

Report of : Director of Corporate Resources

Meeting of	Date	Agenda Item	Ward(s)
Standards Committee	17 June 2008	7	

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Local Assessment, Investigation and Hearing Procedures

1 Synopsis

From 8th of May onwards a complaint of misconduct by a member has to be submitted to the Standards Committee rather than to the Standards Board for England. Members have already received reports concerning this change and this report updates members on the details of the Regulations and on related guidance recently issued to govern this process.

2 Recommendations

- 2.1 That the Committee approve the Local Assessment Procedure in Appendix 1, the revised Local Investigation Procedure in Appendix 2 and the revised Local Hearings Procedure in Appendix 3 (to follow).
- 2.2 That the Committee approve the proposed publicity for the new arrangements.

3 Background

- 3.1 Members will be aware from previous reports that the committee is now given three separate functions in relation to a complaint about a member's conduct:
 - a) Initial assessment of the complaint - The Committee must decide whether to refer to the complaint to the Monitoring Officer for investigation or other action, to refer the complaint to the Standards Board for England for investigation or to take no action in respect of the complaint.
 - b) Review of any decision to take no action - Where the initial assessment is that no action should be taken in respect of the complaint, then the person who submitted the complaint may ask for a review of the decision. The Committee will then be required to make a fresh assessment of the complaint.

- c) Substantive hearing into the complaint - The Committee will be required to act as a quasi judicial body and decide whether there was a breach of the Code of Conduct and if so what the appropriate sanction is.

The Government originally indicated that the new functions would be taken on in April 2008 but in the event the functions have become effective from 8th May 2008.

- 3.2 A separate report on tonight's agenda asks the committee to establish two sub-committees to carry out the initial assessment and review functions respectively. This report provides a general update on The Standards Committee (England) Regulations 2008 which have been issued following the conclusion of the consultation exercise in which the committee participated. It is proposed that a procedure note be adopted to govern the process of dealing with the initial assessment of complaints. The existing Procedure for Investigation of Referred Complaints and Procedure for Local Hearings will also require some amendment as a consequence of the new local assessment arrangements and changes made by the regulations.

4 Assessment Procedure

- 4.3 The Regulations make detailed provision in respect of the procedure provided for in outline in the Local Government Act 2000 as recently amended ("the Act"). The Standards Board has issued guidance in respect of local assessment of complaints to which the Standards Committee is required to have regard. The draft Procedure for Local Assessment of Complaints reflects the requirements of the Regulations and has been drafted taking into account the Guidance. Some key issues are identified and discussed below.

4.2 Notification to the Member

The Act requires the Standards Committee to give a written summary of the allegation to the member concerned. The Regulations create an exception where to do so would not be in the public interest or would prejudice any investigation. In practice, the first occasion in which the Committee itself could decide on a written summary, or decide to delay sending a written summary, is likely to be through its Initial Assessment sub-committee at the meeting at which it conducts the initial assessment. The Regulations provide that this should not prevent the Monitoring Officer from notifying the member prior to this that a complaint has been received and it is considered this would normally be appropriate. It is proposed in the draft procedure that the Monitoring Officer be expected normally to give notice to the member, but to have the discretion, after consulting the Chair of the Standards Committee, to defer notification. The Guidance from the Standards Board as to the contents of the notification is reflected in the draft procedure.

4.3 Filtering Complaints and Informal Resolution

There is no process for informal resolution of complaints in the 2007 Act, although the Regulations enable the Initial Assessment Sub-Committee, after consultation with the Monitoring Officer, to propose training, conciliation or such other steps as

appears appropriate as an alternative to a formal investigation. Guidance from the Standards Board is that the Monitoring Officer should consider whether a complaint received should be referred to the Initial Assessment Sub-Committee or another course of action is appropriate. The examples given where alternative action might be appropriate are where the complaint is not really about member conduct or has only been made orally and the complainant does not wish to formalise it.

4.4 In the former case it would be appropriate for the Monitoring Officer to explain this to the complainant and seek to refer the complainant to the appropriate channel for their complaint to be dealt with. Where a complainant does not wish to formalise their complaint, or indeed where the member concerned has acknowledged that his/her conduct was at fault and apologised (particularly where the complainant has accepted that in the light of that apology he/she is content for the complaint not to proceed to formal investigation) it would normally be a waste of public resources to refer the complaint to the Initial Assessment Sub-Committee. The draft procedure therefore allows for limited informal mediation by the Monitoring Officer before reporting to the Initial Assessment Sub-Committee where it seems likely the complaint could be resolved in this way.

4.5 There is nothing in the legislation which requires a complaint to be signed by the complainant, but it is considered that in such cases it will not normally be appropriate for an anonymous complaint to be referred to the Initial Assessment Sub-Committee and this is reflected in the draft procedure. Another area where the appropriateness of referring a complaint to the Initial Assessment Sub-Committee may arise is in relation to multiple complaints. The legislative position is that each separate complaint must be considered.

4.6 Pre-Investigation

The Initial Assessment Sub-Committee has to decide whether the allegation appears to disclose a failure to comply with the Code of Conduct for Members, and then whether it merits investigation. Where the Sub-Committee has only the letter of complaint, it will not always be easy to assess whether there is any substance to the allegation. However, there may be information which is readily available which might substantiate, or contradict the allegation and so make it easier for the Sub-Committee to decide whether the complaint has any substance. Clearly the Monitoring Officer cannot “investigate whether to investigate”, but she could usefully check publicly available information between receipt of the complaint and the meeting of the Initial Assessment Sub-Committee and this is also reflected in the draft procedure.

4.4 Notification following initial assessment

Where the Initial Assessment Sub-Committee decides that no action be taken on a complaint, it must take reasonable steps to give notice in writing to the complainant of the decision and the reasons for that decision. It must also give similar notification of a decision not to take any action to the member concerned. There is no such requirement for a decision to investigate or to refer a complaint to the Standards Board for England, but as a matter of policy clearly such notification should be given unless there were exceptional circumstances where such

disclosure might impede proper investigation. In practice the Monitoring Officer will give the notification.

4.5 Review of Initial Assessment

Where the Initial Assessment Sub-Committee decides that no action should be taken on a complaint, the complainant may, within 30 days of being notified of that decision, request the Review Sub-Committee to review that decision. The Act and regulations provide that when a review is requested the initial assessment provisions apply again to the Committee. The effect of the provisions is that the matter must be fully re-considered by the Review Sub-Committee. This is different from the position that was anticipated by the Standards Board in its training exercise, on which the recent exercise of the Standards Committee was based. The training anticipated a narrower process looking at the reasonableness of the original decision of the Initial Assessment Committee and at procedural issues or new evidence. Effectively under the arrangements as finally implemented the Review Sub-Committee will repeat the initial assessment process in full.

5. **Changes to the procedure for conduct of local investigations**

The regulations make some minor changes to the procedure to be followed where a complaint has been investigated. Following conclusion of the Monitoring Officer's investigation she will be required to make a finding of failure to comply with the Code or no failure to comply and report to the Standards Committee accordingly. The Standards Committee will be required to decide whether to accept the finding and, in the case of a finding of failure to comply with the Code, whether to hear the matter itself or refer it to the Adjudication Panel. This will only be possible in cases where it determines that the action it could take if a finding of failure was made is insufficient. It is proposed that in cases where the Monitoring Officer is of the opinion that the Committee's powers will be sufficient, a local hearing be arranged and the Standards Committee be asked to decide whether to accept jurisdiction or refer the matter to an Adjudication Panel at the start of the hearing.

6. **Changes to the procedure for local hearings**

The existing procedure for local hearings was adopted in 2003 and the amended version in Appendix 3 has been updated to reflect current requirements. The period for which certain sanctions can be imposed by the Committee has been extended in the new Regulations from 3 to 6 months and this is reflected in the proposed new procedure.

7. **Publicity for the new arrangements**

The Standards Committee is required to publish a notice detailing where complaints should be sent to and the Standards Board have produced a standard complaint form. Guidance has been given concerning publicity and it is proposed that the Standards Committee website is updated outlining the revised procedures for dealing with complaints. These changes will also be highlighted on the front page of the internet and intranet on the Council's websites. The complaints form and guidance will all be downloadable from the website.

An advertisement will also appear in the Islington Now residents magazine as well as in the ICNews internal publication. A small information leaflet will be produced which will be available in libraries and Council reception areas. All Councillors and Group Officers will be written to advising them of the new arrangements as will the local media.

8. Recommendations

The procedure for Local Assessment of Complaints in Appendix 1, the Procedure for Local Investigation of Complaints in Appendix 2 and the Procedure for Local Hearings have been prepared on the basis of information contained in this report, the requirements of the Regulations and taking into account the Standards Board Guidance. The committee is therefore asked to adopt the three procedures and also to approve the proposed publicity of the new arrangements outlined in paragraph 6.

8. Implications

8.1 Legal Implications

These are contained in the body of the report

8.2 Financial Implications

There are no financial implications arising directly from this report.

8.3 Equality Implications

There are no equality implications arising from this report.

Background papers:

None.

Final Report Clearance

Signed by

Director of Corporate Resources

Date

Received by

Head of Democratic Services

Date

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