



Report of Assistant Chief Executive (Corporate Governance)

Standards Committee

Date: 21st April 2009

Subject: Annual Report in relation to Standards Committee Procedure Rules

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

1. This report is the annual review of the Standards Committee Procedure Rules.
2. The report confirms that the arrangements set out in the Rules have been complied with and recommends to Standards Committee a small number of amendments to the Rules for the purposes of clarification and completeness.
3. The report provides the Standards Committee with details as to the Monitoring Officer's use of her gate keeping role in relation to Local Complaints as required by the Rules. In addition it invites Standards Committee to consider whether complaints in relation to Local Codes should be brought within the Local Assessment regime which applies to complaints brought against Members for breach of the Members' Code of Conduct.
4. Finally, the report revisits the question of whether Members should be advised of the existence of a complaint prior to the consideration of that complaint by the Assessment Sub Committee. The Standards Committee is requested to consider the legislation together with anecdotal evidence in their consideration of this point.

1.0 Purpose Of This Report

- 1.1 The purpose of this report is to review the Standards Committee Procedure Rules, to make recommendations for any necessary amendments and to report on the gate keeping role performed by the Monitoring Officer in relation to any Local Complaints.
- 1.2 In addition the Standards Committee are invited to consider whether Local Complaints should be brought within the Local Assessment regime used for the initial assessment of complaints made against Members under the Members' Code of Conduct.
- 1.3 Finally, the report invites the Standards Committee to review their decision in relation to whether Members should be advised of the existence of a complaint prior to the meeting of the Assessment Sub Committee.

2.0 Background Information

- 2.1 The Standards Committee Procedure Rules (the SCPR) are set out in Part 4 of the Constitution. They set out the arrangements to be followed in respect of complaints received under the Members Code of Conduct (Code Complaints), or in relation to the other Codes and Protocols adopted by Leeds City Council (Local Complaints).
- 2.2 The SCPR were last amended in July 2008, incorporating the changes necessary to implement the new regime for the local assessment of complaints. The Standards Committee have considered the procedure adopted for dealing with complaints under the local assessment regime and agreed that the SCPR should not be revised to include the administrative process which is detailed elsewhere. Given the recent amendment to and review of the SCPR it is not considered necessary to review them in detail, however a few amendments are suggested for the purposes of clarification and completeness.
- 2.3 Paragraph 18 of the Standards Committee Procedure SCPR deals with monitoring. It requires the Monitoring Officer to report annually to the Standards Committee in respect of whether the arrangements have been complied with and also in respect of her gate keeping role for local Complaints.

3.0 Main Issues

- 3.1 A number of amendments are proposed which simply footnote the legislative source of the provisions within the SCPR. This enables ease of reference when dealing with matters requiring fine interpretation of those provisions.
- 3.2 Further amendments are recommended to correct the referencing of provisions within the SCPR.

Complaints made under the Local Codes (Local Complaints)

- 3.3 There has been one Local Complaint during the course of the past year. This is currently the subject of an initial investigation and details can not therefore be given in relation to this complaint. The Monitoring Officer is however able to confirm that she is discharging the gate-keeping role set out in paragraph 8.2 of the SCPR.
- 3.4 In contrast to Code complaints (which are automatically referred to the sub committees for assessment), Local complaints are the subject of an initial investigation by the Monitoring Officer. The Monitoring Officer then has the power

to determine whether the complaint should be the subject of a full investigation. The rules converge when a complaint reaches investigation stage. However at hearing stage, in the event of a finding of breach, there would be different sanctions available for Code and Local Complaints.

- 3.5 In addition to the administrative complications brought about by the existence of two separate systems for two different sources of complaint, this distinction between Code and Local complaints could give rise to a perception of injustice against Members dealing with slightly differing complaints.
- 3.6 The table below sets out the points in favour of combining Local Complaints with the Local Assessment Regime and contrasts them with points in favour of keeping the two systems separate.

Points in favour of combining Local Complaints with the Local Assessment process	Points in favour of keeping Local Complaints separate from the Local Assessment process
Consideration of Local Complaints by the Assessment and Review Sub Committees would bring the process out into the open, creating more transparent ethical governance.	
There would be a need for consideration of the status of the Sub Committees in relation to Local Code Complaints. Given that the role would not be devolved to the Sub Committees through the same legislation, it is unclear as to whether the notice and publicity requirements of Part 5A of the Local Government Act 1972 would apply in relation to the consideration of Local Complaints.	Should it be considered that the meetings of the Sub Committees would be subject to the provisions of Part 5A of the Local Government Act 1972 this would create logistical difficulties in terms of agenda setting etc.
There would be consistency of decision making as the same committee would consider all aspects of a complaint whether in relation to Member Code or Local Code matters.	
Further consistency of decision making would arise from the application of the assessment criteria to Local Complaints. Clearly the criteria in relation to the referral of a Member to another authority or to the Standards Board would not apply in relation to Local Complaints.	

Points in favour of combining Local Complaints with the Local Assessment process	Points in favour of keeping Local Complaints separate from the Local Assessment process
<p>There would be a need for clarity in respect of the route of each part of each complaint in order that appropriate outcomes are applied to each. It would not, for example be possible to refer a Local Complaint to the Standards Board for England, regardless of the perceived severity of the complaint or seniority of Members involved. This need to distinguish all parts of the complaint may assist Members in dealing with individual aspects, rather than reaching a 'gut' conclusion in respect of the whole.</p>	<p>Even if complaints are considered together at the assessment stage it may not be possible to keep them together through the investigation process. For example if a Code complaint is referred to the Standards Board for England for investigation it would not be possible to refer the investigation of the Local Complaint at the same time.</p>
<p>There would be consistency of treatment for complainants in that all would have recourse to review of their complaint, not currently available in respect of Local Complaints. In the alternative at the current time a complainant who is not satisfied with the outcome of the initial investigation would presumably have recourse to the Council's corporate complaints procedure.</p>	
<p>The use of the Assessment Sub Committee to perform the initial assessment of a Local Complaint would allow for the separation of Monitoring Officer Roles, leaving the Monitoring Officer untainted in the eventuality of a hearing.</p>	<p>Retention of the initial investigation role by the Monitoring Officer would enable her to deal with complaints relating solely to Local Codes swiftly without recourse to the Assessment and Review Sub Committee.</p>
<p>It would be possible to release details of a complaint to Members prior to the meeting of the Assessment Sub-Committee where that complaint related to a Local Code.</p>	<p>Early release of details in relation to a Local Complaint would highlight the retention of those details in relation to Member Code Complaints. It would create an inconsistency in approach and increase Members' resistance to the Local Assessment regime.</p>
<p>In order to reach conclusions in relation to potential breach of the Local Codes, Committee Members would need training in relation to each of those Codes. This wider knowledge base would be of additional benefit to Members in terms of their wider role in championing ethical governance within the authority.</p>	<p>The pressures of the additional training necessary for Members may be difficult for them to absorb into their already busy schedules. It may however be possible to overcome these concerns through a more flexible approach to the training need, for example through the creation of e-learning materials.</p>

Points in favour of combining Local Complaints with the Local Assessment process	Points in favour of keeping Local Complaints separate from the Local Assessment process
It would be possible to refer full complaints, incorporating both Member and Local Code issues for external investigation, again permitting separation of the Monitoring Officers role, and ensuring that she remains untainted for any eventual hearing.	There would need to be clarity over the grounds for outsourcing an investigation. If the decision to outsource is to be made on a case by case basis then the criteria to be applied to the decision would need to incorporate the consideration of any Local Code aspect of the complaint.
There would be a need to consider the manner in which the results of a Sub-Committee would be presented. For example, would the Local aspect of the complaint be contained within the same decision notice – with all the implications in respect of the public nature of this notice.	Members may be reluctant to increase the publicity given to complaints, especially where those complaints relate to the Local Codes.

- 3.7 If the Standards Committee is of the view that Local Complaints should be incorporated into the Local Assessment regime they are requested to resolve that the Monitoring Officer should have the authority to make the necessary consequential amendments to the SCPR.

Advising Members of the Existence of a Complaint

- 3.8 At the current time, as soon as a complaint is received the subject Member is advised of the existence of the complaint, who has made the complaint, and the relevant paragraphs of the Code. This practice is in line with the indication received from Members that they would like as much information as soon as possible in relation to a complaint.
- 3.9 However it does also cause frustration amongst Members in that it is not possible to give more detailed information in relation to the complaint. This is because the duty to provide a written summary of the complaint rests with the Assessment Sub Committee and the information can not therefore be released before the Sub Committee has met in relation to the complaint.
- 3.10 In practice on a number of occasions the subject Member has been able to ascertain the content of the complaint from the information provided. This undermines the decision making powers of the Assessment/Review Sub Committee when it meets.
- 3.11 Members will be aware that there is an obligation to provide a written summary of the case¹ following the meeting of the Assessment Sub Committee, unless that Committee is of the view that to do so would be contrary to the public interest or would prejudice the investigation of the complaint². Similarly the Monitoring Officer has a duty to inform the subject Member, complainant and any relevant Standards Committee or Parish Council that the matter has been referred for investigation³.

¹ S57C(2) LGA 2000

² Reg 11 The Standards Committee (England) Regulations 2008

³ Reg 14(2) The Standards Committee (England) Regulations 2008

This duty is subject to the proviso that the monitoring Officer should not so inform these people if directed not to by the Standards Committee (for our purposes the Assessment or Review Sub Committee). By implication it must be the same grounds upon which the Sub Committee can direct the Monitoring Officer not to inform the Member etc that the matter has been referred for investigation.

- 3.12 Given the ability of Members to ascertain the nature and detail of the complaint from the limited information released, it would effectively remove any grounds for considering that either to withhold the case summary or to instruct the Monitoring Officer not to inform the subject Member of the referral for investigation, would be contrary to the public interest or would prejudice the investigation.
- 3.13 Aside from these legal provisions the notification to Members of a complaint has in some cases led to significant angst and uncertainty for the subject Members. This is exacerbated by a potential of up to a 5 week delay in learning the outcome of the Assessment Sub Committee. As a result of this and similar instances some subject members have expressed a view that they would favour not being informed of the complaint until after the Assessment Sub Committee has reached a decision. Conversely should a complainant make their complaint public (ie via the media) it may be unreasonable to withhold details of the complaint from the subject member.
- 3.14 The Standards Committee are therefore asked to consider the current practice of advising the subject Member that there is a complaint against them. Two options which may be available to the Committee are as follows:
- 3.14.1 Firstly, to delegate to the Monitoring Officer the task of deciding whether the subject Member should be advised of the existence of the complaint. This would inevitably lead to the Monitoring Officer needing to reach a conclusion as to the likely outcome of the Assessment Sub Committee. Standards Committee may not think it advisable that the Monitoring Officer should try to reach such a conclusion. In addition Standards Committee may think that whilst this would enable information to be given to some Members as soon as possible, there could be a perception of unfair treatment on the part of those Members who do not receive the information. This perception would quite possibly be worsened by the fact that the decision was made by an officer.
- 3.14.2 Secondly Standards Committee could decide that no subject Member should be advised of the existence of a complaint made against them. This would enable the Assessment/Review sub committee to consider the case before deciding whether in fact it would be contrary to the public interest or would prejudice the investigation to inform the subject Member of the complaint.

4.0 Implications For Council Policy And Governance

- 4.1 Clear and transparent governance requires that the rules of procedure are set out fully and accurately within the Constitution. Making the recommended amendments will enable this to take place.
- 4.2 The inclusion of Local Complaints within the local assessment regime would bring about open, transparent and fair decision making in the initial stages of the procedure, which currently could be perceived as not providing a fair basis for consideration of those cases in comparison to Code Complaints.
- 4.3 Providing subject Members with details of complaints to which they are subject prior to the meeting of the Assessment Sub Committee appears to present open and

transparent decision making. However it may reduce the decision making powers of the Sub Committee as they are intended by legislation.

5.0 Legal And Resource Implications

5.1 There are no legal or resource implications to this report.

6.0 Conclusions

6.1 This report is the annual review of the Standards Committee procedure Rules. It confirms that the arrangements set out in the SCPR have been complied with.

6.2 A small number of amendments to the SCPR are necessary for the purposes of clarification and completeness.

6.3 One Local Complaint has been made during the course of the past year. As the complaint is current no details can be given in relation to the outcome of the Monitoring Officer's gate keeping role in this regard.

6.4 The report sets out the advantages of incorporating Local Complaints within the Local Assessment regime and contrasts them with the advantages of retaining a separate regime for Local Complaints. Standards Committee is invited to consider whether In addition it invites Standards Committee to consider whether complaints in relation to Local Codes should be brought within the Local Assessment regime.

6.5 Finally, the report revisits the question of whether Members should be advised of the existence of a complaint prior to the consideration of that complaint by the Assessment Sub Committee. The Standards Committee is requested to consider the legislation together with anecdotal evidence in their consideration of this point.

7.0 Recommendations

7.1 Members are requested to:

7.1.1 Approve the amendments to the Standards Committee Procedure Rules proposed within this report.

7.1.2 Consider whether to include Local Complaints within the Local Assessment regime, and, if they are so minded, to authorise the Monitoring Officer to approve the consequential amendments to the Standards Committee Procedure Rules.

7.1.3 Consider whether subject Members should be advised of the existence of complaints against them prior to the meeting of the Assessment Sub Committee.

Background Documents

- Local Government and Public Involvement in Health Act 2007
- Local Government Act 2000
- Standards Committee (England) Regulations 2008
- Standards Board for England Guidance - 'Local Assessment of Complaints'