

FINAL DECISION YES

SUGGESTED NEXT STEPS:

Details to be specified

- Further consideration by this Committee
- To Council
- To Cabinet
- To an O & S Committee
- To an Area Committee
- Further Consultation

Agenda No 4

Audit & Standards Committee - 18 November 2008.

Local Assessment Procedure

Report of the Strategic Director of Performance and Development

Recommendation

That the Committee approves the process

Introduction

This paper seeks to confirm the process to be adopted in the handling of complaints under the member code of conduct in the light of experience of handling our first complaint and to ensure there is clarity over the process and expectations around Assessment and Review Sub-Committees.

As the Committee is aware the purpose of the initial assessment decision or review is simply to decide whether any action should be taken on the complaint either as an investigation or some other action. The assessment and review sub-committees make no findings of fact.

The Monitoring Officer has an administrative discretion to acknowledge a complaint. When a complaint is addressed to the authority's monitoring officer, the monitoring officer should determine whether the complaint should be directed to the assessment sub-committee or whether another course of action is appropriate. If the complaint is clearly not about member conduct, then the monitoring officer does not have to pass it to the assessment sub-committee.

The attached Appendix 'Warwickshire Local Assessment Process in Practice' explains in more detail the process to be undertaken following receipt of a complaint.

DAVID CARTER
Strategic Director of
Performance and
Development

Shire Hall
Warwick
03 November 2008

Warwickshire Local Assessment Process in Practice

- 1) On receipt of a complaint about a member the Monitoring Officer will determine whether or not it relates to the Member code of conduct.
- 2) If the complaint appears to relate to the Member code of conduct then arrangements will be made for an Assessment Sub-committee to meet (normally within 20 working days of receipt of the complaint).
- 3) The Monitoring Officer will normally acknowledge receipt of a complaint within 5 working days and advise the complainant whether the matter will be dealt with by the Assessment sub-committee.
- 4) The Monitoring Officer will normally tell the subject member that a complaint has been made about them, the name of the complainant and the potential provisions of the code to which the complaint relates unless the complainant has requested confidentiality. In the latter circumstance it will be for the Assessment Sub-Committee when it meets to decide what information should be released.
- 5) No further details about the complaint will be released to the subject member at this stage as it is the Assessment Sub-committee which is authorised to release a summary of the complaint not the Monitoring Officer.
- 6) No pre-investigation will be undertaken by the Monitoring Officer in relation to a complaint except for obtaining copies of readily accessible information such as minutes of meetings, copies of interest registers if relevant to the complaint.
- 7) The papers for the Assessment Sub-committee will be sent only to the members of the sub-committee dealing with the matter and officers advising the sub-committee. The papers are confidential and are not accessible to other members or the public. Only the members of the Assessment Sub-committee and officers supporting the sub-committee will be present at the meeting.
- 8) The Assessment Sub-Committee will need to carefully examine the information provided by the complainant together with any 'readily accessible information' provided by the Monitoring Officer to assess whether or not there might be a potential breach of the code. In the case of a Review sub-Committee the decision of the Assessment Sub-committee will also be available. The Assessment/Review Sub-Committee will need to decide in the light of the Standards Board guidance and the local assessment criteria adopted by the Audit and Standards Committee whether or not to
 - 1) refer the matter for investigation to the Standards Board for England or
 - 2) refer the matter to the Monitoring Officer for investigation or
 - 3) refer the matter to the Monitoring Officer for other action or
 - 4) take no further action

- 9) A more detailed advice note on the approach to be taken by the Assessment/Review Sub-Committee is attached as Annex 1.
- 10) Following the meeting of the sub-committee a Decision Notice will be drafted setting out -
 - the main points considered
 - the conclusions on the complaint
 - the reasons for the conclusion
- 15) The Decision Notice once approved by the sub-committee and signed by the Chair will be sent to the complainant, the subject member and if appropriate any parish/town council of which the subject member is a member.
- 16) Where the Assessment Sub-committee has decided to take no further action the complainant has a right to request a review of that decision within 30 days of the date on the Decision Notice.
- 17) The Council will aim to deal with any request for review of a decision to take no further action within 20 working days (and no later than 3 months) from receipt of the request for review.
- 18) A written summary of the Assessment Sub-Committee/Review Sub-Committee will be made available for public inspection. The summary will include
 - the date, place of meeting and membership of the sub-committee
 - the main points considered
 - the conclusions on the complaint
 - the reasons for the conclusion
- 15) The summary will not name the complainant or the member concerned unless the Assessment/Review Sub-Committee considers it in the public interest to do so. This might be the case where there has already been significant publicity about the complaint, with individuals named in advance of the Sub-Committee meeting.
- 16) Where there is a referral for other action there is no right to request a review of the decision. The Monitoring Officer will normally report to the Audit and Standards Committee on the action which has been taken in relation to a referral for action within 3 months of the Decision.

Access to the original complaint documentation by the subject member following a decision of the Assessment Sub-Committee or Review Sub-Committee:

- 17) Where a complaint has been referred for investigation the original complaint papers will remain confidential. The investigator will determine the appropriate point at which any papers should be disclosed.

- 18) Where a complaint has been referred for other action to the Monitoring Officer the subject member will normally be allowed to view the original complaint papers unless
 - (a) the complainant has requested confidentiality and/or
 - (b) the Monitoring Officer considers some or all of the papers should be withheld.

- 19) Where the final decision is to take no further action the subject member will normally be allowed to view the original papers following the outcome of any review (or if none the expiry period for requesting a review) unless
 - (a) the complainant has requested confidentiality and/or
 - (b) the Monitoring Officer considers some or all of the papers should be withheld.

- 20) Where a complainant has requested confidentiality but the Assessment or Review Sub-committee does not consider that the request has been substantiated, the complainant will normally be offered the opportunity to withdraw their complaint.

- 21) However complainants are advised (in the complaint form) that where the matter complained of is very serious the Assessment or Review Sub-committee may decide to investigate the complaint or take other action and disclose the name of the complainant even though he/she has requested confidentiality.

Access to meetings and decision making

Initial assessment decisions, and any subsequent review of decisions to take no further action on a complaint, **must be conducted in closed meetings**. These are not subject to the notice and publicity requirements under Part 5 of the Local Government Act 1972.

Such meetings may have to consider unfounded and potentially damaging complaints about members, which it would not be appropriate to make public. As such, a standards committee/sub-committee undertaking its role in the assessment or review of a complaint is not subject to the following rules:

- _ rules regarding notices of meetings
- _ rules on the circulation of agendas and documents
- _ rules over public access to meetings
- _ rules on the validity of proceedings

Members should not discuss the complaint with anyone other than the other members of the Assessment/Review Sub-Committee or the officers supporting the sub-committee.

Regulation 8 of the Standards Committee Regulations sets out what must be done **after the assessment or review sub-committee has considered a complaint.**

The new rules require a written summary to be produced which must include:

- the main points considered
- the conclusions on the complaint
- the reasons for the conclusion

The summary must be written having regard to this guidance and may give the name of the subject member unless doing so is not in the public interest or would prejudice any subsequent investigation. The written summary must be made available for the public to inspect at the authority's offices for six years and given to any parish or town council concerned.

The summary does not have to be available for inspection or sent to the parish or town council until the subject member has been sent the summary.

In limited situations, an assessment/review sub-committee can decide not to give the written summary to the subject member when a referral decision has been made and, if this is the case, authorities should put in place arrangements which deal with when public inspection and parish or town council notifications will occur. This will usually be when the written summary is eventually given to the subject member during the investigation process. In addition, authorities must have regard to their requirements under Freedom of Information and Data Protection legislation.

Only the standards committee/assessment sub-committee has the power, under Section 57C(2) of the Local Government Act 2000, as amended, to give a written summary of the allegation to a subject member.

Warwickshire County Council –Published Assessment Criteria

When we receive a complaint our initial questions are

- Is there a prima facie evidence of a code breach?
- Would investigation serve any useful purpose?
- Would an alternative route to investigation provide a more effective resolution? Is there scope for mediation, brokering, apology etc?
- Is the case suitable for local investigation?

Which complaints will we refer for investigation?

We decide that a matter should be investigated when we believe it meets one of the following criteria:

- it is serious enough, if proven, to justify the range of sanctions available to our Audit & Standards Committee or the Adjudication Panel for England
- it is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the authority and there is no other avenue left to deal with it, short of investigation
- in considering this, we will take into account the time that has passed since the alleged conduct occurred

Which complaints are we unlikely to refer for investigation?

We are unlikely to decide that a complaint should be investigated if it falls into any of the following categories:

- we believe it to be malicious, relatively minor, or tit-for-tat
- the same, or substantially similar, complaint has already been the subject of an investigation or inquiry and there is nothing further to be gained by seeking the sanctions available to our committee or the Adjudication Panel
- the complaint concerns acts carried out in the member's private life, when they are not carrying out the work of the authority or have not misused their position as a member
- it appears that the complaint is really about dissatisfaction with a council decision
- there is not enough information currently available to justify a decision to refer the matter for investigation
- except in the most serious of cases, conduct which might have been in breach of the original Code but would not be considered to be a breach of the revised Code of Conduct we adopted in May 2007

Standards Board Guidance

Initial tests

1. Before assessment of a complaint begins, the assessment sub-committee should be satisfied that the complaint meets the following tests:
 - it is a complaint against one or more named members of the authority or an
 - authority covered by the standards committee
 - the named member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time
 - the complaint, if proven, would be a breach of the Code under which the member was operating at the time of the alleged misconduct
2. If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant must be informed that no further action will be taken in respect of the complaint.
3. Local Assessment 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 accusations of bias. Assessment criteria can be reviewed and amended as necessary but this **should not** be done during consideration of a matter.
4. Authorities need to take into account the public benefit in investigating complaints which are less serious, politically motivated, malicious or vexatious.

Some useful questions

5. **Q: Has the complainant submitted enough information to satisfy the assessment sub-committee that the complaint should be referred for investigation or other action?**

If the answer is **no**: "The information provided was insufficient to make a decision as to whether the complaint should be referred for investigation or other action. So unless, or until, further information is received, the assessment sub-committee is taking no further action on this complaint."

6. **Q: Is the complaint about someone who is no longer a member of the authority, but is a member of another authority? If so, does the assessment sub-committee wish to refer the complaint to the monitoring officer of that other authority?**

If the answer is **yes**: "Where the member is no longer a member of our authority but is a member of another authority, the complaint will be referred to the standards committee of that authority to consider."

7. Q: Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?

If the answer is **yes**: “The matter of complaint has already been subject to a previous investigation or other action and there is nothing more to be gained by further action being taken.”

8. Q: Is the complaint about something that happened so long ago that there would be little benefit in taking action now?

If the answer is **yes**: “The period of time that has passed since the alleged conduct occurred was taken into account when deciding whether this matter should be referred for investigation or further action. It was decided under the circumstances that further action was not warranted.”

9. Q: Is the complaint too trivial to warrant further action?

If the answer is **yes**: “The matter is not considered to be sufficiently serious to warrant further action.”

10. Q: Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?

If the answer is **yes**: “The matter appears to be simply malicious, politically motivated or tit-for-tat, and not sufficiently serious, and it was decided that further action was not warranted”. The assessment criteria that the standards committee adopts should be made publicly available.

Initial assessment decisions

11. The assessment sub-committee should complete its initial assessment of an allegation within an average of 20 working days, to reach a decision on what should happen with the complaint. The assessment sub-committee is required to reach one of the three following decisions on a complaint about a member’s actions in relation to the Code of Conduct:

- referral of the complaint to the monitoring officer of the authority concerned, which under section 57A(3) of the Local Government Act 2000, as amended, may be another authority
- referral of the complaint to the Standards Board for England
- no action should be taken in respect of the complaint

12. New rules have been made about what the assessment sub-committee must do when a decision has been made. Please see the section on **Access to meetings and decision making** on **page 22** for further information.

13. The time that the assessment sub-committee takes to carry out its initial assessment of a complaint is key in terms of being fair to the complainant and the subject member. It is also in the public interest to make a timely decision within an average of 20 working days. The assessment sub-committee should therefore aim to achieve this target wherever possible.

Referral for local investigation

14. When the assessment sub-committee considers a new complaint, it can decide that it should be referred to the monitoring officer for investigation. The monitoring officer must write to the relevant parties informing them of the decision and, if appropriate, advising who will be responsible for conducting the investigation.

Referral to the Standards Board for England

15. In most cases, authorities will be able to deal with the investigation of complaints concerning members of their authorities and, where relevant, the parish and town councils they are responsible for. However, there will sometimes be issues in a case, or public interest considerations, which make it difficult for the authority to deal with the case fairly and speedily. In such cases, the assessment sub-committee may wish to refer a complaint to the Standards Board to be investigated by an ethical standards officer.
16. If the assessment sub-committee believes that a complaint should be investigated by the Standards Board, it must take immediate steps to refer the matter. It would be helpful if the assessment sub-committee let us know the paragraph or paragraphs of the Code of Conduct that it believes the allegation refers to and the reasons why it cannot be dealt with locally.
17. We may accept cases for investigation by an ethical standards officer, take no action, or refer cases back to the standards committee which referred them. When deciding which of these actions to take, we will be principally concerned with supporting the ethical framework nationally and locally.
18. We will take the following matters into account in deciding which cases we should accept in the public interest:
 - a) Does the standards committee believe that the status of the member or members, or the number of members about whom the complaint is made, would make it difficult for them to deal with the complaint? For example, is the member a group leader, elected mayor or a member of the authority's cabinet or standards committee?
 - b) Does the standards committee believe that the status of the complainant or complainants would make it difficult for the standards committee to deal with the complaint? For example, is the complainant a group leader, elected mayor or a member of the authority's cabinet or standards committee, the chief executive, the monitoring officer or other senior officer?
 - c) Does the standards committee believe that there is a potential conflict of interest of so many members of the standards committee that it could not properly monitor the investigation?
 - d) Does the standards committee believe that there is a potential conflict of interest of the monitoring officer or other officers and that suitable alternative arrangements cannot be put in place to address the conflict?
 - e) Is the case so serious or complex, or involving so many members, that it cannot be handled locally?
 - f) Will the complaint require substantial amounts of evidence beyond that available from the authority's documents, its members or officers?

- g) Is there substantial governance dysfunction in the authority or its standards committee?
- h) Does the complaint relate to long-term or systemic member/officer bullying which could be more effectively investigated by someone outside the authority?
- i) Does the complaint raise significant or unresolved legal issues on which a national ruling would be helpful?
- j) Might the public perceive the authority to have an interest in the outcome of a case? For example if the authority could be liable to be judicially reviewed if the complaint is upheld.
- k) Are there exceptional circumstances which would prevent the authority or its committee investigating the complaint competently, fairly and in a reasonable period of time, or meaning that it would be unreasonable for local provision to be made for an investigation?

19. We will normally inform the monitoring officer within ten working days whether we will accept a case or whether we will refer it back to the standards committee, with reasons for doing so. There is no appeal mechanism against our decision.

Referral back to a standards committee from the Standards Board for England

20. If we decline to investigate a complaint referred to us, we will normally send it back to the authority's standards committee with the reasons why. The standards committee must then decide what action should be taken next.

21. The assessment sub-committee must again take an assessment decision and should complete this within an average of 20 working days. This may be a decision not to take any further action, to refer the matter for local investigation, or to refer the matter for some other form of action. As the assessment sub-committee initially decided that the matter was serious enough to be referred to the Standards Board for investigation, it is likely that it will still think that it should be investigated.

22. However, if the circumstances of the complaint have changed since the assessment sub-committee's original decision, it may be reasonable to take a different decision. This decision will again need to be communicated to relevant parties in the same way as the original decision was.

23. If we decline to investigate a case referred to us, we may, in the circumstances, offer guidance or give a direction to the standards committee, which may assist with the standards committee's decision.

24. In exceptional circumstances, we may decide to take no further action on a complaint referred to us by a standards committee. This is likely to be where circumstances have changed so much that there would be little benefit arising from investigation or other action, or because we do not consider that the complaint discloses a breach of the Code of Conduct.

Referral for other action

25. When the assessment sub-committee considers a new complaint, it can decide that other action to an investigation should be taken and it can refer

the matter to the monitoring officer to carry this out. It may not always be in the interests of good governance to undertake or complete an investigation into an allegation of misconduct. The assessment sub-committee must consult its monitoring officer before reaching a decision to take other action.

26. The suitability of other action is dependent on the nature of the complaint. Certain complaints that a member has breached the Code of Conduct will lend themselves to being resolved in this way. They can also indicate a wider problem at the authority concerned. Deciding to deal pro-actively with a matter in a positive way that does not involve an investigation can be a good way to resolve matters that are less serious. Other action can be the simplest and most cost effective way of getting the matter resolved, helping the authority to work more effectively, and of avoiding similar complaints in the future.
27. The assessment sub-committee can choose this option in response to an individual complaint or a series of complaints. The action decided upon does not have to be limited to the subject member or members. In some cases, it may be less costly to choose to deal with a matter in this way rather than through an investigation, and it may produce a more effective result.
28. It is not possible to set out all the circumstances where other action may be appropriate, but an example is where the authority to which the subject member belongs appears to have a poor understanding of the Code and authority procedures. Evidence for this may include:
 - a number of members failing to comply with the same paragraph of the Code
 - officers giving incorrect advice
 - failure to adopt the Code
 - inadequate or incomplete protocols for use of authority resources
29. Other action may also be appropriate where a breakdown in relationships within the authority is apparent, evidence of which may include:
 - a pattern of allegations of disrespect, bullying or harassment
 - factionalised groupings within the authority
 - a series of 'tit-for-tat' allegations
 - ongoing employment issues, which may include resolved or ongoing employment tribunals, or grievance procedures