where the Monitoring Officer's finding is that there has been a breach, should be delegated to the Initial Assessment Sub-Committee.

3. RECOMMENDATIONS

- 3.1 It is recommended that the Committee –

- (a) adopt the assessment criteria set out in Appendix 1;
- (b) approves the protocol for handling complaints as set out in Appendix 2; and
- (c) authorises the Initial Assessment Sub-Committee to consider the Monitoring Officer's report following an investigation.

BACKGROUND PAPERS

Standards Board for England Guidance

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