

STANDARDS COMMITTEE
28 JULY 2008
SELECTION AND CONSTITUTIONAL REVIEW COMMITTEE
2008
REPORT OF MONITORING OFFICER
LOCAL ASSESSMENT OF COMPLAINTS

A. INTRODUCTION

- A1. In the past complaints of misconduct by a member (borough or parish councillors) had to be submitted to the Standards Board for England (SBE) and the Referrals Unit of the SBE decided whether the allegation appeared to disclose a failure by a member to comply with the relevant code of conduct and whether the allegation merited investigation. With effect from May 2008, the Local Government and Public Involvement in Health Act 2007 (the Act) requires all such complaints to be made to the Standards Committee of the Council and a sub committee of that Committee will have to decide whether the complaint should be investigated.
- A2. Members will recall that in December 2007, in anticipation of the new requirements, it was agreed to increase the overall size and amend the composition of the Standards Committee to ensure sufficient numbers of borough councillors, parish councillors and independent members would be available to fulfil the new functions. Then in February 2008 this Committee agreed a detailed response to a government consultation paper on the proposed arrangements and some areas of concern expressed by officers and members have been addressed in the final scheme. Also in February 2008 an externally facilitated training event was held in the Civic Centre to prepare members for the new local assessment regime.
- A3. Following the introduction of the new Regulations (The Standards Committee (England) Regulations 2008) and SBE Guidance have now been introduced, I am in a position to set out and recommend the detailed changes that are needed to the existing systems for complaints handling in order to meet the new requirements.

B. ADMINISTRATIVE ARRANGEMENTS FOR LOCAL INITIAL ASSESSMENT AND REVIEW OF COMPLAINTS

- B1. The Act requires the establishment of sub-committees of the Standards Committee (which must be chaired by independent members) to undertake:
- (a) the initial assessment of each complaint and decide whether it discloses an apparent failure to comply with the Code of Conduct and if so whether it merits investigation or other action. I recommend calling this sub-committee "The Assessment Panel."
- (b) a review of the assessment decision if the Assessment Panel decides to take no action in respect of a complaint and the complainant requests a review within 30 days. I recommend calling this sub-committee "The Review Panel."

- B2. No member could sit on the Review Panel in respect of a complaint where they were on the Assessment Panel for the initial assessment of that complaint.
- B3. If the matter is referred for investigation and the Investigating Officer concludes that there has been a breach of the Code of Conduct, a hearing would be held. SBE Guidance is clear that such hearings should also be held before a small Sub-Committee of the Standards Committee. I recommend that such a sub-committee is called "The Hearings Panel." There is no statutory prohibition on a member sitting on a Hearings Panel when that member was previously on either the Assessment Panel or Review Panel in respect of the same matter. This issue was dealt with at some length in the consultation paper and my previous report thereon.
- B4. The quorum (minimum actual attendance) for each sub-committee is 3 members. Limiting all Panels to 3 members - normally one independent, one borough councillor and one parish representative - would meet the SBE Guidance, and the statutory requirements on composition. All members of the Standards Committee could be made members of each of the 3 Panels and then for each meeting 3 people would be selected according to agreed criteria. This is consistent with the approach successfully adopted on licensing matters and I am therefore recommending the establishment of three separate Panels (or sub-committees) along these lines and attach at APPENDIX 1 terms of reference and member selection notes for these Panels which also include certain other functions given to the Standards Committees by law in the 2007 Act. [SEE RECOMMENDATION 1]
- B5. The Assessment Panel will need to be convened at short notice to deal with complaints within the recommended timescale of an average 20 working days of receipt of the complaint. I therefore recommend that monthly daytime meetings of this Panel are diarised, to be held of course only if there is actual business to be conducted. A complaint would be referred to the next available Assessment Panel after the necessary report has been written. Reviews and hearings are subject to less challenging timescales (within 3 months of a request or receipt of investigator's final report respectively, and it would therefore be possible to arrange such meetings without the need to diarise meetings in advance. [SEE RECOMMENDATION 2]
- B6. It will be necessary to retain or "save" the existing administrative arrangements in order to deal with three currently outstanding local investigation cases which are being carried out under the "old" procedures. These are all the subject of ongoing investigations and should be reported to the full Committee later this year. The "new" procedures will relate only to allegations made to the Standards Committee after 8 May 2008.

C. **NOTIFICATION TO THE MEMBER**

- C1. The Act requires the Standards Committee (or a sub-committee) to notify the member of the receipt of a complaint and to provide a written summary of the allegation. However that duty does not arise at the time the Standards Committee received the allegation if the Standards Committee determines that to do so would be contrary to the public interest or would prejudice any person's ability to investigate the allegations. In practice, the first meeting at which the Committee itself could notify the member is likely to be the Assessment Panel meeting at which it conducts the initial assessment. However, the Council in any event ought to

acknowledge receipt of the allegation to the person making the allegation and advise them when it is going to be assessed, and there is nothing to prevent the person making the allegation from publicising that fact.

- C2. It would not engender confidence or promote fairness in the system if the Monitoring Officer were to withhold notification to the member concerned, especially if that member then learned of the complaint from the person making the complaint or from the press. Accordingly in my view it would be sensible for the Monitoring Officer to notify the member of receipt of the complaint at the same time as acknowledging the receipt of the complaint to the person making the complaint and no later than sending the agenda out to members of the Assessment Panel (normally five clear working days before the meeting of the Panel.) Any member who sought to lobby other members in his/her own cause in the interim period would be committing a further breach of the Code of Conduct.
- C3. The DCLG Consultation Paper raised the possibility of cases where there was a danger of the member interfering with evidence or intimidating witnesses, and suggested that in such cases the member might not be notified of the complaint until the investigation had secured such evidence. This is a very remote possibility, but I would suggest that the Monitoring Officer be given the discretion, after consulting the Chairman of the Standards Committee, to defer notification in such exceptional circumstances. In such cases, the Monitoring Officer would notify the member concerned as soon as the reasons for deferral of notification no longer pertained, for example when sufficient investigation had already been completed.

I have included such a provision in a suggested MONITORING OFFICER PROTOCOL which I have attached to this report as APPENDIX 2. This Protocol deals with other matters and I recommend the Standards Committee agrees and adopts it. [SEE RECOMMENDATION 3]

D. LOCAL RESOLUTION OF COMPLAINTS

- D1. Investigations and hearings are expensive. There is no formal process for local resolution of complaints in the 2007 Act, although the Regulations do enable an Assessment Panel to propose action other than a full formal investigation, such as conciliation. Where the member concerned has acknowledged that his/her conduct was at fault or could be perceived to have been at fault and apologised, and particularly where the complainant has accepted that in the light of that apology he/she is content for the complaint not to proceed to formal investigation, the Panel may well determine that the matter need not proceed to investigation. Accordingly, there will be cases in which informal mediation by the Monitoring Officer before reporting to the Panel may avoid the need for a local investigation and/or hearing. Again I have included provision for this in the suggested Monitoring Officer Protocol.

E. FILTERING OUT IRRELEVANT OR ANONYMOUS COMPLAINTS

- E1. SBE experience suggests that a number of complaints received do not actually relate to the Code of Conduct for Members at all. It is possible that publicity for the new system may engender more such complaints. They may be, for example, requests for additional or different services from the Council, statements of policy disagreement complaints about officer conduct or complaints relating to a member's private life (none of which would normally be code of conduct related complaints).

- E2. The 2007 Act provides that the function of initial assessment of complaints must be conducted by a sub-committee of the Standards Committee, and does not allow for delegation of this function to the Monitoring Officer. Where the Monitoring Officer identifies that a complaint clearly falls within the categories referred to above, he may be able to ensure that the complaint is dealt with accordingly, responding to the complainant to set out how the matter is being dealt with, although he may wish to report to the Assessment Panel for information if the complainant insists that it be dealt with as a standards complaint. In all other cases, it will be necessary to report to the Assessment Panel and for the Panel 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 Council but is a member of another relevant local authority, refer the allegation to the Monitoring Officer of that other authority.
- E3. The legislation does not require a complaint to be signed by the complainant. The SBE has occasionally entertained anonymous complaints but this has given rise to considerable unease and difficulty. In such cases it is not of course possible to notify the complainant of the decision, nor to fully inform the member of the complaint and the gathering of evidence beyond the anonymous complaint is made much more difficult. In the circumstances I recommend that the Committee takes a policy decision that anonymous complaints should not be entertained but that the Monitoring Officer be authorised to keep the identify of the complainant confidential in exceptional circumstances where he is satisfied this is in the public interest. [SEE RECOMMENDATION 4]

F PRE-INVESTIGATION

- F1. The Assessment Panel will have to decide whether an allegation appears to disclose a failure to comply with the Code of Conduct for Members, and then whether it merits investigation. Where it 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 Assessment Panel to decide whether the complaint has any substance eg: minutes, declaration of interest forms, etc. 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 Panel. I have therefore included an appropriate provision within the attached Monitoring Officer Protocol to reflect this.

G. ACCESS TO MEETINGS

- G1. The Regulations provide that information presented to an Assessment or Review Panel for the purposes of these new procedures shall be "exempt information" for the purpose of the Local Government Act, thus giving each Panel a power to exclude the press and public from the meetings. This is a discretion so it would still be necessary for each meeting to start by resolving whether to exclude the press or public. As the SBE Guidance acknowledges, this will normally be appropriate as such meetings may have to consider unfounded and potentially damaging

complaints about a member and also holding such meetings will enable free and frank deliberations to take place in camera, (as indeed they do at present when the Committee meets to decide whether to accept an Investigating Officer's finding of no breach of the code of conduct). Indeed some unfairness could result if the Panel did not exclude the press/public as the member the subject of the complaint may well be unable to attend anyway as he/she would have a prejudicial interest in the matter under consideration, whereas the complainant (even with no right of audience) would at least be able to attend (unless he/she was also a member of the authority of course). I therefore recommend that such Panel meetings be held in camera unless the relevant Panel determine otherwise in any particular instance. [SEE RECOMMENDATION 5]

H PUBLIC INFORMATION ABOUT COMPLAINTS RECEIVED

- H1. Under existing legislation, the Council must publish an agenda stating the date, time and location of the meeting and in general terms the business to be transacted, but it can withhold copies of the reports and background papers where they would disclose exempt information and the meeting is likely to be held in private. Once a meeting had decided that particular complaints be investigated, or be not investigated, a minute of that meeting would be prepared, and the minute can again be withheld from publication if it would disclose exempt information. By this stage the member will normally have been notified of the complaint, and the complainant will also be notified of the decision in respect of his/her complaint. Accordingly, I suggest that the minute should be published unless the Monitoring Officer has any reason to believe that such publication was likely to prejudice the investigation of a complaint.
- H2. Any person is entitled to request access to any personal information which the Council holds in respect of him/her. Accordingly a member may request to be informed whether the Council has received a complaint about him/her and may ask to see and correct that information. Section 31 of the Data Protection Act 2000 provides that the Council would not have to disclose such information where it is held for any relevant function which is designed for protecting members of the public against dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorised to carry on any profession or other activity. Accordingly in my view the Council would be able to refuse to disclose whether a complaint had been received until the member was notified on the sending out of the Assessment Panel agenda, or where no notification is made because the disclosure of that information would be likely to prejudice the proper conduct of the investigation.
- H3. As Freedom of Information (FoI) Act requests must normally be dealt with within 20 days, the Council may need to respond to press and public requests before an Assessment Panel has met. I cannot state in advance how individual requests will be resolved, as the Council must determine each request individually. However, the Council may refuse to provide information where the information is held for "law enforcement" purposes, which includes the regulation of improper conduct, and where the disclosure would prejudice the effective conduct of public affairs. However, in each case, disclosure can only be resisted where the public interest in withholding the information outweighs the public interest in its disclosure. Accordingly, there may be grounds for resisting early disclosure of information relating to complaints received depending upon individual case circumstances.

J. **NOTIFICATION AND REVIEW FOLLOWING INITIAL ASSESSMENT**

- J1. Where an Assessment Panel decides that no action should be taken on a complaint, it must give notice in writing of its decision to the complainant and member and of its reasons and so Panels will be required to state its reasons for decisions. In practice, of course, it will be the Monitoring Officer, rather than the Panel, who will so notify.
- J2. Where a Panel decides no action should be taken on a complaint, the complainant may within 30 days request a review of that decision. Such a review must be completed within 3 months, although SBE Guidance suggests the same 20 working day standard as for initial assessments should be met where practicable. The only recourse for a complainant against a decision of the Review Panel would be judicial review.

K **DECISIONS AS TO WHETHER TO CONDUCT A LOCAL HEARING ONCE AN INVESTIGATION HAS BEEN CARRIED OUT.**

- K1. If the Assessment Panel refers an allegation to the Monitoring Officer for investigation and 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 come before the Standards Committee (or a sub-committee of the Standards Committee) which then decides whether it accepts that conclusion, or whether it wishes to conduct a formal hearing. This procedure remains as before.
- K2. Where the Monitoring Officer's investigation, concludes that there has been a failure to observe the Code of Conduct, the old procedure provided for the matter to proceed directly to a local hearing. If it was decided that it could not fairly hear the matter or that the matter was so serious that it would merit more than the maximum 3 months suspension, a request could be made to the Standards Board to take the matter back and direct it to a national Case Tribunal for hearing.
- K3. The new Regulations now add in another step when the report concludes there has been a failure. 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 from three 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 a Case Tribunal is going to be very limited.
- K4. However, the new Regulations require that a meeting is held to consider the report and take this decision before the actual hearing can be arranged. In order to avoid the creation of yet another sub-committee or panel, I recommend that the functions of determining whether to accept an Investigator's finding of no breach or to go to a local hearing or to refer the matter to a Case Tribunal where the Investigator's finding is that there has been a breach should be delegated to the Assessment Panel. Once the decision has been taken for a local hearing, the Monitoring Officer would then undertake the pre-hearing process, and a Hearing Panel can then conduct the hearing. I have prepared the terms of reference at APPENDIX 1 on this basis.

L **PUBLICITY FOR THE NEW ARRANGEMENTS**

- L1. The Regulations require publication of details of the new complaint arrangements. Use of the Council's website, newspaper advertisement (including the Council's own newspaper) and notices to parish councils are under active consideration at the time of preparation of this report. SBE Guidance now offers similar suggestions. Appropriate publicity is therefore being arranged and this will include the preparation of a standard complaint form to facilitate effective initial assessment decision-making.

M. **ASSESSMENT CRITERIA**

- M1. Recently published SBE Guidance indicates that Assessment and Review Panels should operate with the benefit of some assessment criteria to guide local assessment decision-making and aid consistency. The SBE Guidance itself offers some limited assistance in formulating appropriate criteria, but ultimately the criteria need to reflect local views and values. The new Regulations recognise that there may be circumstances rendering it inappropriate to continue with an investigation once it has started, namely where the member has died, resigned or become seriously ill. It must follow from this that such circumstances, should they exist at the stage of initial assessment or review, are also capable of being reasons not to refer a matter for investigation in the first place. SBE Guidance fails to acknowledge this but I have included an appropriate provision within the suggested assessment criteria. In addition I have included a provision recognising that it may be a relevant factor if the member has ceased to be a member for other reasons eg: through not being re-elected.
- M2. There is no ideal or correct set of criteria. I have attached at APPENDIX 3 a suggested set of criteria which I recommend the Committee adopts and keeps under regular review in the light of experience. [SEE RECOMMENDATION 6]

N. **FINANCIAL IMPLICATIONS**

- N1. The new local assessment system has already led to the appointment of a larger Standards Committee membership. There will now be three standing sub-committees and more meetings. There will be significant additional work for the Monitoring Officer and his staff in receiving, handling and reporting upon complaints. There is a significant cost to conducting any investigations and hearings, and even where complaints relate to the conduct of parish or town councillors it is the Borough Council which bears the cost of investigations and hearings. There are therefore potentially very substantial costs implications, depending upon the volume and nature of complaints received. I consider it would be justified to examine and discuss with interested parties the possibilities of spreading some of the cost to the relevant parish/town councils by way of adjustments to the existing concurrent grant payments made to such local councils annually. This would be unlikely to result in full cost sharing but would at least enable some of the costs to fall where they arise and may ultimately drive up standards of conduct and discourage trivial complaints. I therefore recommend this is examined further and pursued through the normal Council budget and consultation process. [SEE RECOMMENDATION 7]

RECOMMENDATIONS

1. The Standards Committee and Selection and Constitutional Review Committee agree the administrative arrangements and terms of reference for Assessment, Review and Hearings Panels as set out in Appendix 1 to this report in relation to allegations made to the Standards Committee after 8 May 2008, retaining alongside them the existing procedures and structures for as long as they are needed to dispose of allegations made to the Standards Board for England prior to that date
2. That monthly daytime meetings of the Assessment Panel be diarised, to be held only if there is business to be transacted.
3. That the Monitoring Officer Protocol at Appendix 2 to this report be agreed and adopted by the Standards Committee.
4. That the Standards Committee agrees to not entertain anonymous complaints, but that the Monitoring Officer be authorised to keep the identity of the complainant confidential where and for as long as he/she is satisfied that it is in the public interest to do so.
5. Meetings of the Assessment and Review Panels be held in camera unless the relevant Panel determines otherwise in any particular case.
6. That the Standards Committee adopts the Assessment Criteria at Appendix 3 to this report which Assessment and Review Panels will take into account when assessing complaints.
7. That the Monitoring Officer examine options for spreading the cost of complaints and investigations handling on the basis set out in the report.

APPENDIX ONE

ASSESSMENT PANEL

MEMBERSHIP: All Borough Council Members, Independent Members and Parish Council Representatives appointed to the Standards Committee from time to time shall be members of the Assessment Panel and from this membership shall be drawn for each meeting of the Panel one person from each of the 3 categories of membership. This shall be the quorum for that meeting.

TERMS OF REFERENCE

- (a) The Assessment Panel is established to receive allegations that a Borough Council or Parish or Town Council member or co-opted member has failed or may have failed to comply with the relevant Code of Conduct and each meeting must be chaired by an Independent Member.
- (b) Upon receipt of each allegation and any accompanying report by the Monitoring Officer, the Assessment Panel shall make an initial assessment of the allegation and shall then do one of the following:
- i. refer the allegation to the Monitoring Officer, with an instruction that he/she arrange a formal investigation of the allegation, or directing that he/she arrange training, conciliation or such appropriate alternative steps as permitted by Regulations;
 - ii. refer the allegation to the Standards Board for England;
 - iii. decide that no action should be taken in respect of the allegation; or
 - iv. where the allegation is in respect of a person who is no longer a member of the Authority, 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 relevant authority;

and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the member concerned of that decision.

- (c) Upon completion of an investigation by or on behalf of the Monitoring Officer, the Assessment Panel shall be responsible for determining 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 consideration at a hearing before the Hearings Panel of the Standards Committee; or
 - iii. the matter should be referred to the national Adjudication Panel for determination.
- (d) Where the Assessment Panel resolves to do any of the actions set out in Paragraph (b) or (c) above, the Panel shall state its reasons for that decision.

- (e) The Assessment Panel shall consider any application received from any officer of the Authority for exemption from political restriction under Sections 1 and 2 of the Local Government and Housing Act 1989 in respect of the post held by that officer and may direct the Authority 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 Authority under Section 2(2) of that Act.
- (f) The Assessment Panel shall, upon the application of any person or otherwise, consider whether a post should be included in the list maintained by the Authority under Section 2(2) of the 1989 Act, and may direct the Authority to include a post in that list.

REVIEW PANEL

MEMBERSHIP: All Borough Council Members, Independent Members and Parish Council Representatives appointed to the Standards Committee from time to time shall be members of the Review Panel and from this membership shall be drawn for each meeting of the Panel one person from each of the 3 categories of membership. This shall be the quorum for that meeting.

TERMS OF REFERENCE

- a. The Review Panel is established to review, upon the request of a person who has made an allegation that a member of an Authority has failed, or may have failed, to comply with the Authority's Code of Conduct, a decision of the Assessment Panel that no action be taken in respect of that allegation.
- b. Upon receipt of each such request and any accompanying report by the Monitoring Officer, the Review Panel shall review the decision of the Assessment Panel and shall then do one of the following:
 - i. refer the allegation to the Monitoring Officer, with an instruction that he/she arrange a formal investigation of the allegation, or specifying that he/she arrange training or conciliation or such appropriate alternative steps as permitted by Regulations;
 - ii. refer the allegation to the Standards Board for England;
 - iii. decide that no action should be taken in respect of the allegation; or
 - iv. where the allegation is in respect of a person who is no longer a member of the Authority, 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 relevant authority;

and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the member concerned of that decision.

- c. Where the Review Panel resolves to do any of the actions set out in Paragraph (b) above, the Panel shall state its reasons for that decision.

HEARINGS PANEL

MEMBERSHIP: All Borough Council Members, Independent Members and Parish Council Representatives appointed to the Standards Committee from time to time shall be members of the Hearings Panel and from this membership shall be drawn for each meeting of the Panel

- (i) one from each of the 3 categories of membership when considering a matter relating to the conduct of a person in his/her capacity as a parish or town councillor. This shall be the quorum for that meeting.
- (ii) two Borough Council Members (from different political groups where possible) and one Independent Member when considering a matter relating to the conduct of a person in his/her capacity as a borough councillor. This shall be the quorum for that meeting.

TERMS OF REFERENCE

To conduct local hearings on matters referred for investigation by the Assessment Panel or the Review Panel (or by the Standards Board for England) in accordance with approved procedures and to make determinations on such matters, including the application of sanctions.

NOTES ON ADMINISTRATIVE ARRANGEMENTS FOR APPOINTMENT OF MEMBERS FOR INDIVIDUAL MEETINGS OF ASSESSMENT, REVIEW AND HEARINGS PANELS

1. All Panels must be chaired by an Independent Member
2. Appointments for each meeting of a Panel will be made from within the overall membership taking into account the following factors:
 - no person shall be appointed to a Review Panel if he/she has already considered the same allegation as a member of an Assessment Panel.
 - so far as practicable there will be a reasonable spread of responsibility/appointments amongst all members of each Panel.
 - no person shall be appointed to a Panel who has a close family, personal or business relationship with the respondent member, with the complainant or with any other person involved in the case or who is himself/herself a potential witness relating to the matter.
 - where practicable there should be no appointment to a Panel of a Parish Representative from the same parish council as the respondent member and/or complainant.
 - where practicable there should be no appointment to a Panel of a Borough Council member who is a joint Borough Council ward member with the respondent member or complainant.
 - where practicable there should be no appointment to a Panel of a Borough Council member whose borough ward includes the parish of the respondent parish councillor.

3. The Borough Council's normal scheme allowing substitute members to be appointed (which applies only to borough councillors and only within the same political groups) shall not apply to appointments to Panels. However it is possible that significant personal interests in a particular matter may become apparent only after appointment to a Panel considering that matter. It is also possible that a member appointed to a Panel may become unable to sit for some other reason at short notice eg. by reason of illness. In order to minimise the risk of cancellation of Panel meetings replacement members should be permitted on the following terms:
- any appointed member who finds himself/herself unable to sit must notify the Head of Legal and Democratic Services as soon as reasonably practicable
 - a replacement member will be identified by the Head of Legal and Democratic Services from within the membership of the Panel only, and from within the same membership category only ie: only another borough council member can replace an indisposed borough council member, and the same for independent and parish members. Such replacement will be identified taking into account availability and eligibility including the various matters set out at paragraph 2 above.
 - The replacement member must be identified and provided with all relevant papers in reasonable time to enable him/her to prepare for the meeting of the Panel.

APPENDIX TWO

MONITORING OFFICER PROTOCOL

Instructions to the Monitoring Officer on the discharge of functions in relation to the initial assessment and review of allegations that a member has failed or may have failed to comply with the Code of Conduct

1 Receipt of Allegations

- 1.1 The Monitoring Officer shall set up arrangements within the Council to secure that any allegation made in writing that a member of the Borough Council or any parish or town council within the borough has or may have failed to comply with the relevant Code of Conduct is referred to him/her immediately upon receipt by the Council.
- 1.2 The Monitoring Officer shall maintain a register of such allegations to ensure that the Council can comply with its obligations under the relevant legislation, including the obligation to provide quarterly monitoring and statistical information to the Standards Board for England.
- 1.3 Complaints shall only be entertained where they are signed by the complainant, but the Monitoring Officer is authorised to maintain the confidentiality of the identity of the complainant in exceptional cases where and for so long as in his/her opinion that would be in the public interest and in accordance with the adopted Assessment Criteria.

2 Notification of Receipt of Allegations

- 2.1 All relevant allegations must be assessed by the Assessment Panel, as the Monitoring Officer has no authority to deal with an allegation which appears to be an allegation of failure by a relevant member to observe the Code of Conduct other than by reporting it to the Panel. The Monitoring Officer shall therefore determine whether the allegation appears to him/her to be a substantive allegation of misconduct. Where it appears not to be, he/she shall ensure that the matter is dealt with under a more appropriate procedure, for example where it is really a request for service from the Authority, a statement of policy disagreement, a legal claim against the Authority or a complaint against an officer of the Authority.
- 2.2 Following receipt of the allegation, and where the allegation does appear to be a complaint of misconduct against a relevant member, the Monitoring Officer will promptly, and in any case in advance of the relevant meeting:
 - 2.2.1 acknowledge to the complainant receipt of the allegation and confirm that the allegation will be assessed by the Assessment Panel at its next convenient meeting;
 - 2.2.2 notify the member against whom the allegation is made of receipt of the complaint, together with a written summary of the allegation, and state that the allegation will be assessed at the next convenient meeting of the Assessment Panel. However, where the Monitoring Officer is of the opinion that such notification would be contrary to the public interest or would

prejudice any person's ability to investigate the allegation, he/she shall consult the Chairman of the Standards Committee, and may then decide that no such advance notification shall be given;

- 2.2.3 collect such information as is readily available and would assist the Assessment Panel in its function of assessing the allegation;
- 2.2.4 seek local resolution of the matter where practicable, in accordance with Paragraph 3 below;
- 2.2.5 place a report, including a copy of the allegation, such readily available information and his/her recommendation as to whether the allegation discloses an apparent failure to observe the Code of Conduct, on the agenda for the next convenient meeting of the Assessment Panel.

3 Local Resolution

- 3.1 Local resolution is not an alternative to reporting the allegation to the Assessment Panel, but can avoid the necessity of a formal local investigation.
- 3.2 Where the Monitoring Officer is of the opinion that there is the potential for local resolution, he/she shall approach the member against whom the allegation has been made and ask whether he/she is prepared to acknowledge that his/her conduct was inappropriate, and whether he/she would be prepared to offer an apology or undertake other appropriate remedial action. With the consent of the member concerned, the Monitoring Officer may then approach the complainant and ask whether the complainant is or would be satisfied by such apology or other remedial action. The Monitoring Officer should then report to the Assessment Panel as required, and at the same time report the response of the member concerned and of the complainant with the intention that, where the member has acknowledged that his/her conduct was inappropriate or could have been perceived to be inappropriate, and particularly where the complainant is satisfied with any proffered apology or remedial action, the Panel will take that into account when considering whether the matter merits investigation.

4 Review of Decisions That No Action Be Taken

- 4.1 Where an Assessment Panel has decided that no action be taken on a particular matter, the Monitoring Officer shall promptly advise the complainant of the decision, and the complainant may then within 30 days of receipt of such notification request that the Review Panel review that decision.
- 4.2 The Monitoring Officer shall report to the Review Panel the information which was provided to the previous Assessment Panel in respect of the matter, the summary of its decision and any additional relevant information which has become available prior to the meeting of the Review Panel in accordance with the Assessment Criteria adopted by the Standards Committee.

5. Local Investigation

- 5.1 It is recognised that the Monitoring Officer will not personally conduct a formal local investigation as he/she should act as main adviser to the Standards Committee and Panels (unless an interest in the matter prevents this).

- 5.2 It will be for the Monitoring Officer to determine who to instruct to conduct a formal local investigation, and this may include another senior officer of the Council, a senior officer of another authority or an appropriately experienced consultant.

APPENDIX THREE

ASSESSMENT AND REVIEW CRITERIA FOR ALLEGATIONS OF FAILURE TO COMPLY WITH MEMBER CODE OF CONDUCT

1 Introduction

This paper sets out the criteria which the Assessment and Review Panels will apply in conducting the initial assessment of allegations of failure by members to observe the Code of Conduct. It takes full account of relevant extant Standards Board Guidance.

The Council 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 remove the right of a complainant to have their complaint of member misconduct considered by an Assessment Panel.

3 Which complaints can be considered?

The Assessment Panel 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 Panel 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 Panel 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 Panel 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 Panel will take into account the complaint letter or form 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 Panel to consider.

Following receipt of a complaint, the Monitoring Officer will collect any other information which is readily available and which may assist the Panel in its consideration of the complaint. This will not include conducting interviews with witnesses, but may include providing the Panel 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 Panel 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 Panel 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 Panel has concluded that there may 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, if proven, 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 Panel 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 Panel 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 the investigation into the complaint;

The following factors will be considered by the Panel to be factors which support referring the complaint to the Standards Board for England for its own 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 complaint relates to serious, long-term or systemic member/officer bullying which could be more effectively investigated and handled outside the authority.
- (vii) 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
- (viii) 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 Panel 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).

Regulation 13 of the 2008 Regulations requires the Monitoring Officer to report back within 3 months of any such direction giving details of the action taken or proposed. If the Standards Committee is not satisfied with the action specified, it may give a further direction eg: to conduct a formal investigation.

(d) **decide to take no action in respect of the complaint.**

The following factors are likely to lead the Panel 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. A "new" complaint which is merely a restatement of a previous complaint with no substantive new evidence will be regarded as vexatious.
- (ii) the complaint is anonymous. The Panel can ensure that the confidentiality of the identity of the complainant is protected 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 may suggest that the complaint is less serious, is malicious or is politically motivated and the Standards Committee has therefore decided that it will not entertain anonymous complaints.
- (iii) a significant period of time has elapsed since the events which are the subject of the complaint. This is 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 generally makes it more difficult to obtain documentary evidence and reliable witness evidence and recollection.
- (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.
- (v) insufficient information has been submitted to satisfy the Panel that the complaint should be referred for investigation or other action.
- (vi) the subject member has died or is seriously ill with a medical condition which would prevent them from engaging with the process of an investigation or a hearing for the foreseeable

future or has resigned from the authority, and it is not considered appropriate to refer the matter for investigation.

- (vii) the subject member is no longer a member of the authority for a reason other than resignation and it is not considered appropriate to refer the matter for investigation.
- (viii) the subject member has apologised to the complainant or taken other appropriate remedial action and it is not considered appropriate to refer the matter for investigation

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 Panel 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 Panel may wish to request medical evidence.

7 Withdrawing complaints

Where the complainant purports to withdraw the complaint before the Assessment Panel has had the opportunity to take a decision on it, the Panel 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 Panel 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 eg: 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 Panel will normally accept such withdrawal.
- (c) However, where the complaint raises issues of wider public interest or if there is information to suggest the complainant may have been pressured to withdraw this may outweigh the complainant's desire to withdraw it and it may be appropriate for the Panel to ensure that such wider issues are formally investigated and resolved, provided it is feasible to do so without the complainant's participation.

8 Review

Where the Assessment Panel 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 Panel to review the decision of the Assessment Panel.

Such a review shall be conducted in two stages:

(a) First, the Review Panel will determine whether the original decision of the Assessment Panel was unreasonable on the basis of the information available to the Assessment Panel 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 Panel, the decision-notice of the Assessment Panel and any information contained within the complainant's request for a review. Therefore this is a review of the initial decision, rather than a reconsideration of the matter de novo.

(b) Second, the Review Panel 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 Panel determines that the initial decision was unreasonable, or that new information now available to the Review Panel 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.

JULY 2008