



Report of the Assistant Chief Executive (Corporate Governance)

Standards Committee

Date: 1st July 2008

Subject: Final proposals for the local assessment arrangements

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:
 - Present the proposals for the new local assessment arrangements for dealing with complaints about members made under the Code of Conduct; and
 - Detail the constitutional amendments that will be required to put those arrangements in place.
2. The Committee is asked to agree the proposed arrangements and constitutional amendments in this report.

1.0 Purpose Of This Report

1.1 The purpose of this report is to:

- Present the proposals for the new local assessment arrangements for dealing with complaints about members made under the Code of Conduct; and
- Detail the constitutional amendments that will be required to put those arrangements in place.

2.0 Background Information

2.1 The Local Government and Public Involvement in Health Act 2007 (LGPIHA 2007) has amended the Local Government Act 2000 to make changes to the way that complaints about Members under the Members Code of Conduct are dealt with.

2.2 Under the new local system for dealing with allegations of misconduct by Members, an allegation will no longer be initially assessed by the Standards Board for England. This function is not the responsibility of the Leeds City Council Standards Committee.

2.3 The new regime came into force on 8th May 2008. The Standards Committee (England) Regulations 2008 in relation to the local process were made on 17th April and the Standards Board for England Guidance (that must be taken into account in devising the local arrangements) was published on 2nd May. The Guidance is attached as Appendix 1.

2.4 On 13th February 2008 the Standards Committee agreed some general proposals for the arrangements that need to be put in place in order to carry out the local assessment process.

2.5 Those general proposals were that the assessment and review of complaints made under the Members Code of Conduct will be carried out by sub-committees, and that any final hearings will be dealt with the whole Standards Committee. This report now sets out the detailed arrangements and the amendments to the Constitution that will be required to establish the new local system for dealing with allegations of misconduct made under the Members Code of Conduct.

2.6 The Standards Committee will need to appoint an Assessment Sub-Committee and a Review Sub-Committee. The Standards Committee is also asked to dissolve the Town and Parish Council Hearings Sub-Committee as this will no longer be required.

2.7 The Committee is requested to make the amendments to the Constitution detailed in the Appendices in order that the requirements of the legislation and Standards Board Guidance can be met.

3.0 Main Issues

3.1 Amendments or additions will be required to the following parts of the Constitution:

- a. Amendments to the Standards Committee Procedure Rules
- b. Creation of the Terms of Reference for Assessment Sub-Committee

c. Creation of the Terms of Reference for Review Sub-Committee

- 3.2 The new administrative procedures proposed by the Assistant Chief Executive (Corporate Governance) will also need to be agreed with the Standards Committee and these are covered in the report on the process for the receipt, referral and management of allegations of misconduct.

Make up of the Standards Committee

- 3.3 The authority must ensure that at least 25% of the members of its standards committee are independent members and that only one of its members is an executive member. In addition as Leeds City Council is a responsible authority at least two of the Standards Committee Members must be Parish or Town Council representatives but these cannot also be Leeds City Council Members. The current membership of the Leeds City Council Standards Committee complies with all these requirements.
- 3.4 However, the Standards Board guidance recommends that the number of Parish Council representatives on a Standards Committee is at least three to ensure that there is always a Parish or Town Council Member available without a conflict of interest for the assessment and review stages.

The Assessment Sub-Committee

- 3.5 The Regulations require that the initial assessment of any written allegation of misconduct under the Members Code of Conduct is carried out by a sub-committee that must be appointed by the Standards Committee. The sub-committee must be chaired by an Independent Member. It is proposed that this will be the Assessment Sub-Committee.
- 3.6 It is proposed that the Assessment Sub-Committee membership is to consist of:
- One Independent Member (Chairperson);
 - Two Leeds City Council Members¹; and
 - One Parish or Town Council Member (the Parish or Town Council Member only need attend if the matter involves a Parish or Town Councillor).

The quorum for the Assessment Sub-Committee is proposed to be three.²

- 3.7 The Standards Committee is asked to appoint the Assessment Sub-Committee with Membership as set out in paragraph 3.6.

Initial Assessment of Complaints

- 3.8 When considering an allegation of misconduct that has been made against a Member the Assessment Sub-Committee is required to reach one of the following decisions:

¹ Only one Leeds City Council Member needs to be present if the Parish or Town Council Member is also present, in order for the sub-committee to be quorate.

² Regulations 6 and 7 of the Standards Committee (England) Regulations 2008 state that an independent Member must be the Chair. If the matter involves an LCC member then an LCC member of the Assessment Sub-Committee must be present. If the Matter involves a Town/Parish Council Member then a Town/Parish Council representative must be present. There is no exemption to the requirement for an Independent Member to chair the Sub-Committee due to a prejudicial interest.

- To refer the complaint to the Monitoring Officer for investigation;
- To refer the complaint to the Monitoring Officer for other action;
- To refer the complaint to the Standards Board for England for investigation; or
- That no action should be taken.

3.9 When referring a case to the Monitoring Officer, this can be a referral to the Monitoring Officer of another authority if the subject of the complaint is no longer a Member of Leeds City Council but is a Member of another authority.

Consideration of Investigators' Reports

3.10 Under the current Standards Committee Procedure Rules, when an investigator completes an investigation, they produce a final report setting out their findings. If the investigator concludes in their report that the Member has breached the Code of Conduct (a finding of failure), this would automatically begin the pre-hearing process, and the Standards Committee would consider the report at a hearing. If the investigator concludes that the Member has not breached the Code of Conduct (a finding of no failure), the final report is presented to the Standards Committee during a normal Committee meeting. The Standards Committee then have to decide whether or not they accept the investigators' finding. If they agree with the investigator, the matter is concluded. If they do not agree with the investigator, the matter would be referred to a hearing of the Standards Committee.

3.11 Under the new regulations, all investigators' final reports will need to be considered by the Standards Committee **before** entering the pre-hearing process, even where the investigator has concluded that the Member has breached the Code of Conduct. If the investigator has concluded that the Member has breached the Code (a finding of failure), the Standards Committee would have to decide whether to refer the matter to a hearing of the Standards Committee or to the Adjudication Panel for England. If the investigator has decided that the Member has not breached the Code (a finding of no failure), the Standards Committee will have to decide whether or not they accept the investigator's finding. If they agree with the investigator, the matter is concluded. If they do not agree with the investigator, the Standards Committee must decide whether to refer the matter to a hearing of the Standards Committee or to the Adjudication Panel for England.

In order to avoid any delays in the process, it is proposed that the Assessment Sub-Committee considers these final reports.

3.12 Appendix 2 shows the proposed terms of reference of the Assessment Sub-Committee which sets out the functions that the Assessment Sub-Committee will be authorised to carry out. The Standards Committee is asked to approve these terms of reference.

The Review Sub-Committee

3.13 The Regulations require that the review of any decision by the Assessment Sub-Committee not to take any action in respect of an allegation be carried out by a sub-committee which must be appointed by the Standards Committee and must be chaired by an Independent Member. It is proposed that this will be the Review Sub-Committee. The Members on the Review Sub-Committee cannot be the same

Members who sat on the Assessment Sub-Committee that made the original decision on the case.

- 3.14 It is proposed that the Review Sub-Committee membership is to consist of:
- One Independent Member (Chairperson);
 - Two Leeds City Council Members³; and
 - One Parish or Town Council Member (the Parish or Town Council Member only need attend if the matter involves a Parish or Town Councillor).

The quorum for the Review Sub-Committee is three.⁴

- 3.15 The Standards Committee is asked to appoint the Review Sub-Committee with membership as set out in paragraph 3.14 above.
- 3.16 The Review Sub -Committee will apply the same assessment criteria as the Assessment Sub-Committee and is required to reach one of the following decisions when it is reviewing the decision of the Assessment Sub-Committee:
- To refer the complaint to the Monitoring Officer for investigation;
 - To refer the complaint to the Monitoring Officer for other action;
 - To refer the complaint to the Standards Board for England for investigation; or
 - Uphold the decision of the Assessment Sub-Committee to take no action.
- 3.17 Appendix 3 shows the proposed terms of reference of the Review Sub-Committee which set out the functions that the Review Sub-Committee will be authorised to carry out. The Standards Committee is asked to approve the terms of reference for the Review Sub-Committee.

Final Hearings

- 3.18 The Standards Board Guidance states that there is no requirement that final hearings must be carried out by a sub-committee. The Standards Board Guidance makes it clear that a Member can participate in a hearing if they have been involved in the assessment or review stages, as the earlier stages simply seek to determine whether further action should be taken, they do not result in any findings of fact.
- 3.19 It is proposed that final hearings will continue to be heard by the full Standards Committee. As with the proposed sub-committees the quorum for the Standards Committee is proposed to be three⁵.

Dissolution of the Town and Parish Council Hearings Sub-Committee

- 3.20 The Standards Committee is asked to formally dissolve the Town and Parish Council Hearings Sub-Committee as it is proposed that all cases will be dealt with in

³ Only one Leeds City Council Member needs to be present if the Parish or Town Council Member is also present, in order for the sub-committee to be quorate.

⁴ Regulations 6 and 7 of the Standards Committee (England) Regulations 2008 state that an independent Member must be the Chair. If the matter involves an LCC member then an LCC member of the Review Sub-Committee must be present. If the Matter involves a Town/Parish Council Member then a Town/Parish Council representative must be present. There is no exemption to the requirement for an Independent Member to chair the Sub-Committee due to a prejudicial interest.

⁵ This is the same as the present arrangements as set out in paragraph 28.3 of the Council Procedure Rules.

the same way. A Town or Parish Council Member of the Committee will be present when any matter involving a Town or Parish Council Member is dealt with.

Parish Council Representatives

- 3.21 In the event that a Code of Conduct Complaint was received about a Town or Parish Councillor, and one of the two Town or Parish Councillors on the Standards Committee had a prejudicial interest in that complaint, then the Assessment Sub-Committee could be held. However if there was a request for a review of the Assessment Sub-Committee's decision then a Review Sub-Committee could not be held until after a further Town or Parish Council Representative had been appointed to the Standards Committee. This would cause delay in dealing with a case and it may be that the Standards Committee feel it appropriate to resolve to increase the number of Town or Parish Council Representatives to three at this stage.

Arrangements for calling sub-committee meetings

- 3.22 The usual notice requirements do not apply to the sub-committees when they are initially assessing or reviewing complaints. Assessment Sub-Committee and Review Sub-Committee meetings will therefore be arranged when they are required.
- 3.23 With regard to the Assessment Sub-Committee, the Clerk will establish a date upon which both the Monitoring Officer and the Independent Chair person are available. The Clerk will then contact the remaining members of the Standards Committee. The membership of the Assessment Sub-Committee will be allocated on the basis of those who confirm first that they are available.⁶
- 3.24 With regard to the Review Sub-Committee, this cannot contain members who dealt with the case at the initial Assessment Sub-Committee so this will be arranged by the Clerk depending on the availability of the Monitoring Officer and all the Members of the Committee who are entitled to participate. Again the membership will be allocated on the basis of those who confirm first that they are available as long as the quorum requirements can be met in this way.
- 3.25 The Standards Board guidance states that the initial assessment should be carried out within an average of twenty days from receipt of the complaint. Any subsequent review should be carried out within three months of the decision, however the Standards Board guidance suggests that the reviews should, wherever possible, also be carried out within 20 days.
- 3.26 The Committee is asked to note the arrangements outlined in paragraphs 3.23 and 3.24 above for arranging the Assessment Sub-Committee, and the arrangements in paragraphs 3.23 and 3.25 above for arranging the Review Sub-Committee.

Standards Committee Procedure Rules

- 3.27 The proposed amendments to the Standards Committee Procedure Rules are shown at Appendix 4. The amendments are made to include the new local assessment and review process and to amend the existing procedure rules where required. Further amendments may be required and will be notified to the

⁶ (as long as the quorum requirements can be met in this way).

Committee at the meeting, as guidance and advice continue to emerge from the Standards Board for England.

- 3.28 The main stages of the new process are set out below and the changes required to implement the legislation, regulations and requirements of the Standards Board guidance have been incorporated into the Standards Committee Procedure Rules shown at Appendix 4. The revised Standards Committee Procedure Rules contain references to Appendices 1 and 2 which are the assessment criteria and anonymity criteria will be inserted into the Standards Committee procedure rules once they have been approved by the Committee.
- 3.29 The revised rules differentiate between Code of Conduct Complaints and Local Complaints. Some parts of the procedure will continue to apply to both types of complaint, however many parts of the new local assessment/review arrangements do not apply to Local Complaints and the rules have therefore had to be significantly changed to provide for this.

Initial receipt of complaints

- 3.30 All complaints must be made in writing and submitted to the Assessment Sub-Committee for assessment. Reasonable adjustments under the Disability Discrimination Act 2000 must be considered when necessary.
- 3.31 When a complaint has been addressed to the Monitoring Officer rather than to the Standards Committee the Monitoring Officer should determine if the complaint is about Member Conduct and should be passed to the Standards Committee or whether another course of action is appropriate. In the case of verbal complaints made to the Monitoring Officer, the Monitoring Officer should ask the complainant whether they want to submit a written complaint to the Standards Committee or whether they want to consider informal resolution of the matter.

Acknowledging the complaint

- 3.32 The Monitoring Officer may acknowledge receipt of a written complaint and tell the subject member that a complaint has been made against them. The information⁷ that can be provided at this stage is however limited to:
- Confirmation that a complaint has been made;
 - The name of the complainant (unless the complainant has requested confidentiality and the standards committee has not yet considered whether or not to grant it);
 - The relevant paragraphs of the Code of Conduct that may have been breached; and
 - Confirmation that a written summary of the allegation will only be provided to the subject member once the assessment sub-committee has met to consider the complaint, and the date of the meeting, if known.

⁷ The Monitoring Officer should be satisfied they have the legal power to disclose this information. The Monitoring Officer should also consider whether advising the Member of the complaint would not be in the public interest. If this would be the case then the subject member should not be advised of the complaint at this stage.

- 3.33 It is proposed that the Monitoring Officer will usually advise the subject Member unless it is considered that advising the member of the complaint would not be in the public interest. The Standards Committee is asked to approve that the Monitoring Officer will advise the subject Member of the complaint unless it is not in the public interest.

Pre-assessment reports and enquires

- 3.34 The Committee is asked to consider whether the Monitoring Officer (or other nominated officer) should prepare a short summary of the complaint for the Assessment Sub-Committee. Such a report would cover:
- Whether the complaint is within the jurisdiction of the Assessment Sub-Committee.
 - The paragraphs of the Code of Conduct that the complaint may relate to or that have been identified by the complainant.
 - A summary of the key points of the complaint if it is particularly complex or long.
 - Any further readily accessible information that has been obtained, for example copies of the members register of interests, minutes, declarations of acceptance of office, other readily obtainable information.

Assessment Criteria

- 3.35 Before the Assessment Sub-Committee go on to apply their assessment criteria, they should be satisfied that each complaint meets the following initial 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; and
 - The complaint, if proven, would be a breach of the Code under which the member was operating at the time of the alleged misconduct.

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. Information regarding whether the complaint meets these tests will be contained in the officer's covering report.

- 3.36 If the complaint does meet the above initial tests, the Assessment Sub-Committee must also apply certain assessment criteria to each matter to decide what action to take. These criteria need to be agreed by the Standards Committee.
- 3.37 The assessment criteria should reflect local circumstances and priorities and be simple clear and open. Applying the same criteria to each case will ensure that cases are dealt with consistently and fairly and avoid accusations of bias. The assessment criteria can be reviewed and amended as necessary.
- 3.38 It is important that complainants are confident that complaints about member conduct are taken seriously and dealt with appropriately. At the same time deciding to investigate a complaint or to take some other action will incur resources, both from the public purse and in the time of elected and independent members.

Authorities need to take into account the public benefit in investing in complaints which are less serious, politically motivated, malicious or vexatious.

- 3.39 Using the Standards Board guidance as a basis, the assessment criteria shown at Appendix 5 are proposed for discussion and agreement by the Standards Committee.

Criteria for accepting anonymous complaints

- 3.40 The Committee is asked to decide on the criteria for accepting anonymous complaints. As a matter of fairness and natural justice, a member should usually be told who has complained about them. However, there may be instances where the complainant asks for their identity to be withheld. The Standards Board guidance advises that such requests should only be granted in exceptional circumstances and at the discretion of the Assessment Sub-Committee. It is proposed that the Assessment Sub-Committee consider the request for anonymity alongside the substance of the complaint itself.
- 3.41 The Standards Board advise that Authorities should develop criteria by which the Assessment Sub-Committee will consider requests for anonymity (where the complainant has identified themselves). It is proposed that these criteria are as follows:
- The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed.
 - The complainant is an officer who works closely with the subject member and they are afraid of suffering a disadvantage to their employment or of losing their job if their identity is disclosed (this should be covered by the authority's whistle blowing policy).
 - The complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed (in such circumstances, Standards Committees may wish to request medical evidence of the complainant's condition).
- 3.42 When considering requests for anonymity, the Standards Committees should also consider whether it is possible to investigate the complaint without making the complainant's identity known.
- 3.43 If a Standards Committee decides to refuse a request by a complainant for anonymity, the Committee may wish to consider offering the complainant the option to withdraw, rather than proceed with their identity being disclosed. In certain circumstances, the public interest in proceeding with an investigation may outweigh the complainant's wish to remain anonymous and the Assessment Sub-Committee will need to decide where the balance lies in the particular circumstances of each complaint.
- 3.44 Authorities should publish information setting out how anonymous complaints (where the complainant has not identified themselves) will be dealt with. It is proposed that an anonymous complaint should only be referred for investigation or some other action if it is exceptionally serious or significant, and that this is included in the Committee's local assessment criteria.

- 3.45 The Committee are asked to agree the criteria for dealing with requests for anonymity (where the complainant has identified themselves) as proposed in paragraph 3.40.

Notification of Assessment Sub-Committee decision

- 3.46 The decision of the Assessment Sub-Committee will need to be notified to the subject member and the complainant by a decision notice. In the event that a complaint is to be referred to the Monitoring Officer or the Standards Board then the decision should contain a summary of the complaint.⁸
- 3.47 The Assessment Sub-Committee can use its discretion to give limited information to the subject member. Any decision to withhold the summary must be kept under review as circumstances change.

The written summary of the Assessment Sub-Committee or Review Sub-Committee decision

- 3.48 As the Assessment Sub-Committee and Review Sub-Committee may discuss unfounded and potentially damaging complaints about Members it would not be appropriate for them to be held in public. Therefore they are not subject to the notice and publicity requirements under Part 5 of the Local Government Act 1972.⁹ The usual rules about notice, agendas and access to meetings do not therefore apply.
- 3.49 Regulation 8 of the Standards Committee (England) Regulations 2008 provides that once the Assessment Sub-Committee or Review Sub-Committee has considered a complaint a written summary of its consideration of the allegation (or review) must be made available for public inspection. The written summary must record the main points considered, the conclusions as regards the allegation or review of the decision, and the reasons for that conclusion.
- 3.50 This written summary should not be published until the subject member has been given a summary of the complaint against them as detailed in paragraph 3.45 above.

Review of New Arrangements

- 3.51 As the new arrangements will result in a significant number of changes to the Standards Committee Procedure Rules it is proposed that the operation of the Rules will be reviewed in three months. This will allow time to assess the new process and will enable changes to be made if required.

⁸ Unless the Assessment Sub-Committee decides that doing so would be against the public interest or would prejudice any future investigation. The Assessment Sub-Committee should take advice from the Monitoring Officer on this point.

⁹ According to Regulation 8(5) of the Standards Committee (England) Regulations 2008.

4.0 Implications For Council Policy And Governance

- 4.1 The authority is required to locally assess and review complains of misconduct. The changes and procedures detailed in this report are required in order for the Council to carry out it's statutory role in relation to dealing with allegations of misconduct.
- 4.2 It is in the interests of good governance that the Council's procedures and constitution are updated and amended to reflect the requirements of changes to legislation.

5.0 Legal and Resource Implications

- 5.1 Whilst additional resources have been identified to implement the local assessment and review process, the resource implications of the new arrangements will continue to be kept under review.

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 the Committee to appoint an Assessment Sub-Committee and a Review Sub-Committee. The Town and Parish Council Hearings Sub-Committee will require dissolving.
- 6.3 The changes also require amendments to the Constitution which are shown in the Appendices.

7.0 Recommendations

- 7.1 Members of the Committee are asked to:
- 1) appoint the Assessment Sub-Committee with membership as set out in paragraph 3.6;
 - 2) approve the terms of reference for the Assessment Sub-Committee as shown in Appendix 2;
 - 3) appoint the Review Sub-Committee with membership as set out in paragraph 3.14;
 - 4) approve the terms of reference for the Review Sub-Committee as shown in Appendix 3;
 - 5) formally dissolve the Town and Parish Council Hearings Sub-Committee, as proposed in paragraph 3.20;
 - 6) approve the amended Standards Committee Procedure Rules as shown in Appendix 4;
 - 7) agree that the Monitoring Officer will advise the subject Member of the complaint unless it is not in the public interest;

- 8) agree that the Monitoring Officer or other nominated officer will prepare a short summary of each complaint for the Assessment Sub-Committee;
- 9) agree the proposed assessment criteria as shown in Appendix 5 of this report;
- 10) agree a set of criteria for deciding whether complaints should be considered anonymously, as proposed in paragraphs 3.41; and
- 11) agree that a review of the operation of the new Standards Committee Procedure Rules be undertaken after 3 months.