

Local Assessment of Standards Complaints

Standards Committee

Date: 14 July 2008

Author: Director of Law and Democratic Services (Monitoring Officer)

Wards Affected: All

Purpose

- To advise the Committee of the coming into force of The Standards Committee (England) Regulations 2008 on 8 May 2008, and related guidance issued by the Standards Board on the local assessment of complaints under the Members Code of Conduct, so the Committee can make the necessary decisions in relation to their implementation.

Recommendation

It is recommended that:

- 1) An Assessment Sub-Committee be established to comprise 3 members drawn from a panel of members of the Standards Committee and including one independent member (to act as Chair), one elected Member of Swindon Borough Council and one parish representative with the remit set out in Appendix '3' attached.
- 2) A Review Sub-Committee be established to comprise 3 members drawn from a panel of members of the Standards Committee and including one independent member (to act as Chair), one elected member and one parish representative provided that no member shall be selected to participate in a Review Sub-Committee where they have participated in the initial assessment of the complaint subject to review. The remit of the Review Sub-Committee be as set out in Appendix '4' attached.
- 3) The assessment criteria set out in Appendix '5' be adopted;
- 4) The Monitoring Officer be authorised to notify Members the subject of an allegation of the complaint as soon as practicable after receipt unless, in his opinion, it would be contrary to public interest or might prejudice the proper investigation of the complaint.
- 5) The Monitoring Officer be authorised to constitute and convene meetings of the Assessment Sub-Committee and Review Sub-Committee.
- 6) The Monitoring Officer be authorised to amend the current procedures for the conduct of investigations and hearings to comply with such regulations and statutory guidance as may be issued from time to time;
- 7) The Monitoring Officer, in consultation with the Chair of the Standards Committee be authorised to arrange appropriate publicity for the new arrangements in accordance with the regulations and guidance.

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1. Reasons

- 1.1 At its last meeting on 14th April 2008, the Committee received an update on the anticipated regulations and guidance relating to the local filtering of complaints, and authorised the Monitoring Officer to update the terms of reference of the Standards Committee, to take account of any changes to the remit of the Standards Committee arising from the Standards Committee (England) Regulations 2008 and the Local Government and Public Involvement in Health Act 2007.
- 1.2 The regulations and guidance have now been issued so the Committee is able to adopt the necessary procedures and documentation for local filtering and assessment of complaints.

2. Detail

Background

- 2.2 The Standards Committee (England) Regulations 2008 came into force on 8th May 2008. Under those regulations local Standards Committees are now responsible for the local assessment of Standards complaints. The Monitoring Officer issued a public notice advising of these changes and the Council's website has details of the changes and how the complaints procedure can be accessed by members of the public (Appendix '1').
- 2.3 As from 8th May all complaints which relate to breaches of the Code of Conduct by elected and co-opted members of the Borough Council, and parish councillors, will be referred to an Assessment Sub-Committee of the Standards Committee which will decide if the complaint should be investigated or some other form of further action taken.
- 2.4 The Standards Board for England ('the Standards Board') has issued guidance to which Standards Committees have to have regard when exercising their function, and a copy of the Guidance and accompanying Assessment and Review Flowcharts are attached as Appendix '2'.
- 2.5 So far as timescale for consideration of complaints is concerned, the Standards Board consider that the Assessment Sub-Committee should complete its initial assessment of an allegation within an average of 20 working days of it being received.
- 2.6 If the Assessment Sub-Committee decides that no action should be taken on the complaint, the complainant has a right to request a review of that decision. The request must be made by the complainant within 30 days of being notified of the decision. The review will then be conducted by a Review Sub-Committee whose members must be different from those who conducted the initial assessment. The review must be held within 3

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months. The Standards Board have again recommended that the review be completed within an average of 20 working days.

- 2.7 A suggested remit of the Assessment Sub-Committee is set out in Appendix '3', and the Review Sub-Committee in Appendix '4'. Each of the sub-committees must be chaired by an independent member. An elected member of the Borough Council must also be present if the allegation relates to a member of the Borough Council and a parish representative must be present if the matter relates to a parish councillor.
- 2.8 It is, therefore, recommended that the membership of each sub-committee to comprise, as a minimum, one independent member, one Borough councillor and one parish councillor.
- 2.9 The Assessment and Review Sub-Committees do not have to comply with the normal rules about publicity. Instead, after an initial assessment Sub-Committee, a written summary must be produced. This will include the name of the member subject to the complaint unless disclosure is not in the public interest or would prejudice the investigation.

Written Allegations

- 2.10 Standards Committees are required to publish details of the address to which written allegations should be sent. The Borough Council has already published these details on the Council's website together with a pro-forma complaint form.
- 2.11 There is an additional requirement in the regulations for ongoing publicity of the arrangements so that they continue to be brought to the attention of members of the public.

Notifying the subject member of the complaint

- 2.12 Whilst the duty to give the member a written summary of the complaint rests with the Standards Committee the regulations clearly state that this does not prevent the Monitoring Officer informing the member concerned at an early stage unless to do so would be contrary to public interest or might prejudice any subsequent investigation. The Committee will similarly need to consider the above before informing the member of the details of the allegation but, under the principles of natural justice, the balance should always be exercised in favour of disclosure.

The Assessment Sub-Committee

- 2.13 The Assessment Sub-Committee, in considering the complaint will need to decide whether: -

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- (a) to take no action;
 - (b) to refer the complaint to the Standards Board (if they believe it cannot be dealt with locally because of the seniority of the member, conflict of interest, the seriousness of the complaint, etc.). The Standards Board can decline to accept the referral and will give reasons why they have reached that decision.
 - (c) refer the complaint to the Monitoring Officer.
- 2.14 If they decide to refer a case to the Monitoring Officer it can be either: -
- (a) for the Monitoring Officer to arrange for an investigation to be conducted or;
 - (b) for the Monitoring Officer to take some other form of action – this could include training, conciliation, etc. The Monitoring Officer must be consulted before this option is pursued.
- 2.15 The Monitoring Officer can refer a case back to the Standards Committee if the matter is more or less serious than originally thought or it is no longer in the public interest to pursue the matter because the member has died, is seriously ill or has resigned.
- 2.16 Where a matter is referred to a Monitoring Officer for alternative action, the Monitoring Officer must report back to the Standards Committee within three months on the action taken. If the Standards Committee is not satisfied with the action taken it can make a further direction to the Monitoring Officer.

The Review Sub - Committee

- 2.17 If the Assessment Sub-Committee resolves to take no action, then the complainant can request a review within 30 days of being notified of the decision. This must be heard by different members to those who conducted the initial assessment. The review must be conducted within 3 months although the Standards Board recommend that it should be completed within 20 working days.
- 2.18 There is no right to request a review where the Assessment Sub-Committee resolves to take action other than investigation.

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Assessment Criteria

- 2.19 The Standards Board recommend that each Standards Committee sets out its assessment criteria to determine whether they will investigate a complaint or direct that some form of alternative action be taken. Suggested criteria for adoption by the Standards Committee are annexed at Appendix '5'.

Consideration of Reports by Standards Committee

- 2.20 The Standards Committee must meet, following the completion of an investigation, to decide: -
- (a) If it accepts the finding in the report that there has been no breach of the Code – a finding of Acceptance; or
 - (b) that the matter should be considered at a hearing of the Standards Committee; or
 - (c) that the matter should be referred to the Adjudication Panel for determination – if the matter is serious and the sanctions available to the Standards Committee are unlikely to be sufficient.
- 2.21 This is an additional step in the process prior to the hearing itself and could be conducted by a sub-committee rather than the whole of the Committee.

Hearings by Standards Committee

- 2.22 Hearings must be conducted within 3 months of completion of the investigating officers report either conducted locally or by an Ethical Standards Officer.
- 2.23 The hearing can be conducted by a sub-committee rather than the whole of the Standards Committee. In Swindon, the Standards Committee has in the past taken the view that hearings should be conducted by the Committee itself rather than a sub-committee, so as to widen the experience of all members of the Committee. The Standards Board has advised that there is no difficulty in the same members participating in the initial assessment and the hearing or in the review and the hearing (but not in both the initial assessment and review).
- 2.24 The procedure for conducting hearings is largely unchanged with the exception that the maximum sanction available to the Standards Committee has increased from 3 to 6 months suspension. It is recommended that the Monitoring Officer be authorised to amend the

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current procedures for the conduct of investigations and hearings to comply with such regulations and statutory guidance as may be issued from time to time.

Actions required by the Standards Committee

2.25 The Standards Committee are required to take the following actions: -

- (a) To establish Assessment and Review Sub-Committees;
- (b) To determine assessment criteria; and
- (c) To decide if it wishes to establish sub-committees to receive Investigating Officers reports and to conduct hearings. If the volume of such investigations is relatively low it would be feasible for the whole committee to meet to receive the report and to resolve at that meeting to establish a sub-committee to conduct the hearing into the matter. It is suggested that we proceed on that basis at the present time and that the position be reviewed should the number of investigations significantly increase.

2.26 In the case of the Assessment and Review Sub-Committees, the most practical way to proceed is for the sub-committees to be drawn from a panel comprising all the members of the Standards Committee with a proviso that no member shall participate in a Review Sub-Committee where they have participated in the initial assessment of the complaint.

Alternative Options

- The Standards Committee has to implement the statutory regulations. Where there is a choice as to how these are implemented, these are referred to in the report.

Risk Management

Financial and Procurement Implications

- That there may be some increased costs to the authority associated with carrying out local assessment of complaints. This has been highlighted to the Committee previously, and it is anticipated that these will met from the Committee Meetings budget or members allowances budgets as appropriate.

Legal / Human Rights Implications

- The Standards Committee (England) Regulations 2008 give effect to the provisions of Part 10 of the Local Government and Public Involvement in Health Act 2007. The Council is required to implement the Regulations having regard to the statutory guidance issued by the Standards Board.

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Links to Corporate Plans and Policies (in particular to Swindon 2010 Promises)

- Monitoring of issues of probity in the Council underpins the Council's plans and policies and the delivery of the 2010 objectives.

Consultees

- The Director of Finance (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

Background Papers and Appendices

- Appendix 1 - Complaints Form and Guidance
- Appendix 2 - Standards Board for England Guidance on Local Assessment of Complaints together with Assessment and Review Flowcharts
- Appendix 3 - Proposed remit of the Assessment Sub-Committee
- Appendix 4 - Proposed remit of the Review Sub-Committee
- Appendix 5 - Proposed Assessment Criteria