

AGENDA ITEM 4

I am very concerned that the Standards Committee are being “disenfranchised” by the current Arrangements for dealing with Code of Conduct complaints, particularly in view of the process that was adopted under item 4 of last week’s Council Meeting. It appears that, under our current Arrangements a complaint against a Member can be taken straight to investigation, bypassing the opportunity for a meeting with the Subject Member to discuss the allegations and the opportunity for an apology or a process of conciliation. At present the Monitoring Officer, together with an Independent Person make such decisions. It appears at present that the first that the Standards Committee will hear about the complaint could be when it comes before a Hearing. Bearing in mind the considerable and unacceptable legal costs that have been incurred in the past in carrying out investigations, some of which complaints have not been upheld, should we not endeavour to put far more of the decision-making in the hands of the appropriately trained Standards Committee members? I am concerned that, if complaints have not been through a robust process and are not upheld, the Council could be held liable for legal costs and damages. I also believe that the Standards Committee should appoint panels, especially the Hearings Panel, not the Monitoring Officer/Independent Person.

I therefore submit my suggestions for changes, most of which are taken from our previous Arrangements, and ask that the Committee discuss these with the possibility of incorporating these or such amendments as you deem necessary, into our new Arrangements. My suggestions are as follows:-

Upon receipt of a complaint regarding a Subject Member, the Monitoring Officer will report the complaint to an Assessment Sub-Committee selected from members of the Standards Committee. From the outset and until a public Hearing is held, **strict confidentiality will be observed at all times** in the interests of Natural Justice. Any information provided during the course of an investigation should be treated as confidential. There are statutory restrictions on the disclosure of information obtained by the Monitoring Officer. This is covered by Section 63 of the Local Government Act 2000 and disclosure of information contrary to this is a criminal offence. I understand that this is still in effect.

All relevant allegations must be assessed by the Assessment Sub-Committee, and so the Monitoring Officer has no authority to deal with an allegation which appears to be an allegation of failure by a relevant member to observe the Code of Conduct other than by reporting it to the Assessment Sub-Committee.

The Monitoring Officer shall therefore determine whether the allegation appears to be a substantive allegation of misconduct. Where it appears not to be, he/she shall ensure that the matter is dealt with under a more appropriate procedure, for example where it is really a request for service from the Council, a statement of policy disagreement, a legal claim against the Council or a complaint against an officer. Criteria should be established as to the seriousness of the complaint.

Following receipt of the allegation, and where the allegation does appear to be a complaint of misconduct against a relevant member, the Monitoring Officer will promptly and in any case in advance of the relevant meeting:

- (a) acknowledge to the complainant receipt of the allegation and confirm that the allegation will be assessed by the Assessment Sub-Committee at its next convenient meeting;
- (b) notify the member against whom the allegation is made of receipt of the complaint, **together with a written summary of the allegation [which is not done currently in some cases]**, and

state that the allegation will be assessed at the next convenient meeting of the Assessment Sub-Committee.

- (c) collect such information as is readily available and would assist the Assessment Sub-Committee in its function of assessing the allegation;
- (d) seek local resolution of the matter where practicable;

Where there is the potential for local resolution, the Monitoring Officer shall approach the member against whom the allegation has been made and ask whether he/she is prepared to acknowledge that his/her conduct was inappropriate, and whether he/she would be prepared to offer an apology or undertake other appropriate remedial action.

With the consent of the member concerned, the Monitoring Officer may then approach the complainant and ask whether the complainant is satisfied by such apology or other remedial action. The Monitoring officer should then report to the Assessment Sub-Committee as required, and at the same time report the response of the member concerned and of the complainant.

Where the member has acknowledged that his/her conduct was inappropriate, and particularly where the complainant is satisfied with the proffered apology/or remedial action, the Assessment Sub-Committee might take that into account when considering whether the matter merits investigation.

The Assessment Sub-Committee will aim to complete its initial assessment of an allegation within an average of 20 working days, to reach a decision on what should happen with the complaint.

The Assessment Sub-Committee is required to reach one of the three following decisions on a complaint about a Member's actions in relation to the Code of Conduct.

- (a) no action should be taken in respect of the complaint
- (b) referral of the complaint to the Monitoring Officer for local investigation
- (c) referral for other action

Decision to take no action

The Assessment Sub-Committee can decide that no action is required in respect of a complaint. For example, this could be because the Assessment Sub-Committee does not consider the complaint to be sufficiently serious to warrant any action. Alternatively, it could be due to the length of time that has elapsed since the alleged conduct took place and the complaint was made.

If the Assessment Sub-Committee decides to take no action over a complaint then, as soon as possible after making the decision, it will give notice in writing of the decision and set out the reasons for that decision.

Where no potential breach of the Code is disclosed, the Assessment Sub-Committee will explain in the decision notice what the allegation was and why they believe this to be the case. This notice will be given to the relevant parties, i.e. the complainant and the subject member. The Standards Committee will aim to send out its decision notice within five working days of the decision being made.

After it has made its decision, the Assessment Sub-Committee does not have to give the subject member a summary of the complaint, if it decides that doing so would be against the public interest or would prejudice any future investigation. The Assessment Sub-Committee can use its discretion to give limited information to the subject member if it decides this would not be against the public interest or prejudice any investigation. Any decision to withhold the summary will be kept under review as circumstances change.

If the Assessment Sub-Committee decides not to take any action on a complaint, then the complainant has a right of review over that decision. The Review Sub-Committee will carry out its review within a maximum of three months of receiving the request.

The Review Sub-Committee will aim to undertake the review within the same timescale as the initial assessment – that is, to complete the review within an average of 20 working days. The review must be, and must be seen to be, independent of the original decision.

Members of the Assessment Sub-Committee who made the original decision must not take part in the review of that decision. A separate Review Sub-Committee, made up of members of the Standards Committee, will consider the review. The Review Sub-Committee will apply the same criteria used for initial assessment. The Review Sub-Committee will apply the same criteria used for initial assessment. The Review Sub-Committee has the same decisions available to it as the Assessment Sub-Committee.

There may be cases where further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint. In such cases, the Review Sub-Committee will consider carefully if it is more appropriate to pass this to the Assessment Sub-Committee to be handled as a new complaint. In this instance, the Review Sub-Committee will still need to make a formal decision that the review request will not be granted.

For example, a review may be more appropriate if a complainant wishes to challenge that:

- (a) not enough emphasis has been given to a particular aspect of the complaint
- (b) there has been a failure to follow any published criteria
- (c) there has been an error in procedures

However, if more information or new information of any significance is available, and this information is not merely a repeat complaint, then a new complaint rather than a request for review may be more suitable.

If the Standards Committee receives a review request from the complainant, it will notify the subject member and other relevant parties that it has received the request.

When the Review Sub-Committee reviews the Assessment Sub-Committee's decision it has the same decisions available to it that the Assessment Sub-Committee had. It could be decided that no action should be taken on the complaint. In this case, the Review Sub-Committee must, as soon as possible after making the decision, give the complainant and the subject member notice in writing of both the decision and the reasons for the decision.

If it is decided that the complaint should be referred to the Monitoring Officer, the relevant parties should be advised and letting them have a summary of the complaint. The decision notice will not explain why that particular referral decision has been made as it might prejudice the investigation or other action.

The Review Sub-Committee will aim to send out its decision notice within five working days of the decision being made.

Referral for Local Investigation

When the Assessment Sub-Committee considers a new complaint, it can decide that it should be referred to the Monitoring Office for investigation. The Monitoring Officer will write to the relevant parties informing them of the decision and, if appropriate, advising who will be responsible for conducting the investigation.

Referral for other action

When the Assessment Sub-Committee considers a new complaint, it can decide that other action to an investigation should be taken and it can refer the matter to the Monitoring Officer to carry this out.

It may not always be in the interests of good governance to undertake or complete an investigation into an allegation of misconduct. (Costs for legal advice should be considered) The Assessment Sub-Committee must consult the Monitoring Officer before reaching a decision to take other action. The suitability of other action is dependent on the nature of the complaint. Certain complaints that a member has breached the Code of Conduct will lend themselves to being resolved in this way. They can also indicate a wider problem at the authority concerned.

Deciding to deal pro-actively with a matter in a positive way that does not involve an investigation can be a good way to resolve matters that are less serious. Other action can be the simplest and most cost effective way of getting the matter resolved, helping the authority to work more effectively and of avoiding similar complaints in the future.

Everyone involved in the process will need to understand that the purpose of other action is not to find out whether the member breached the Code – the decision is made as an alternative to investigation. Complaints that have been referred to the Monitoring Officer for other action will not then be referred back to the Standards Committee if the other action is perceived to have failed. There will be a requirement that the parties involved confirm in writing that they will co-operate with the process of other action proposed.

The following are some examples of alternatives to investigation:

- (a) arranging for the subject member to attend a training course
- (b) arranging for that member and the complainant to engage in a process of conciliation
- (c) instituting changes to the procedures of the authority if they have given rise to the complaint

Following an Investigation

If a complaint is referred for investigation the Standards Committee must meet, following the completion of an investigation to decide:

- (a) if it accepts the findings in the report that there has been no breach of the Code – a finding of Acceptance; or
- (b) that the matter should be considered at a hearing of the Standards Committee.

Hearings by the Standards Committee

Hearings must be conducted within 3 months of completion of the Monitoring Officer's report. The hearing can be conducted by a sub-committee rather than the whole of the Standards Committee. The sub-committee members should be appointed by the Standards Committee. There should be no difficulty in the same members participating in the initial assessment and the hearing or in the review and the hearing (but not in both the initial assessment and review).

The Standards Committee is required to make findings:

- (a) that the member who was the subject of the hearing had not failed to comply with the Code of Conduct or
- (b) that the member had failed to comply with the Code of Conduct but that no action needs to be taken, or
- (c) that the member had failed to comply with the Code of Conduct and that a sanction should be imposed