



Report of the Assistant Chief Executive (Corporate Governance)

Standards Committee

Date: 13th July 2010

Subject: Options for amendment to the 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 consider amendments to the local assessment process in Leeds, including the way that complaints are handled prior to being presented to the Assessment Sub-Committee. This report also presents revised terms of reference for the four Sub-Committees, along with minor amendments to the Standards Committee Procedure Rules, for the Standards Committee's approval.
2. The Monitoring Officer has become aware that certain other local authorities may be approaching local assessment differently, and particularly in the way that complaints are dealt with prior to being presented to the Standards Committee. Although most of the proposals in this report relate to parts of the process that are conducted by officers, the guidance on local assessment from Standards for England states that the administrative processes that the authority adopts should be agreed with the Standards Committee.
3. During a review of the Sub-Committees' Terms of Reference it has become apparent that there are some elements of the process which are not currently delegated to a Sub-Committee. These functions are receiving a referral back from the Monitoring Officer during an investigation, and receiving a referral back from Standards for England following a decision to not investigate the matter. In both such cases the Sub-Committee is required to make a new assessment decision on the matter in accordance with powers under 57A of the Local Government Act, and therefore it is proposed that both these functions are delegated to the Assessment Sub-Committee. Amendments to the Standards Committee Procedure Rules are also proposed for clarification.
4. Members of the Standards Committee are asked to approve the proposals set out in paragraph 7 of this report.

1.0 Purpose Of This Report

- 1.1 The purpose of this report is to consider amendments to the local assessment process in Leeds, including the way that complaints are handled prior to being presented to the Assessment Sub-Committee. This report also presents revised terms of reference for the four Sub-Committees, along with minor amendments to the Standards Committee Procedure Rules, for the Standards Committee's approval.

2.0 Background Information

- 2.1 The Monitoring Officer has become aware that certain other local authorities may be approaching local assessment differently, and particularly in the way that complaints are dealt with prior to being presented to the Standards Committee. Although most of the proposals in this report relate to parts of the process that are conducted by officers, the guidance on local assessment from Standards for England states that the administrative processes that the authority adopts should be agreed with the Standards Committee.
- 2.2 Mr Keith Stevens, the interim Monitoring Officer of Torbay Council, trained the Standards Committee in conducting hearings on 4th December 2009 and 1st March 2010. During these training sessions Mr Stevens indicated that Councillors can be notified as soon as a complaint about them is received, and can be given a full summary of the complaint at this point. Mr Stevens also indicated that very few complaints in Torbay were presented to the Assessment Sub-Committee as most were resolved by the Monitoring Officer before reaching this point.
- 2.3 In addition, the Monitoring Officer has become aware that LGG Training are providing a course called "Implementing Codes of Conduct – The Revised Members Code & the New Employees Code" in which the presenter, Mr. Peter Keith-Lucas, indicates that it would be possible under the Regulations to give a copy of the complaint to the subject Member at the time it is received and also to allow the subject Member to present their own information to the Assessment or Review Sub-Committee for their consideration alongside the information provided by the complainant.
- 2.4 Members of the Standards Committee will recall that the inability of the subject Member to receive a summary of the complaint until after the Assessment Sub-Committee has met, and their inability to put their 'defence' before the Sub-Committee, were both issues of concern raised during the last survey conducted in Leeds.
- 2.5 Both Mr Stevens and Mr Keith-Lucas have been approached for further explanation on the above points, and the various options for amendment following these discussions are outlined in this report.

3.0 Main Issues

Checking whether a complaint should be referred to the Assessment Sub-Committee

- 3.1 In Leeds, the Head of Governance Services has delegated authority from the Monitoring Officer to decide whether complaints are about Member misconduct, and therefore whether they should be forwarded to the Assessment Sub-Committee for

initial assessment. To be referred to the Assessment Sub-Committee a complaint form should contain the following information:

- The names of one or more subject Members;
- The subject Member must be a Leeds City Councillor or a Parish Councillor, and have been in office at the time of the alleged incident;
- A Code of Conduct must have been in force at the time of the alleged incident;
- The complaint must be about the behaviour of a Councillor and refer to a potential breach of the Members' Code of Conduct.

- 3.2 If the complaint does not meet the relevant criteria it cannot be forwarded to the Assessment Sub-Committee. The complainant would be advised of this and given details of how best to redirect their complaint e.g. to the Local Government Ombudsman or the Compliments and Complaints Team.
- 3.3 This procedure is based on advice from Standards for England that officers dealing with incoming complaints will need to be alert to a complaint that a Member may have breached the Code. Standards for England state that if a written complaint specifies or appears to specify that it is in relation to the Code, then it should be passed to the Assessment Sub-Committee for consideration. However the guidance does allow the Monitoring Officer to determine whether the matter should be referred to the Assessment Sub-Committee or whether another course of action is appropriate. According to the guidance, if the complaint is clearly not about Member conduct, it does not have to be passed to the Assessment Sub-Committee.
- 3.4 Torbay Council have adopted a local protocol which requires complainants to specify on the complaints form what the subject Member is alleged to have said or done, any corroborating evidence or details of people who will be able to provide it, and a copy of any documentary evidence the complainant needs to rely on. Therefore if the complainant fails to provide any of this information the Monitoring Officer can either choose to deal with the matter via informal resolution or take no further action at all. However any decision not to refer the matter to the Assessment Sub-Committee is made after preliminary inquiries have been made and in consultation with the Chair of the Standards Committee.

Proposal for amendment

- 3.5 The Monitoring Officer therefore proposes that the Council's complaints form is amended to require the complainant to provide sufficient details of their allegation, corroborating evidence, details of witnesses and copies of documentary evidence, and that this requirement will be reflected in the list of criteria checked by the Head of Governance Services on receipt of a complaint. If the complainant did not provide such information, it is proposed that the Head of Governance Services should approach the Chair of the Standards Committee to ascertain whether the Chair believes it should be referred to the Assessment Sub-Committee anyway. If the Chair does not wish to refer it, the complaint would be rejected.
- 3.6 An amended version of the Council's complaints form and guidance leaflet is attached as Appendix 1 to this report for the Standards Committee's approval.

Options for informal resolution

- 3.7 As outlined above, Standards for England advise that where a complaint is addressed to the Monitoring Officer, and is clearly not about Member conduct, the Monitoring Officer does not have to pass it to the Assessment Sub-Committee. Furthermore, if a concern is raised with the Monitoring Officer verbally, the

Monitoring Officer should ask the complainant whether they want to formally put the matter in writing to the Standards Committee. If the complainant does not, then the Monitoring Officer should consider the options for informal resolution to satisfy the complainant.

- 3.8 This guidance suggests that informal resolution is only open to the Monitoring Officer if the complainant has indicated that they do not wish to make a formal complaint, and where the complaint is not about Member conduct.
- 3.9 However, Torbay Council's local protocol states that *"where the Monitoring Officer is of the opinion that there is the potential for local resolution, he/she may approach the Member complained against and ask whether the Member admits, denies or otherwise wishes to comment on the alleged breach and whether he/she would be prepared to offer an apology or undertake other remedial action."*
- 3.10 This local resolution is presented as an alternative to forwarding the complaint to the Referrals Sub-Committee of Torbay Council, and the decision to do so would be taken in consultation with the Chair of the Standards Committee.
- 3.11 The model procedure for the "Initial Assessment of Standards Complaints" produced by Peter Keith-Lucas (which was included in the LGG training materials) states that *"whilst formal investigation may be necessary in some cases, many complaints can often be dealt with more rapidly and effectively if an early, informal resolution of the matter can be achieved. The Standards Committee has instructed the Monitoring Officer, where a complaint has been received, to explore the potential for local resolution to the satisfaction of the complainant, to avoid the need for a formal investigation."*
- 3.12 However Peter Keith-Lucas also advises that the Monitoring Officer should seek local resolution of the matter **at the same time** as referring the complaint to the Assessment Sub-Committee for initial assessment. This is because, in his view, local resolution is not an alternative to reporting the allegation to the Assessment Sub-Committee. Where the Monitoring Officer believes that there is potential for informal resolution, they shall approach the subject Member and ask whether they are prepared to acknowledge that their conduct was inappropriate, and whether they would be willing to give an apology or undertake other remedial action. With the consent of the subject Member, the Monitoring Officer should then approach the complainant and ask them if they would be satisfied with that outcome. The Monitoring Officer should then report the complaint and the responses of the subject Member and complainant to the Assessment Sub-Committee. The idea is that where the subject Member and complainant are satisfied with informal resolution, the Assessment Sub-Committee might take this into account when deciding whether it is in the public interest to investigate the matter.

Advantages and Disadvantages

- 3.13 The advantage of using informal resolution as an alternative to referring valid Code of Conduct complaints to the Assessment Sub-Committee is that it saves resources and it may allow the complaint to be dealt with more quickly and effectively.
- 3.14 The disadvantages of such an approach are that it can introduce a significant delay into the process, particularly if informal resolution fails and the matter needs to be referred to the Assessment Sub-Committee after all (which has occurred twice in Leeds to date), and that it prevents the Assessment Sub-Committee from exercising any discretion on the matter. For example, there may be cases where the

Assessment Sub-Committee feel that it is in the public interest to investigate, but where the Monitoring Officer chooses to deal with the matter informally. One potential solution to this would be to involve the Chair of the Standards Committee in the decision to pursue informal resolution, as in Torbay Council. However this places additional responsibility upon the Chair and also potentially removes Councillors and Parish Members from the complaints process.

- 3.15 However, if the complaint were to be referred to the Assessment Sub-Committee (in spite of the parties favouring informal resolution), and the Assessment Sub-Committee decides that there is no potential breach of the Code of Conduct, it may make it difficult for the Monitoring Officer to complete the informal resolution agreed with the complainant.

Proposals for amendment

- 3.16 The Monitoring Officer proposes that the following amendments are made to the local assessment process in Leeds:
- To introduce the option of informal resolution at the time the complaint is submitted by asking the complainant to indicate their agreement with it on the complaints form, and to specify a form of resolution that would satisfy them e.g. an apology. An amended version of the complaints form is attached as Appendix 1 to this report for the Standards Committee's approval.
 - To amend the procedure to allow the Head of Governance Services to forward cases that seem appropriate for informal resolution to the Monitoring Officer, and to not refer the complaint to the Assessment Sub-Committee at all (unless instructed to do so by the Monitoring Officer i.e. if informal resolution fails), and that this decision is taken without the assistance of the Chair of the Standards Committee.

Notifications to the subject Member

- 3.17 Torbay Council's local protocol outlines that that subject Member will be sent a summary of the complaint within five working days of receipt, unless the Monitoring Officer believes that it would be likely to:
- Put the complainant at risk of bullying, harassment or intimidation;
 - Put other witnesses at risk of bullying, harassment or intimidation;
 - Prejudice any investigation;
 - Prejudice any other action from being taken; and/or
 - Not be in the public interest.
- 3.18 This contradicts guidance from Standards for England which states that:

"The Monitoring Officer has the discretion to take the administrative step of acknowledging receipt of a complaint and telling the subject Member that a complaint has been made about them...The notification can say that a complaint has been made, and state the name of the complainant...and the relevant paragraphs of the Code of Conduct that may have been breached. It should also state 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...Only the Standards Committee has the power, under Section 57C(2) of the Local Government Act 2000, as amended, to give a written summary of the allegation to a subject Member."

- 3.19 However, Peter Keith-Lucas also disagrees with this guidance, and states that authorities are able to depart from it where they have sound reasons for doing so. He argues that Section 57C provides that the Standards Committee must take reasonable steps to give a written summary of the allegation to the person who is the subject of the allegations, but does not in itself prohibit the Monitoring Officer from notifying the respondent Councillor, although such notification would not count as the Standards Committee's statutory notification under Section 57C.
- 3.20 The Standards Committee (England) Regulations 2008 state at Regulation 11 that the Monitoring Officer is able to tell the subject Member that a complaint has been received. However, Regulation 12 makes it a criminal offence for a Monitoring Officer to disclose information which they have received in the performance of their functions, except where the person to whom the information relates has consented. Peter Keith-Lucas is of the opinion that the person who needs to give their consent is the subject Member, and the complainant must also give their consent for their name to be disclosed to the subject Member.
- 3.21 He is therefore happy that, unless it would interfere with a particular investigation, the Monitoring Officer has the legal power to give the subject Member a copy of the complaint. He suggests that the Council should set up a system for doing this as a matter of routine on receipt of a complaint, so that the subject Member would normally have a copy of the complaint well before the Assessment Sub-Committee met.

Proposal for amendment

- 3.22 The Monitoring Officer proposes that Leeds City Council should continue to comply with the guidance from Standards for England and provide the subject Member with a summary of the complaint in the decision notice after the Assessment Sub-Committee has met. However the Monitoring Officer will continue with informal arrangements involving the Group Whips once the subject Member has been informed by the Head of Governance Services.

Information provided by the subject Member

- 3.23 Torbay Council's local protocol states that "*the Monitoring Officer may carry out a preliminary investigation in accordance with Standards for England guidance, to assist a decision (in consultation with the Chair of the Standards Committee).*"
- 3.24 However, this contradicts the guidance from Standards for England which states that "pre-assessment enquiries should not be carried out in such a way as to amount to an investigation. For example, they should not extend to interviewing potential witnesses, the complainant, or the subject Member." It is also unclear what role the Chair of the Standards Committee could have in gathering factual documents or other information in relation to the complaint.
- 3.25 Peter Keith-Lucas states that the definition of 'readily obtainable information' might include a letter from the subject Member saying why he or she thinks that they did not breach the Code. Although Peter Keith-Lucas states that he would not invite such a letter, he sees no reason why if a letter is received it should not be put before the Assessment Sub-Committee with an appropriate caveat that the statements in the letter have not been investigated. He believes that there would be public interest in putting the letter before the Assessment Sub-Committee to avoid costly investigations.

3.26 However, advice sought by officers from Standards for England (and reported to the Standards Committee on 17th February 2010) says:

*“Any information the monitoring officer supplies at this stage should be easily obtainable. This means that if the monitoring officer is able to get their hands on useful documents without having to carry out a mini-investigation, they can do so. It does not matter whether or not the documents are publicly available - it is more about how readily available they are. The monitoring officer can, however, include documents that they can easily get hold of which are not publicly available. The interpretation of what is easily obtainable and how far a monitoring officer can go in the collection of that information is for each local authority to decide. Keeping in mind the pre-assessment enquiries should not extend to interviewing potential witnesses, the complainant or the subject member. Officers should not seek opinions on an allegation rather than factual information as this may prejudice any subsequent investigation. They should also ensure their report does not influence improperly the assessment sub-committee’s decision or make the decision for it. However, **we recommend that evidence supplied by the subject member is not used at this early stage.** The main considerations for each complaint should be whether a breach of the Code is revealed and the relative seriousness of the matter. Although it may be sensible in some cases to look into the motivation behind the complaint this should not be an overriding factor in taking no action on complaints that clearly reveal a potential for a breach.”*

3.27 In response to this advice Peter Keith-Lucas argues that once the Monitoring Officer has received such a letter from the subject Member, it would fall into Standards for England’s definition of ‘readily obtainable information’ i.e. including documents that the Monitoring Officer can easily get hold of which are not publicly available. He argues that if the subject Member wrote to the Monitoring Officer to say they were in France on the day the incident allegedly took place and not at the meeting etc. then this would be relevant information for the Sub-Committee. Equally, if they wrote back to say that they did say the words complained of, but the complainant deserved it, that would also make the job of the Assessment Sub-Committee easier.

Proposal for amendment

3.28 The Monitoring Officer proposes that if the subject Member decides to send such information to the Assessment Sub-Committee and Review Sub-Committee it will be accepted for consideration, but such information will not be specifically sought by officers, particularly in view of the fact that the subject Member will only be able to provide relevant information to the Assessment Sub-Committee in limited circumstances e.g. if they are able to recall the incident through recognising the complainant’s name. This is because the subject Member will not receive details of the complaint until after the Assessment Sub-Committee has met.

Assessment criteria

3.29 The Standards Committee adopted its Assessment Criteria on 13th July 2008 based on guidance from Standards for England and have not amended them since. A copy of the Assessment Criteria is attached as Appendix 2 to this report.

3.30 Torbay Council have adopted the following assessment criteria in addition to those suggested by Standards for England:

- *“The Sub-Committee may decide to take no further action because the complainant has not provided, and there is insufficient likelihood of, adequate*

evidence being found which might indicate a positive breach of the Code to justify the use of resources involved in an investigation; and

- *The Sub-Committee may decide to take no further action because the complaint was made at least six months after the event unless the pattern of behaviour complained about has been recently repeated or the evidence relied upon is predominantly documentary.”*

Option for amendment

- 3.31 Members of the Standards Committee have previously expressed an interest in setting a time limit for complaints to be referred for action, and are therefore asked to consider whether their Assessment Criteria should be amended to include the criteria above.

Feedback from complainants and subject Members

- 3.32 At the conclusion of every complaint considered by the Standards Committee, officers send a questionnaire to the complainant and the subject Member asking for any feedback on the process. Since the last review report there have been two responses from complainants, and two responses from subject Members. These responses have been collated into two questionnaires attached as Appendices 8 and 9. Members of the Standards Committee are asked to consider whether there are any changes required to the local assessment process as a result of these responses.
- 3.33 Many of the issues identified by the parties are part of the legislation and therefore cannot be changed, or are already discussed in this report or the report on “Review of the procedure for Standards Committee hearings”. Members of the Standards Committee may wish to note that the issues raised about the questioning style of the investigator have already been raised by the Head of Governance Services with the investigator concerned.

Sub-Committee Terms of Reference and Standards Committee Procedure Rules

- 3.34 During a review of the Sub-Committees’ Terms of Reference it has become apparent that there are some elements of the process which are not currently delegated to a Sub-Committee. These functions are receiving a referral back from the Monitoring Officer during an investigation, and receiving a referral back from Standards for England following a decision to not investigate the matter. In both such cases the Sub-Committee is required to make a new assessment decision on the matter in accordance with powers under 57A of the Local Government Act, and therefore it is proposed that both these functions are delegated to the Assessment Sub-Committee.
- 3.35 All four sets of Sub-Committee Terms of Reference are attached to this report as Appendices 3 to 6 for Members of the Standards Committee to note and approve.
- 3.36 In addition, according the relevant Regulations, when the Assessment Sub-Committee meets to carry out these functions, it does so in a public meeting, although the information provided by the Monitoring Officer or Standards for England can be classed as exempt information in accordance with Access to Information Procedure Rule 10.4(7C), if and so long as the public interest in maintaining the exemption outweighs the public interest in disclosing the

information. Therefore amendments are proposed to the Standards Committee Procedure Rules to clarify the status of these meetings.

- 3.37 An amended extract of the Standards Committee Procedure Rules is attached as Appendix 7 to this report for Members' consideration and approval.

4.0 Implications For Council Policy And Governance

- 4.1 Regularly reviewing the Council's local assessment procedures ensures that they remain current and fit for purpose.

- 4.2 The proposed amendments to the Standards Committee Procedure Rules will also increase transparency in the Sub-Committee's meeting procedures.

5.0 Legal And Resource Implications

- 5.1 The legal implications to these proposals are set out in the main body of this report.

- 5.2 If more complaints are resolved informally rather than forwarded to the Assessment Sub-Committee this may mean a reduction in the number of meetings required, although there is likely to be an increase in the amount of officer time spent in trying to resolve such complaints.

6.0 Conclusions

- 6.1 The Monitoring Officer has become aware that certain other local authorities may be approaching local assessment differently, and particularly in the way that complaints are dealt with prior to being presented to the Standards Committee. Although most of the proposals in this report relate to parts of the process that are conducted by officers, the guidance on local assessment from Standards for England states that the administrative processes that the authority adopts should be agreed with the Standards Committee. The various options for amendment following these discussions are outlined in this report.

- 6.2 During a review of the Sub-Committees' Terms of Reference it has become apparent that there are some elements of the process which are not currently delegated to a Sub-Committee. These functions are receiving a referral back from the Monitoring Officer during an investigation, and receiving a referral back from Standards for England following a decision to not investigate the matter. In both such cases the Sub-Committee is required to make a new assessment decision on the matter in accordance with powers under 57A of the Local Government Act, and therefore it is proposed that both these functions are delegated to the Assessment Sub-Committee.

- 6.3 In addition, according the relevant Regulations, when the Assessment Sub-Committee meets to carry out these functions, it does so in a public meeting, although the information provided by the Monitoring Officer or Standards for England can be classed as exempt information in accordance with Access to Information Procedure Rule 10.4(7C), if and so long as the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Therefore amendments proposed to the Standards Committee Procedure Rules to clarify the status of these meetings.

7.0 Recommendations

- 7.1 Members of the Standards Committee are asked to consider the following proposals from the Monitoring Officer for amendments to the local assessment process:
- 7.1.1 To amend the Council's complaints form to require the complainant to provide sufficient details of their allegation, corroborating evidence, details of witnesses and copies of documentary evidence, and that this requirement will be reflected in the list of criteria checked by the Head of Governance Services on receipt of a complaint. If the complainant did not provide such information, it is proposed that the Head of Governance Services should approach the Chair of the Standards Committee to ascertain whether the Chair believes it should be referred to the Assessment Sub-Committee anyway. If the Chair does not wish to refer it, the complaint would be rejected.
 - 7.1.2 To introduce the option of informal resolution at the time the complaint is submitted by asking the complainant to indicate their agreement with it on the complaints form, and to specify a form of resolution that would satisfy them e.g. an apology.
 - 7.1.3 To amend the procedure to allow the Head of Governance Services to forward cases that seem appropriate for informal resolution to the Monitoring Officer, and to not refer the complaint to the Assessment Sub-Committee at all (unless instructed to do so by the Monitoring Officer i.e. if informal resolution fails), and that this decision is taken without the assistance of the Chair of the Standards Committee.
 - 7.1.4 That Leeds City Council should continue to comply with the guidance from Standards for England and only provide the subject Member with a summary of the complaint in the decision notice after the Assessment Sub-Committee has met. However the Monitoring Officer will continue with informal arrangements involving the Group Whips once the subject Member has been informed by the Head of Governance Services.
 - 7.1.5 That if the subject Member decides to send any information to the Assessment Sub-Committee and Review Sub-Committee regarding the allegations against them it will be accepted for consideration, but that such information will not be specifically sought by officers.
- 7.2 Members of the Standards Committee are also asked to:
- 7.2.1 Approve the amended complaints form and guidance leaflet (attached as Appendix 1 to this report);
 - 7.2.2 Consider whether to make any additional amendments to the local assessment process as a result of the questionnaire responses attached as Appendices 8 and 9 to this report;
 - 7.2.3 Consider possible amendments to their Assessment Criteria (as set out in paragraph 3.31);
 - 7.2.4 Approve the revised terms of reference for the Assessment Sub-Committee, Review Sub-Committee, Consideration Sub-Committee, and Hearings Sub-Committee (attached as Appendices 3 to 6 to this report); and
 - 7.2.5 Approve the proposed amendments to the Standards Committee Procedure Rules (attached as Appendix 7 to this report) to clarify when meetings of

the Assessment Sub-Committee are potentially open to the public or closed.

Background Documents

“Local Assessment of Complaints” by Standards for England, available at: <http://www.standardsforengland.gov.uk/Guidance/TheLocalStandardsFramework/> , last updated June 2008

Standards Committee (England) Regulations 2008

Local Government Act 2000

LGG course materials, “Implementing Codes of Conduct – The Revised Members’ Code & the New Employees’ Code” presented by Peter Keith-Lucas, 10th February 2010

Email correspondence from Peter Keith-Lucas sent 26th February 2010

“Local Protocol on Local Assessment and Investigation of Allegations of Misconduct by Members”, Torbay Council Constitution, available at: http://www.torbay.gov.uk/42_local_protocol_on_local_assessment_and_investigation_of_allegations_of_misconduct_by_members.doc