



Report of the Assistant Chief Executive (Corporate Governance)

Standards Committee

Date: 13th February 2007

Subject: Local Assessment Process

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

1. The purpose of this report is to outline to the Committee the proposed changes to the process for dealing with complaints of misconduct against Members, and the options available to the Committee in order to prepare for this new process.
2. The Local Government Public Involvement in Health Act 2007 and Regulations¹ require changes to the way complaints of misconduct against Members are dealt with by the Council. This report outlines those changes and outlines possible arrangements for dealing with those complaints.
3. The Standards Committee is asked to:
 1. Comment on the proposals, and
 2. Approve the following general proposals in paragraph 3 -6 to deal with complaints made under the Code of Conduct in the way set out below subject to any requirements contained the final regulations and/or the final Standards Board for England Guidance
 3. That the initial local assessment of allegations shall be carried out by a sub-committee consisting of Members of the Standards Committee
 4. That any review of the initial local assessment decision shall be carried out by a sub-committee consisting of Members of the Standards Committee

¹ The Department of Communities and Local Government has issued a consultation paper on the Orders and Regulations relating to the Conduct of Local Authority Members in England in January 2008.

5. That any hearings relating to allegations of misconduct under the Members Code of Conduct shall be carried out by the Standards Committee
6. That the membership and quorum of the Standards Committee and sub-committees should be as follows:

Member Type	Full Committee	Local Assessment Sub-Committee	Review Sub-Committee	Hearings Full Committee
Independent	3	2	1	3
Leeds CC	5	3	2	5
Parish/Town Council²	2	1	1	2
Total	10	6	4	10
Quorum	3	3	3	3

² Drawn from a larger pool of Parish/Town Council representatives from the Leeds area. Only required to attend if the Committee/Sub-Committee is dealing with a matter involving Parish/Town Councils or a Parish/Town Council Member.

1.0 Purpose Of This Report

- 1.1 The purpose of this report is to outline to the Committee the proposed changes to the process for dealing with complaints of misconduct against Members, and the options available to the Committee in order to prepare for this new process.

2.0 Background Information

- 2.1 In the Local Government White Paper “Strong and Prosperous Communities”, the Department for Communities and Local Government proposed that aspects of the conduct regime should be devolved to local councils, and that the Standards Board for England should become refocused as a light touch regulator.
- 2.2 One of the ways this is to be achieved is by amending the process for the initial receipt and assessment of complaints. Instead of complaints being received centrally by the Standards Board, and then either dismissed or referred elsewhere for investigation, this process will be handled by each individual standards committee. The legislative changes that are required to make this possible are contained in the Local Government and Public Involvement in Health Act 2007.
- 2.3 Following this legislative change, the Department for Communities and Local Government is publishing regulations for standards committees to comply with. In addition the Standards Board for England will produce detailed guidance for local authorities. The draft regulations are currently being consulted upon and the options outlined in this report are based on information contained in that consultation paper together with information provided by the Standards Board through the local filter pilot project and information from the Annual Assembly, and information in a checklist produced by the Standards Board which covers matters to consider in the run-up to the implementation of the locally managed framework.
- 2.4 Further changes to the proposals in this report may also be required when the final version of the regulations and the Standards Board guidance are published.
- 2.5 As the regulations are currently at the draft/consultation stage. It is not possible to finalise the changes that will be required to the Constitution until the final regulations are made and the final version of the Guidance is published by the Standards Board. The Standards Board may not publish Guidance until after the regulations are made final and it is expected that the earliest Leeds will be in a position to implement the new regime will be at the start of the 2008/2009 municipal year.

3.0 Main Issues

Current assessment system

- 3.1 Under the current system for assessing complaints of misconduct against Members, complaints are received centrally by the Standards Board for England. The referrals unit then aim to make an initial decision about the complaint within ten days. This decision would be based on the following criteria:
- Whether the complaint is serious enough, if proven, to justify the range of sanctions available to the Adjudication Panel for England or local standards committees;

- Whether the complaint 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;
- and in considering this, the Board takes into account the time that has passed since the alleged conduct occurred.

3.2 If the Standards Board decides not to refer a complaint for further investigation, the complainant has the right to have this decision reviewed. The complainant should make this request, within 30 days of the referral decision, by writing to the Chief Executive of the Standards Board for England.

3.3 If the Standards Board does refer the complaint, they are able to instruct the monitoring officer of the local authority or an Ethical Standards Officer to carry out the investigation.

Proposed new assessment system

3.4 Under the new system, complaints will be received locally by each local standards committee. As complainants will write directly to the local authority to make their complaint, this process will need to be advertised. Ensuring that people are aware of this new process is also likely to be a criterion in the Audit Commission's new Comprehensive Area Assessment in future³.

3.5 Each local authority will have to decide who will receive and collate these complaints, although the actual decision on the matter must be taken by the standards committee or a sub-committee of the standards committee. The role of Customer Services in this process will need to be considered further in due course.

3.6 The consultation on the draft regulations suggests that the time scale for assessing complaints will not be dealt with by way of regulations and a statutory penalty for failing to comply. The time scale will instead be indicated in the guidance issued by the Standards Board, at this stage the consultation paper indicates that the time scale may be 20 days for dealing with the assessment process.

3.7 Whilst dealing with the complaint, the authority will be required to notify certain parties of its progress. It is expected that the regulations will require local authorities to notify both the complainant and the Member at the time the allegation is received and when the standards committee have decided how to proceed. Consideration will need to be given to issues of confidentiality, sensitivity and avoiding delay with regard to this procedure. Prior to making the decision on the matter, the standards committee will also have the power to request further clarification or evidence of a complaint, enabling them to make a fairer decision on the case.

3.8 The standards committee, or assessment sub-committee, will need to consider the same points as the Standards Board does under the current regime, regarding whether to refer a complaint for investigation. However each local authority will have to develop its own set of assessment criteria to decide whether a possible breach of the Code warrants further investigation or not based on guidance from the Standards Board. This is because local circumstances and priorities will need to be taken into account. The Standards Board will be providing guidance on developing criteria and the types of issues to be considered when considering complaints.

³ Standards Board Annual Assembly

- 3.9 Monitoring Officers will be able to acquire additional factual information which is readily available about allegations before the assessment takes place. This should not include interviews or investigations.
- 3.10 Under the new system, the vast majority of investigations would be expected to be carried out locally. Although the standards committee could still choose to refer a matter for investigation by an Ethical Standards Officer, these would only expect to deal with cases which had the following characteristics: A complaint which if true, would attract a sanction of disqualification; Complex cases involving many Members or many documents; and cases involving substantial local conflict of interests.
- 3.11 Local authorities will also need to establish a review mechanism for complainants to appeal against the local assessment decisions of the standards committee if the decision is made not to investigate and the complainant complains about this decision.

Size and make up of the Standards Committee

- 3.12 The new system for local assessment of complaints has the potential to create conflicts of interest for Members of the Standards Committee. This is because a complaint has three potential stages that need to be considered by Members of the Standards Committee.
- The local assessment of complaints to decide if they will be investigated.
 - Dealing with any possible review of a decision that a matter should not be investigated.
 - Dealing with any hearing following an investigation.
- 3.13 The Standards Board and the consultation on the regulations suggest that conflict issues can be avoided altogether if decisions on local assessment of complaints, reviews and hearings are taken by smaller sub-committees rather than the whole standards committee.
- 3.14 The Standards Board checklist does say that a Member of the Committee who dealt with the local assessment or a review hearing can deal with any subsequent hearing in relation to that complaint. This is because the initial assessment does not require deliberation of whether the conduct did or did not take place, it simply requires assessment of whether the complaint discloses something that needs to be investigated. However draft regulations indicate that a member of the standards committee who has been involved in the initial assessment cannot subsequently be involved in a review of a decision not to refer in relation to that matter.
- 3.15 The Local Government and Public Involvement in Health Act 2007 inserts section 56A into the Local Government 2000 giving the Secretary of State the power to make regulations providing that two or more authorities may establish a joint committee. The authority can then arrange for functions of the Standards Committee to be exercised by the joint committee.
- 3.16 In order to consider any issues affecting Parish Councils, including complaints regarding Parish Councillors in the Leeds area, a Parish representative of the Committee must be present. The current number of two may cause issues if there is

a review of the decision, or if a conflict of interest arises. Therefore it is suggested that a pool of Leeds parish/town council representatives be established, this would mean that the number of Parish/Town Council representatives on the full Committee would remain at two but that other representatives would be available if required to attend sub-committees or hearings.

- 3.17 The consultation on the draft regulations and information provided by the Standards Board therefore currently contains no issues that might lead the Authority to reconsider the size and make-up of the Standards Committee at the current time.

Organisation of the sub-committees

- 3.18 The information being provided by the Standards Board so far suggests that the best method of dealing with the local filter would be the creation of smaller sub-committees to handle some or all of the different stages of the process. This would avoid possible allegations of conflict of interests between the Members of the Committee carrying out the assessment process and those carrying out a review of the assessment.
- 3.19 The consultation on the regulations indicates that the meetings of the local assessment sub-committee and review sub-committee will be considered in closed meetings and will not be subject to the notice and publicity rules contained in Part 5A of the Local Government Act 1972. Therefore it will be possible to arrange for the local assessment sub-committee and review sub-committee meetings on an ad-hoc basis as they are required. It is envisaged that the review sub-committees and any subsequent hearings will need to be held with less frequency than the local assessment sub-committees.
- 3.20 However should the final regulations provide that the assessment sub-committee and review sub-committee are not closed meetings then Members may need to consider having scheduled assessment sub-committee meetings in place from the start of the municipal year which could then be cancelled if there was no business. This is to allow for time to comply with notice and publicity rules.
- 3.21 Members should be aware that the Local Government and Public Involvement in Health Act 2007 amends Section 53 (4) of the Local Government Act 2000 to provide that the chairman of the Standards Committee should be an independent Member. The LGPIH Act 2007 does not require that the chairman of a sub-committee should be an Independent Member. However the Standards Board checklist and consultation on the regulations indicate that it may also become a requirement that the sub-committee chairs are also independent members.
- 3.22 Members should also be aware that the current regulations provide that Standards Committees must consist of at least three Members of which one must be an Independent Member and at least two should be Members of the Council. As Leeds has Town or Parish Councils in the area there is also a requirement that there is a Town or Parish Council representative on the Committee. Independent Members should make up at least 25% of the Standards Committee. There should be no more than one Executive Member on Standards Committee however there is no requirement that the Standards Committee includes a member of the Executive. There is no requirement that Standards Committees are politically balanced.

- 3.23 Finally Members will need to consider how they wish each stage of the process to be dealt with and the size and make up of any sub-committees. The existing Parish Council Hearing sub-committee has a membership of four with the casting vote going to the chairperson. It is proposed that the existing sub-committee, which was set up to deal with Parish Council hearings, could be dissolved and replaced in the process by sub-committees to consider local assessment decisions and deal with any reviews.
- 3.24 As the current draft regulations provide that being on the local assessment sub-committee or the review committee does not preclude a Member from dealing with the final hearing of a matter it is proposed that the full Standards Committee could deal with the final hearing of allegations.
- 3.25 Members are asked to consider if the following arrangement for dealing with the three stages should be implemented.
- Initial local assessment decisions : Sub-committee
 - Review of local assessment decisions : Sub-committee
 - Hearings : Full committee

Initial local assessment decisions

- 3.26 These could be dealt with by a sub-committee consisting of two Independent Members, three Leeds Members and one Parish/Town Council Member (Parish/Town Council Member will only need to be present when dealing with a matter that involves a Parish/Town Councillor).

Review of local assessment decisions

- 3.27 These could be dealt with by a sub-committee consisting of one Independent Member, two Leeds Members and one Parish/Town Council Member (Parish/Town Council Member will only need to be present when dealing with a matter that involves a Parish/Town Councillor)

Hearings

- 3.28 These could be heard by the whole Committee as is currently the practice. This would ensure that the whole Committee is able to be involved in the final determination of any allegations of misconduct. Retaining the practice of having the full committee deal with hearings would also have the benefit of retaining the part of the process with which Members of the Committee are familiar and which is working adequately. The Hearings Procedure Rules are also regularly reviewed, both annually and after any hearings which will enable the Committee to consider regularly whether any changes to the hearings procedure are required .

Quorum

- 3.29 The current requirement that committees and sub-committees shall not be quorate unless there are at least three members present⁴ is not subject to any change under the current proposals in the consultation on the draft regulations. The Council's Procedure Rules also provide that the quorum for Standards Committee shall be three, including one independent Member, and that a Parish/Town Council member must be present when Parish/Town Council matters are being considered. The Council's Procedure Rules provide that the quorum of any sub-committee shall be determined by the appointing committee.
- 3.30 The following table summarises the possible size and make up of the Committee and Sub-Committees

Member Type	Full Committee	Local Assessment Sub-Committee	Review Sub-Committee	Hearings Full Committee
Independent	3	2	1	3
Leeds CC	5	3	2	5
Parish/Town Council ⁵	2	1	1	2
Total	10	6	4	10
Quorum	3	3	3	3

4.0 Implications For Council Policy And Governance

- 4.1 The Council is obliged to make changes to the procedures that govern the way Standards Committee deal with complaints of misconduct against Members. Those changes are required in order that the Council complies with the requirements of the Local Government Public Involvement in Health Act 2007 and the regulations made under that legislation. These arrangements will contribute to the maintenance of good governance arrangements at the Council.
- 4.2 As the regulations are currently at the draft/consultation stage. It is not possible to finalise the changes that will be required to the Constitution until the final regulations are made and the final version of the Guidance is published by the Standards Board. The Standards Board may not publish Guidance until after the regulations are made final and it is expected that the earliest Leeds will be in a position to implement the new regime will be at the start of the 2008/2009 municipal year.
- 4.3 The proposed timetable is currently as follows:
- 12 April 2008 (date to be confirmed) Standards Committee to consider the changes to the Constitution that they have the delegated authority to make,

⁴ As provided by the Relevant Authorities (Standards Committee) Regulations 2001

⁵ Drawn from a larger pool of Parish/Town Council representatives from the Leeds area see paragraph 3.16. Only required to attend if the Committee/Sub-Committee is dealing with a matter involving Parish/Town Councils or a Parish/Town Council Member.

and to recommend that the Corporate and Governance and Audit Committee consider the changes to the constitution that ultimately need to be approved by Full Council.

- 23 April 2008 (or 14 May 2008) Corporate Governance and Audit Committee to consider changes to the Constitution that need to be made by Full Council; and to make a recommendation to Full Council on those proposed amendments.
- 22 May 2008 the Annual Council Meeting to consider the recommendation of Corporate Governance and Audit Committee in relation to the Constitutional changes that must be approved by full Council.

However this timetable is dependant upon the timely publication of final regulations and guidance.

5.0 Legal and Resource Implications

- 5.1 There will be resource implications to the potential increase in membership of the Standards Committee and to the local assessment/investigation process in general. The Assistant Chief Executive (Corporate Governance) has identified additional budget required for the local filtering role and the new investigative role, as part of the budget pressures for the 2008/9 budget to be considered as part of the budget process.

6.0 Conclusions

- 6.1 The Local Government and Public Involvement in Health Act 2007 requires changes to the ways complaints about member misconduct are dealt with at a local level.
- 6.2 This will require changes to the structure of the Standards Committee. The Standards Board recommend setting up sub-committees to deal with some of the different stages of a complaint to avoid allegations of conflict.
- 6.3 The broad arrangements for dealing complaints locally need to be agreed by the Committee and the proposals are set out at paragraph 3.

7.0 Recommendations

- 7.1 The Standards Committee is asked to:

7.1.1 Comment on the proposals, and

7.1.2 Approve the following general proposals to deal with complaints made under the Code of Conduct in the way set out below in paragraph 7.1.3 – 7.1.5 subject to any requirements contained the final regulations and/or the final Standards Board for England Guidance

7.1.3 That the initial local assessment of allegations shall be carried out by a sub-committee consisting of Members of the Standards Committee

7.1.4 That any review of the initial local assessment decision shall be carried out by a sub-committee consisting of Members of the Standards Committee

7.1.5 That any hearings relating to allegations of misconduct under the Members Code of Conduct shall be carried out by the Standards Committee

7.1.5 That the membership and quorum of the Standards Committee and sub-committees should be as follows:

Member Type	Full Committee	Local Assessment Sub-Committee	Review Sub-Committee	Hearings Full Committee
Independent	3	2	1	3
Leeds CC	5	3	2	5
Parish/Town Council⁶	2	1	1	2
Total	10	6	4	10
Quorum	3	3	3	3

⁶ Drawn from a larger pool of Parish/Town Council representatives from the Leeds area see paragraph 3.16. Only required to attend if the Committee/Sub-Committee is dealing with a matter involving Parish/Town Councils or a Parish/Town Council Member.