

TELFORD & WREKIN COUNCIL

STANDARDS COMMITTEE – 9TH OCTOBER 2008

ASSESSMENTS AND REVIEW CRITERIA FOR INITIAL ASSESSMENT OF STANDARDS COMPLAINTS

REPORT OF INTERIM HEAD OF LEGAL SERVICES AND MONITORING OFFICER

1. PURPOSE

- 1.1 To inform members about an assessment and review criteria for the initial assessment of member Code of Conduct complaints.

2. RECOMMENDATIONS

- 2.1 That the Committee approve the initial assessment of standards complaints criteria attached to this Report at Appendix 1.
- 2.2 That delegated authority be given to the Head of Legal Services and Monitoring Officer after consultation with the Chair and Vice Chair of the Standards Committee to amend the assessment and review criteria as appropriate in the event of new or updated relevant guidance issued by the Standards Board for England.

3. SUMMARY

- 3.1 The Standards Board for England recommends that standards committees develop criteria against which complaints alleging breaches of the members' Code of Conduct can be assessed. Officers are presenting a draft assessment and review criteria for consideration by this Committee.

4. PREVIOUS MINUTES

Standards and Audit Committee – 24 March 2005, 24 January 2006 (ST - 30), 30 October 2007 (ST – 33), 29 January 2008 (ST – 53).
Standards Committee – 17 June 2008 (ST – 05).

5. INFORMATION

- 5.1.1 The Committee is aware that from 8 May 2008 the responsibility for initial assessment of complaints alleging a breach of the Members' Code of Conduct has been transferred to this Committee. In accordance with the provision of the Local Government and Public Involvement in Health Act 2007 and the Standards Committee (England) Regulations 2008, the Committee have set up an Assessment Sub Committee and Review Sub

Committee to deal with the initial assessment and review of complaints. The Committee will also be aware that in undertaking these new responsibilities the Committee has to take account of guidance issued by the Standards Board for England.

5.1.2 The Standards Board Guidance entitled “Local Assessment of Complaints” states

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

Assessing all new complaints by established criteria will also protect the committee members from accusation of bias. Assessment criteria can be reviewed and amended as necessary but this should not be done during consideration of a matter” (Page 11 of the guidance).

5.1.3 Attached to Appendix 1 is a draft initial assessment and review criteria for consideration by the Committee. To address the Standards Board reference to the criteria reflecting local circumstances and priorities, an example is contained at section 4(d) which addresses issues such as trivial, vexation, malicious and politically motivated complaints, which caused some debate amongst members of the Committee at the last meeting.

5.1.4 Adoption of the assessment and review criteria does not fetter the discretion of the Assessment or Review Sub Committee when they consider complaints. Each case must be considered on its own merit and reasonable and proportionate decisions made accordingly.

5.1.5 Any criteria adopted can be reviewed periodically by the Committee, but as previously mentioned, this should not be done during the consideration of a matter. It is suggested that the Monitoring Officer, after consultation with the Chair and Vice Chair of this Committee, has a delegated authority to make amendments to any assessments within the adopted criteria, in the event that the changes need to be made quickly to ensure compliance with any Standards Board guidance.

5.2 Equality and Diversity

No implications identified

5.3 Environment Impact

No implications

5.4 Legal Comments

The legal comment is contained within the main body of this report.

5.5 Links to Corporate Priorities

Ensuring that the Standards Committee undertakes its functions in accordance with Standards Board guidance and following best practice helps to ensure that the Council achieves its priority of being an efficient, effective and customer focused Council.

5.6 Opportunities and Risks

The Opportunities and Risks associated with the adoption of this criteria have been identified and assessed. Arrangements will be put in place to manage the risks and maximise the opportunities that have been identified.

5.7 Financial Implications

The development of assessment criteria is part of the new local system for processing code of conduct complaints which came into place on the 8th May 2008. There will be additional costs associated with the new system, however it is very difficult to quantify the financial impact as this will depend on the number and types of complaints received. At the time of compiling this report, only one complaint had been dealt. An initial estimate is that around 30-40 days of officer time will be required to meet the requirements and legal services will aim to contain this within current staff budgets, although it should be noted that this may impact on their capacity to provide legal services. If an investigation is required there may be the need to appoint an independent investigator which will lead to additional costs that are not budgeted. These will be closely monitored during the year and any additional costs will be flagged up in financial monitoring reports.

6. Ward Implications

District wide implications.

7. Background Papers

Local Government and Public Involvement In Health Act 2007.
The Standards Committee (England) Regulations 2008.
Standard Boards Guidance – Local Assessment of Complaints.

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Appendix 1

Initial Assessment of Standards Complaints

Assessment and Review Criteria

1 Introduction

This paper sets out the criteria which the Assessment Sub-Committee will apply in conducting the initial assessment of allegations of failure by members to observe the Code of Conduct.

The authority takes all allegations of member misconduct extremely seriously and seeks to secure the highest standards of conduct at all times. The initial assessment process determines whether the complaint appears to show that there has been a breach of the Code of Conduct, and then whether the complaint should be subject to a formal investigation (either by the Standards Board for England or locally under the direction of the authority's Monitoring Officer), whether the authority's Monitoring Officer should be directed to take other appropriate actions in respect of the complaint, or whether no action should be taken in respect of the complaint.

2 Local resolution of complaints

The Standards Committee is acutely aware that the formal investigation of complaints is costly and time consuming. Whilst formal investigation may be necessary in some cases, many complaints can often be dealt with more rapidly and effectively if an early, informal resolution of the matter can be achieved.

The Standards Committee has instructed the Monitoring Officer, where a complaint has been received, to explore the potential for local resolution to the satisfaction of the complainant, to avoid the need for a formal investigation. But any attempts at local resolution do not take away from the right of a complainant to have their complaint of member misconduct considered by the Sub-Committee.

3 Which complaints can be considered?

The Assessment Sub-Committee must consider every complaint that a member of the authority (or of any Parish or Town Council within its area) has failed to comply with the Code of Conduct which that authority has adopted. Accordingly, it has no jurisdiction in respect of any complaint which relates to:

- (a) persons who are not members of the authority (or a Parish or Town Council in its area)
- (b) conduct which occurred at a time when the person against whom the complaint was made was not a member of the authority (or of a Parish or Town Council in its area)
- (c) conduct which occurred before the relevant authority adopted a Code of Conduct. All local authorities were required to adopt a Code of Conduct in 2001. In practice, the Sub-Committee will expect complaints to be made promptly after the events to which they relate (see below)

- (d) conduct which occurred in the member's private life, as the Code of Conduct only applies to a member's conduct as a member of a local authority
- (e) conduct which occurred when the member was acting as member of another authority. Where a member is also a member of another authority (other than a Parish or Town Council within its area) which has its own Code of Conduct, then the complaint should be addressed directly to that authority.
- (f) complaints which do not relate to the apparent misconduct of a relevant member but are, for example, about the policies and priorities of the authority, or are a request for the provision of a service by the authority, or are a complaint about the conduct of an officer of the authority

Such complaints will not be referred to the Assessment Sub-Committee but will instead be dealt with by the Monitoring Officer who will advise the complainant as to the most appropriate avenue for proper consideration of their complaint or request.

4 Does the complaint appear to show a breach of the Code of Conduct?

The first assessment which will be undertaken by the Sub-Committee will be to determine whether the complaint appears to show that a breach of the Code of Conduct may have occurred.

For this purpose, the Sub-Committee will take into account the complaint letter and any other information which is readily available to them. Accordingly, it is the responsibility of a complainant to set out clearly –

- (a) who the complaint is against
- (b) what they understand that the relevant member did
- (c) why they consider that the member's conduct amounted to a breach of the Code of Conduct,

And to provide copies of any documents which they want the Sub-Committee to consider.

Following receipt of your complaint, the Monitoring Officer will collect any other information which is readily available and which may assist the Sub-Committee in its consideration of the complaint. This will not include conducting interviews with witnesses, but may include providing the Sub-Committee with copies of the agenda, reports and minutes of a meeting of the authority at which the alleged misconduct occurred, or providing copies of the member's entry in the register of members' interests.

The Sub-Committee will then consider whether, on the basis of the complaint and that additional information, there appears to have been a breach of the Code of Conduct.

If the Sub-Committee concludes that the evidence does not disclose an apparent breach of the Code of Conduct, it has no further jurisdiction in respect of the matter.

5 Possible actions where an apparent breach of the Code of Conduct has occurred

Where the Sub-Committee has concluded that there appears to have been a breach of the Code of Conduct, it has four options available to it. These are as follows:

(a) **direct the Monitoring Officer to secure that the complaint is investigated locally**

A local investigation will normally be appropriate where the alleged conduct is sufficiently serious to merit the imposition of a sanction against the member, but not so serious that it would merit a greater sanction than the authority's Standards Committee could impose following a formal hearing. In practice, this means that a local investigation would not be appropriate where the appropriate sanction is likely to be a suspension as a member of the relevant authority for a period of more than 6 months, or disqualification as a member of any local authority. See paragraph 5(b) below for more detailed grounds for referring a complaint to the Standards Board for England.

However, recognising that a formal investigation is an expensive and time-consuming process, and can only address the immediate subject matter of the complaint, the Sub-Committee can direct the Monitoring Officer to take other appropriate action short of a formal investigation – see paragraph 5(c) below.

In addition, particularly where the conduct complained of is not sufficiently serious to merit any action or occurred a considerable time ago, the Sub-Committee may determine that no action should be taken in respect of it. For more detail, see paragraph 5(d) below.

(b) **refer the matter to the Standards Board for England with a request that the Board undertakes a national investigation into the complaint;**

The following factors will be considered by the Sub-Committee to be factors which support referring the complaint to the Standards Board for England for a national investigation:

- (i) that the complaint is so serious that, if proven, the conduct complained of merits a sanction in excess of that which could be imposed by the Standards Committee. In practice this means that the appropriate sanction would be either a suspension from the relevant authority for a period of more than 6 months, or a disqualification from any local authority
- (ii) that the investigation required is so extensive that it would impose an unreasonable burden on the authority and/or that any hearing conducted on the basis of that investigation would be unreasonably complex for the Standards Committee
- (iii) that the status of the member against whom the complaint has been made or of the person by whom the complaint has been made is such that either the authority could not conduct a full and impartial investigation and hearing, or that there is likely to be a public perception that the authority could not conduct a full and impartial investigation and hearing

- (iv) that so many members of the Standards Committee have a conflict of interest in respect of the matter that the authority is going to be in difficulty in organising an impartial Hearings panel for the matter
- (v) that the complaint raises significant or unresolved legal issues where a national ruling would be helpful
- (vi) that the authority itself has an interest in the outcome of the investigation and/or hearing, for example where the report may lead to a judicial review of a decision of the authority
- (vii) that there are other exceptional circumstances which would prevent the authority from securing a timely, full and impartial investigation and/or hearing of the matter, or which are likely to give rise to the perception that the authority cannot secure a timely, full and impartial investigation and/or hearing of the matter.

(c) **direct the Monitoring Officer to take other appropriate action short of a formal investigation;**

The Assessment Sub-Committee cannot impose a sanction on the member against whom the complaint has been made without a formal investigation and hearing. But it can direct the Monitoring Officer to take a range of other actions, including providing training for members, securing conciliation or mediation between competing interests, or reviewing procedures to minimise conflict.

In some instances, the conduct complained of may be a symptom of wider conflicts within the authority. A formal investigation and hearing would only deal with the particular complaint and may not resolve such underlying conflicts.

Such alternative action is therefore most suitable where –

- (i) the conduct complained of is a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct
- (ii) the conduct complained of is apparently common to a number of members of that authority, demonstrating a lack of awareness or recognition of the particular provisions of the Code of Conduct
- (iii) the conduct complained of is not so serious that it requires a substantive formal sanction such as suspension or disqualification
- (iv) the complaint reveals a lack of guidance, protocols and procedures within the authority, for example on the use of resources or the process of decision-making

- (v) the member complained of and the person making the complaint are amenable to engaging in such alternative action, as there is no power to require them to participate.
- (d) **decide to take no action in respect of the complaint.**

The following factors are likely to lead the Sub-Committee to decide to take no action in respect of the matter:

- (i) the complaint appears to be trivial, vexatious, malicious, politically motivated or tit for tat.
- (ii) the complaint is anonymous. The Sub-Committee can protect the confidentiality of the identity of the complainant where that is justified by a real fear of intimidation or victimisation. However, where this is not an obvious risk, the fact that the complainant has not disclosed his/her identity can indicate that the complaint is less serious, is malicious or is politically motivated
- (iii) a significant period of time has elapsed since the events which are the subject of the complaint. This is both because, where a matter is serious, it would be reasonable to expect the complainant to make a complaint promptly, and because the passage of time may make it more difficult to obtain documentary evidence and reliable witness evidence
- (iv) the complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter. This could be where the matter is such that there is unlikely to be any firm evidence on the matter.

6 Confidentiality

As a matter of fairness and natural justice, a member should usually be told who has complained about them and what the complaint is about. There may be occasions where the complainant requests that their identity is withheld. Such a request should only be granted in circumstances which the Assessment Sub-Committee consider to be exceptional, for example: -

- (a) the complainant has reasonable grounds for believing that he/she will be at risk of physical harm if his/her identity is disclosed
- (b) the complainant is an officer who works closely with the member and they have a reasonable fear of intimidation or victimisation if their identity is disclosed
- (c) the complainant suffers from a serious health condition which might be adversely affected if his/her identity is disclosed. The Assessment Sub-Committee may wish to request medical evidence.

7 Withdrawing complaints

Where the complainant purports to withdraw the complaint before the Assessment Sub-Committee has had the opportunity to take a decision on it, the Sub-Committee will consider whether to accept such withdrawal.

- (a) Where the complainant submits further evidence demonstrating that the complaint was ill-founded, it may be appropriate for the Sub-Committee formally to resolve that the complaint as amended shows no evidence of a breach of the Code of Conduct, so that the matter is formally concluded.
- (b) Where the alleged misconduct is simply a matter of alleged failure on the part of the respondent to treat the complainant with respect, and raises no wider issues of public interest, the Sub-Committee will normally accept such withdrawal.
- (c) However, where the complaint raises issues of wider public interest, it may be appropriate for the Sub-Committee to ensure that such wider issues are formally investigated and resolved.

8 Review

Where the Assessment Sub-Committee has resolved to take no action in respect of a matter (that is, not to refer the matter to the Standards Board for England for investigation, and not to refer the matter to the Monitoring Officer either for investigation or for other appropriate action), the complainant may request the Review Sub-Committee to review the decision of the Assessment Sub-Committee.

Such a review shall be conducted in two stages:

- (a) First, the Review Sub-Committee will determine whether the original decision of the Assessment Sub-Committee was unreasonable on the basis of the information available to the Assessment Sub-Committee at the time of its decision and in accordance with these approved criteria for assessment. This review shall be conducted on the basis of the original complaint, the Monitoring Officer's report to the Assessment Sub-Committee, the decision-notice of the Assessment Sub-Committee and any information contained within the complainant's request for a review. Note that this is a review of the initial decision, rather than a reconsideration of the matter *de novo*.
- (b) Second, the Review Sub-Committee shall consider whether there is any new evidence which demonstrates that the initial assessment decision is no longer the correct decision. This consideration shall take into account any new information provided by the complainant and/or the Monitoring Officer.

If the Review Sub-Committee determines that the initial decision was unreasonable, or that new information now available to the Sub-Committee demonstrates that the original decision is no longer the correct decision, it shall take a new decision in relation to the matter in accordance with these approved criteria.