

## **STANDARDS COMMITTEE**

**29 MAY 2008**

### **REVISION OF INVESTIGATION & LOCAL DETERMINATION PROCEDURES**

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#### **Summary**

This report seeks to request the Committee to change the system of handling complaints against Members in accordance with the Standards Board for England (SBE) Regulations.

#### **1. Budget and Policy Framework**

1.1 This matter is for the Standards Committee to decide.

#### **2. Background**

2.1 Currently a complaint of misconduct by a member has to be submitted to the Standards Board for England (SBE), and the Referrals Unit of the SBE determines whether the allegation appears to disclose a failure by a member to comply with the Authority's Code of Conduct, and then whether the allegation merits investigation. From 8 May 2008, all such complaints must be made to the Standards Committee of the Authority, and a sub-committee of the Standards Committee will have to decide whether the complaint should be investigated.

2.2 This report sets out what the changes will be to the system of handling complaints against members, and the issues which the Authority needs to address in order to meet these new requirements.

2.3 The new rules will only apply to complaints received from 8 May onwards, and as each allegation must be assessed within 20 working days of receipt, it will be possible for the first meeting of the Standards Committee after the Annual Meeting of Council to set up the sub-committees required for this purpose.

### **3. Changes to Regulations**

#### **3.1 Separate panels**

The Act requires the Standards Committee to establish a sub-committee (the “Referrals Sub-Committee”) that will be required to undertake the initial assessment and decide whether the complaint shows an apparent failure to comply with the Code of Conduct for Members and, if so, whether that complaint merits investigation or other action. If the Referrals Sub-Committee decides to take no action in respect of an allegation, the complainant will have 30 days within which to request the Authority to review that decision. The Act requires the Standards Committee to set up a second sub-committee (the “Review Sub-Committee”) to conduct that review. No member can sit on the Review Sub-Committee in respect of a complaint where they were on the Referrals Sub-Committee for the initial assessment of the same complaint.

If the matter then goes for investigation and the Investigating Officer concludes that there has been a failure to comply with the Code of Conduct for Members, a hearing would then be held. The Standards Board recommends that such hearings should be held before a sub-committee (a “Hearings Panel”) of between three and five members.

Whilst the Act prohibits any member from sitting on both the Referrals Sub-Committee and the Review Sub-Committee on the same matter (on the basis that a member cannot fairly review his/her own decision) there is no similar statutory prohibition of a member sitting on the Hearings Panel when that member was previously on either the Referrals Sub-Committee nor the Review Sub-Committee in respect of the same matter. However, a member against whom a complaint has been made might reasonably take exception to a member being part of the Hearings Panel when that member had some months previously seen the complaint without the benefit of any response from the member and decided that the matter should proceed to investigation (and later received the Investigating Officer’s report and finding of breach, and referred the matter for local hearing, without at that stage having the benefit of a response from the member concerned). Separate membership for all three sub-committees clearly increases the minimum size of the Standards Committee and the minimum number of Independent Co-opted Members and Parish Council representatives necessary to make up the separate Sub-Committees.

The quorum (minimum actual attendance) for each such Sub-Committee is three members:

- at least 25% of each sub-committee must be Independent Co-opted Members, one of whom must be present to chair the meeting;
- at least one elected member of this Council must be present at each meeting
- and at least one of whom must be a Parish Council representative if the Sub-Committee is dealing with a complaint in respect of the conduct of a member as a member of a Parish Council

Since the Referrals Sub-Committee must be available at short notice to deal with any allegation within 20 working days of receipt, the Monitoring Officer will be recommending to Standards Committee that it should have a monthly meeting diarised, to be held if there is actual business to be conducted. This urgency means that we need to ensure that a quorum will be available,

The Review must be conducted within three months of a request for review, and the hearing within three months of receipt of the investigation report, so there is more flexibility to arrange such meetings on a date to suit the available members. In addition, if the matter goes for investigation without a review, the Review Sub-Committee members will also be available for the hearings.

For any hearings, we must ensure that a suitable number of members are available that have not sat on either of the above panels. Where the matter had been sent for investigation by the Referrals Sub-Committee, the members of the Review Sub-Committee would also be available for a Hearings Sub-Committee.

### 3.2 Joint Working Between Authorities

The Act provides that authorities may appoint Joint Committees to discharge all or any of their Standards functions. As set out above, the requirement to populate three different sub-committees will place a considerable burden on authorities. Joint working would enable authorities to meet their statutory requirements without the cost of maintaining their own separate sub-committees. Such joint working may be more acceptable in terms of the initial assessment and the review, rather than the actual hearings. The Regulations which will bring these provisions into force have not yet been made and a further report will be made to members at that time.

### 3.3 Notification to the Member

The Act requires the Standards Committee to notify the member of the receipt of a complaint and to provide a written summary of the allegation. In practice, the first meeting at which the Committee itself could notify the member is likely to be the meeting at which it conducts the initial assessment. The Consultation Paper suggested that there was a danger that the member might seek to lobby members of the Standards Committee, and suggested that no notification be made until the Referrals Sub-Committee had come to a decision whether to investigate. However, the Authority 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.

It will not engender confidence in the system if the Monitoring Officer was withholding notification to the member concerned when that member learned of the complaint from the person making the complaint or from the press. Accordingly, 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 Referrals Sub-Committee, i.e. at least five clear working days before the meeting of the sub-committee. Any member who sought to lobby other members in his/her own cause would be committing a further breach of the Code of Conduct.

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 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.

### 3.4 Local Resolution of Complaints

Investigations and hearings are expensive. There is no formal process for local resolution of complaints in the 2007 Act, although the Regulations may enable the Referrals Sub-Committee to propose conciliation or some other course as an alternative to a formal investigation. However, where the member concerned has acknowledged that his/her conduct was at fault and apologised, and particularly where the complainant has accepted that in the light of that apology he/she is content for the complaint not to proceed to formal investigation, the Referrals Sub-Committee may determine that the matter should not proceed to investigation. Accordingly, there will be cases in which informal mediation by the Monitoring Officer before reporting to the Referrals Sub-Committee may avoid the need for a local investigation and/or hearing. But equally, some members may take exception to the Monitoring Officer seeking such local resolution.

### 3.5 Filtering out Irrelevant Complaints

Standards Board experience has been that a large number of complaints received do not relate to the Code of Conduct for Members, and I would anticipate that the publicity for the new system will engender more such complaints. Such requests can be categorised as follows:

- Requests for additional service from the Authority
- Statements of policy disagreement
- Matters relating to other authorities
- Matters relating to a member's private life

The 2007 Act provides that the function of initial assessment of complaints must be conducted by the Standards Committee, or by a sub-committee, but does not allow for delegation of this function to the Monitoring Officer. Where the Monitoring Officer identifies that a complaint clearly falls within categories 7.1 or 7.2, he/she 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, and only reporting to the Referrals Sub-Committee 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 Referrals

Sub-Committee and for the Referrals Sub-Committee to determine which of the following statutory options should apply :

- refer the allegation to the Monitoring Officer;
- refer the allegation to the Standard Board for England;
- decide that no action should be taken in respect of the allegation, or
- where the allegation relates to a person who is no longer a member of this Authority but is a member of another relevant local authority, refer the allegation to the Monitoring Officer of that other authority.

The Monitoring Officer anticipates that the Standards Board for England will issue guidance on these options and will copy such guidance to members of the Standards Committee and report it to the Standards Committee upon receipt.

### 3.6 Anonymous complaints

There is nothing in the legislation which requires a complaint to be signed by the complainant. The Standards Board for England has entertained some anonymous complaints, and this has given rise to considerable unease. In such cases, it is, of course, not possible to meet the requirements to notify the complainant of the decision in respect of the complaint.

### 3.7 Multiple complaints

It is not uncommon that one event gives rise to similar complaints from a number of different complainants. The legislative position is that each separate complaint must be considered, and that even where a meeting of the Referrals Sub-Committee has previously decided that no action be taken upon an identical complaint, a subsequent complaint must still be reported to and considered by the Referrals Sub-Committee.

### 3.8 Pre-Investigation

The Referrals Sub-Committee has to decide whether the allegation appears to disclose a failure to comply with the Code of Conduct for Members, and then whether it merits investigation. Where the sub-committee has only the letter of complaint, it is not always easy to assess whether there is any substance to the allegation. However, there may be information which is readily available which might substantiate, or contradict, the allegation and so make it easier for the sub-committee to decide whether the complaint has any substance. Clearly the Monitoring Officer cannot “investigate whether to investigate”. But he/she can usefully check publicly available information between receipt of the complaint and the meeting of the Referrals Sub-Committee. The role-plays conducted by the Standards Board and others have demonstrated that such additional information can be very helpful, and we will cover this aspect in training.

### 3.9 Timescale for initial assessment of allegations

The DCLG Consultation Paper suggests that the initial assessment should be undertaken within 20 working days of the receipt of the allegation by the Authority.

This requirement is likely to be set out in SBE Guidance rather than in the Regulations, to allow a bit of flexibility in exceptional circumstances. The Review Sub-Committee is then required to determine the review within three months of the date when the request for a review is received. In order to ensure that the members of the Referrals Sub-Committee will be available within the required timescale if and when allegations or requests for reviews are received, it would be sensible to put dates into the Council Diary and reserve rooms for meetings, although an actual meeting would only be held if there was business to be discharged

### 3.10 Public or Private Meetings

The new Regulations provide that information presented to the Referrals Sub-Committee, to a Review Sub-Committee or to a Hearings Sub-Committee for the purpose of these new procedures shall be “exempt information” for the purpose of Schedule 12A to the Local Government Act 1972, thus giving each of the sub-committees a power to exclude the press and public from their meetings. This is a discretion, so it will still be necessary for each meeting to start by resolving whether to exclude press and public. If the sub-committee did not exclude press and public, the member concerned would be unable to attend as he/she would have a prejudicial interest in the matter under consideration, whereas the complainant would have the right to attend (unless the complainant was also a member). Neither party would have a right of audience at the meeting.

### 3.11 Public information about complaints received

#### 3.11.1 Advance publication of the agenda and reports

Under existing legislation, the Authority 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.

#### 3.11.2 Member requests for information under the Data Protection Act

Any person is entitled to request access to any personal information which the Authority holds in respect of him/her. Accordingly a member may request to be informed whether the Authority 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 Authority 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, the Authority would be able to refuse to disclose whether a complaint had been received until the member was notified on the sending out of the Referrals Sub-Committee agenda, or where no notification is made because the disclosure of that information would be likely to prejudice the proper conduct of the investigation.

### 3.11.3 Freedom of Information Act

As FoI requests must be dealt with within 20 days, the Authority may need to respond to press and public requests before the Referrals Sub-Committee has met. It is difficult to state in advance how individual requests will be resolved, as the Authority must determine each request individually. However, the Authority 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, the Authority may have grounds for resisting early disclosure of information relating to complaints received, but this is likely to be contested by persons making such requests.

### 3.12 Notification following initial assessment

Where the Referrals Sub-Committee decides that no action be taken on a complaint, it must take reasonable steps to give notice in writing to the complainant of the decision and the reasons for that decision. It must also give similar notification to the member concerned of a decision not to take any action. There is no such requirement for a decision to investigate or to refer a complaint to the Standards Board for England, but as a matter of policy clearly such notification should be given unless there were exceptional circumstances where such disclosure might impede proper investigation. The first point is that, in taking a decision as to whether a complaint should be investigated, the Referrals and Review Sub-Committees will be required to state their reasons for each decision. The second point is that, in practice, it will not be the relevant sub-committee which will notify the complainant and the member, but rather the Monitoring Officer

### 3.13 Review of Initial Assessment

Where the Referrals Sub-Committee decides that no action should be taken on a complaint, the complainant may, within 30 days of being notified of that decision, request the Review Sub-Committee to review that decision. We await the final Regulations which will define whether this is to be a complete reconsideration of the matter, or whether it is merely to identify whether there is anything clearly wrong or unreasonable about the earlier decision, and whether the Review Sub-Committee can take account of additional information received after the initial decision. The Review Sub-Committee’s decision is then notified to the complainant, who then has no further recourse other than judicial review.

### 3.14 Decision whether to conduct a local hearing

Where the Monitoring Officer's investigation concludes that there has not been a failure to observe the Code of Conduct, the Regulations provide for the Monitoring Officer's report to 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.

Where the Monitoring Officer's investigation concludes that there has been a failure to observe the Code of Conduct, the old Regulations provided for the matter to proceed directly to a local hearing. If the Hearings Sub-Committee 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, the Hearings Sub-Committee could request the Standards Board to take the matter back and direct it to a national Case Tribunal for hearing.

The new Regulations add in another step. So, the Monitoring Officer's report now has to be reported to the Standards Committee, or a sub-committee, which can only decide to send it for a local hearing or to send it to a Case Tribunal. Given that the maximum local sanction is now increased to six months' suspension, and the Monitoring Officer has the opportunity to refer the matter to the Standards Board at any stage prior to the completion of the investigation, the number of matters which will require to be referred to the Case Tribunal by the sub-committee is going to be very limited.

However, the new Regulations require that a meeting of this sub-committee is held to consider the report and take this decision before the actual hearing can be arranged. Once the decision has been taken for a local hearing, the Monitoring Officer will then undertake the pre-hearing process, and a Hearings Sub-Committee will then conduct the hearing. There is an argument that membership of the sub-committee which considers the Monitoring Officer's report, without any response from the member concerned, and decides to proceed to local hearing could prejudice the members of the sub-committee in the subsequent hearing, it is simply impractical to populate four separate sub-committees.

### 3.15 Publicity for the new arrangements

DCLG have suggested that the Regulations should place an obligation on each Standards Committee to publicise the new arrangements and the fact that allegations should now be sent to the Authority rather than to the SBE. It is likely that SBE will provide guidance that such notice should be advertised in one or more local newspapers, the Authority's own newspaper and on the Authority's website.

## **4 Financial and Legal Implications**

Overall, this change will mean a larger Standards Committee, with more sub-committees, and more meetings. It will require the Monitoring Officer and other staff to undertake a significant amount of additional work in receiving any allegations of misconduct and reporting them to the relevant sub-committees. The experience from the role-plays undertaken by the Standards Board for England is that local



Standards Committees are likely to refer about twice as many matters for investigation than have hitherto been referred by the SBE. There is a significant cost to conducting any investigations and hearings.

Under the legislation, even where complaints relate to the conduct of Parish Councillors, it is this Authority which bears the full cost of investigations and hearings. There are therefore potentially very substantial cost implications, but the actual costs will depend upon whether any complaints of misconduct are received. There is no additional Central Government funding being provided as a result of this change.

## **5. Recommendations**

The Committee is requested to decide that:

- (a) the Standards Committee establish and appoint the members of a Referrals Sub-Committee with the Terms of Reference set out in Appendix One to this Report.
- (b) Standards Committee establish and appoint a Review Sub-Committee with the terms of reference set out in Appendix Two to this report.
- (c) Hearings Sub-Committees be established as and when required for particular hearings, comprising members who have not been involved on the referral or review of the particular matter.
- (d) the Monitoring Officer be instructed to notify the member of receipt of a complaint and provide a written summary of the allegation at the same time as acknowledging receipt of the allegation to the person making the allegation and no later than sending the agenda for the meeting of the Referrals Sub-Committee to members of that sub-committee, unless after consultation with the Chairman of the Standards Committee he/she considers it appropriate to defer notification in order to enable a proper investigation to take place, in which case notification should be made as soon as the reasons for the deferral no longer apply.
- (e) the Authority should adopt a local protocol as set out in Appendix Three to this report authorising the Monitoring Officer to seek local resolution in appropriate cases.
- (f) the Committee take a policy decision that anonymous complaints should not be entertained, but that the Monitoring Officer be authorised to keep the identity of the complainant confidential where she is of the opinion that this is in the public interest.
- (g) the Monitoring Officer be instructed as set out in the draft protocol attached, where practicable to obtain and inform the Referrals Sub-Committee of any publicly available information which would facilitate their task of determining whether a complaint merits investigation.
- (h) the functions of determining whether to accept the Monitoring Officer's finding of no breach, to go to a local hearing, or to refer the matter to a Case Tribunal should be delegated to a Hearings Sub-Committee.

- (i) the Monitoring Officer be instructed to arrange appropriate publicity in accordance with the Regulations and Guidance, such publicity to be determined by the standards committee
- (j) the Standards Committee approve a protocol in the terms set out in Appendix Three to this report setting out the responsibilities and discretions of the Monitoring Officer in the provision or withholding of information relating to complaints

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**Background papers**

None.

**Terms of Reference of the Referrals Sub-Committee**

**1. Terms of Reference**

- a. The Referrals Sub-Committee is established to receive allegations that a member of the Authority has failed, or may have failed, to comply with the Authority's Code of Conduct.
- b. Upon receipt of each allegation and any accompanying report by the Monitoring Officer, the Sub-Committee 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 the Monitoring Officer, the Sub-Committee 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 Sub-Committee of the Standards Committee; or
  - iii. the matter should be referred to the Adjudication Panel for determination.
- d. Where the Sub-Committee resolves to do any of the actions set out in Paragraph 1(b) or 2(c) above, the Sub-Committee shall state its reasons for that decision.
- d. The Sub-Committee 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.

- e. The Sub-Committee 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.

## **2. Composition of the Referrals Sub-Committee**

The Referrals Sub-Committee shall comprise 6 members, of whom 2 shall be an independent co-opted member of the Standards Committee, one of whom shall chair the Sub-Committee, and 4 elected members of the Authority. When the Referrals Sub-Committee considers a matter relating to the conduct of a person in his/her capacity as a Parish Councillor, the Sub-Committee shall comprise 8 members, the additional 2 members being Parish Council representatives.

## **3. Quorum**

The quorum for a meeting of the Sub-Committee shall be 3 members, with an Independent Co-opted member as Chairman, and at least one elected member of the Council and at least one Parish Council representative when considering a matter relating to the conduct of a member as Parish Councillor.

## **4. Frequency of Meetings**

The Sub-Committee shall agree a programme of meetings including one meeting per calendar month, but shall only meet where one or more allegations has been received which require to be assessed at that meeting.

**Terms of Reference of the Review Sub-Committee**

**1. Terms of Reference**

- a. The Review Sub-Committee is established to review, upon the request of a person who has made an allegation that a member of the Authority has failed, or may have failed, to comply with the Authority's Code of Conduct, a decision of the Referrals Sub-Committee 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 Sub-Committee shall review the decision of the Referrals Sub-Committee 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 take an alternative action 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 Sub-Committee resolves to do any of the actions set out in Paragraph 1(b) above, the Sub-Committee shall state its reasons for that decision.

**2. Composition of the Review Sub-Committee**

The Review Sub-Committee shall comprise 3 members, of whom 1 shall be an independent co-opted member of the Standards Committee, who shall chair the Sub-Committee and the other 2 shall be elected members of the Authority. When the Referrals Sub-Committee considers a matter relating to the conduct of a person in his/her capacity as a Parish Councillor, the Sub-Committee shall comprise 4 members, the additional member being a Parish Council representative.

**3. Quorum**

The quorum for a meeting of the Sub-Committee shall be 3 members, with an Independent Co-opted member as Chairman, and at least one elected member of the Council and at least one Parish Council representative when considering a matter relating to the conduct of a member as Parish Councillor

#### **4. Frequency of Meetings**

The Review Sub-Committee shall meet as and when required to enable it to undertake the review of any decision of the Referrals Sub-Committee within 3 months of the receipt of the request for such a review from the person who made the allegation.

### Monitoring Officer Protocol

#### **Instructions to the Monitoring Officer on the discharge of functions in relation to the initial assessment and review of allegation that a member of the Authority has failed to comply with the Code of Conduct**

##### **1. Receipt of Allegations**

The Monitoring Officer shall set up arrangements within the Authority to secure that any allegation made in writing that a member of the Authority has or may have failed to comply with the Authority's Code of Conduct is referred to him/her immediately upon receipt by the Authority.

The Monitoring Officer shall maintain a register of such allegations to ensure that the Authority can comply with its obligations under the relevant legislation.

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 where and for so long as in his/her opinion that would be in the public interest.

##### **2. Notification of Receipt of Allegations**

- a. All relevant allegations must be assessed by the Referrals Sub-Committee, so 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 Referrals Sub-Committee. The Monitoring Officer shall therefore determine whether the allegation appears 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.
- b. 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:
  - i. acknowledge to the complainant receipt of the allegation and confirm that the allegation will be assessed by the Referrals Sub-Committee at its next convenient meeting;
  - ii. 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 Referrals Sub-Committee. 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 Referrals Sub-Committee, or in his/her absence the Chairman of the Standards Committee, and may then decide that no such advance notification shall be given;

- iii. collect such information as is readily available and would assist the Referrals Sub-Committee in its function of assessing the allegation;
- iv. seek local resolution of the matter where practicable, in accordance with Paragraph 3 below;
- v. 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 Referrals Sub-Committee.

### **3. Local Resolution**

- a. Local resolution is not an alternative to reporting the allegation to the Referrals Sub-Committee, but can avoid the necessity of a formal local investigation.
- b. 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 satisfied by such apology or other remedial action. The Monitoring Officer should then report to the Referrals Sub-Committee as required, and at the same time report the response of the member concerned and of the complainant. The idea is that, where the member has acknowledged that his/her conduct was inappropriate, and particularly where the complainant is satisfied with the proffered apology or remedial action, the Referrals Sub-Committee might take that into account when considering whether the matter merits investigation.

### **4. Review of Decisions not to Investigate**

- a. Where the Referrals Sub-Committee 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 Sub-Committee review that decision.

- b. Whilst the review shall normally be a review of the reasonableness of the original decision rather than a reconsideration, the Monitoring Officer shall report to the Review Sub-Committee the information which was provided to the Referrals Sub-Committee in respect of the matter, the summary of the Referrals Sub-Committee and any additional relevant information which has become available prior to the meeting of the Review Sub-Committee.

## **5. Local Investigation**

- a. It is recognised that the Monitoring Officer may not personally conduct a formal local investigation. It will be for the Monitoring Officer, where appropriate after consultation with the Chairman of the Referrals Sub-Committee, to determine who to instruct to conduct a formal local investigation, and this may include another senior officer of the Authority, a senior officer of another authority or an appropriately experienced consultant.