

SOLIHULL METROPOLITAN BOROUGH COUNCIL

STANDARDS COMMITTEE

LOCAL ASSESSMENT PROCEDURE

(INCLUDING CRITERIA APPLIED TO ASSESSMENTS)

May 2008
(Revised July 2008)
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STANDARDS COMMITTEE LOCAL ASSESSMENT PROCEDURE

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SOLIHULL METROPOLITAN BOROUGH COUNCIL

STANDARDS COMMITTEE LOCAL ASSESSMENT PROCEDURE

1. SCOPE

- (1) This procedure deals with allegations which are made that a member of the Borough Council or a member of a Town or Parish Council are in breach of the respective Code of Conduct.
- (2) This procedure incorporates the requirements of the Local Government Act 2000 as amended and the provisions of the Standards Committee (England) Regulations 2008.
- (3) In the case of any conflict between the provisions of this Procedure and the provisions of legislation, the latter shall prevail.
- (4) This procedure shall be applied in the light of guidance published by the Standards Board for England.

2. INTERPRETATION

- (1) "Allegation" means an allegation which is made in writing that a member, or co-opted member (or former member or co-opted member) or an authority has failed, or may have failed to comply with the authority's code of conduct.
- (2) "Authority" means the Borough Council or a Town or Parish Council in the Metropolitan Borough of Solihull.
- (3) "Council" means the Council of the Metropolitan Borough of Solihull.
- (4) "Procedure" means this Local Assessment Procedure.
- (5) "Regulations" mean the Standards Committee (England) Regulations 2008.
- (6) Expressions in this Procedure shall have the same meaning as in the Regulations.

3. SUB-COMMITTEES

- (1) An Assessment Sub-Committee of 3 persons shall be appointed by the Standards Committee. The sub-committee shall have no fixed membership but shall be appointed by the Proper Officer from the membership of the Standards Committee acting in consultation with Chairman of the Committee.
- (2) A Review Sub-Committee of 3 persons shall be appointed by the Standards Committee. The sub-committee shall have no fixed membership but shall be appointed by the Proper Officer from the membership of the Standards Committee acting in consultation with Chairman of the Committee.

- (3) The Proper Officer of the Council shall in consultation with the Chairman of the Standards Committee have delegated power to appoint any member of the Standards Committee to a sub-committee for the purpose of this procedure in order to substitute one member for another or appoint to any vacancy.
- (4) In the event of there being insufficient independent members available to constitute a sub-committee the Proper Officer of the Council shall in consultation with the Chairman of the Standards Committee and subject to the provisions of the Regulations have delegated power to appoint a person who is an independent member of the standards committee of another authority to be a member of a sub-committee to be appointed for such terms and for such purposes as may be required.

4. MEMBERSHIP OF SUB-COMMITTEES

- (1) Each Sub-Committee shall be constituted to include at least 1 Independent Member.
- (2) In the case of an allegation relating to a member of the Council at least one member shall be a member of the Council.
- (3) In the case of an allegation relating to a member of a Town or Parish Council at least one member shall be a member representative of Town and Parish Councils provided that a member of a Town and Parish Council may not sit on a Sub-Committee if he is a member of the same Council as the member the subject of an allegation.
- (4) A member who has taken part in a decision in relation to local assessment shall not be qualified to sit on a Review Sub-Committee in respect of that decision.

5. TERMS OF REFERENCE OF ASSESSMENT SUB-COMMITTEE

- (1) To receive allegations that a member of the Authority has failed, or may have failed, to comply with the Authority's Code of Conduct.
- (2) Upon receipt of each allegation and any accompanying report by the Monitoring Officer, the Sub-Committee shall make an initial assessment of the allegation and shall then do one of the following:
 - (a) refer the allegation to the Monitoring Officer, with an instruction that he/she arrange a formal investigation of the allegation, or directing that he/she arrange training, conciliation or such appropriate alternative steps as permitted by Regulations;
 - (b) refer the allegation to the Standards Board for England;
 - (c) decide that no action should be taken in respect of the allegation; or
 - (d) where the allegation is in respect of a person who is no longer a member of the Authority, but is a member of another relevant authority (as defined in Section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other relevant authority;

and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the member concerned of that decision.

- (3) Upon completion of an investigation by the Monitoring Officer, the Sub-Committee shall be responsible for determining whether either:
 - (a) it accepts the Monitoring Officer's finding of no failure to observe the Code of Conduct; or
 - (b) that the matter should be referred for consideration at a hearing before the Hearings Sub-Committee of the Standards Committee; or
 - (c) that the matter should be referred to the Adjudication Panel for determination.
- (4) Where the Sub-Committee resolves to do any of the actions set out in paragraph (2) above, the Sub-Committee shall state its reasons for that decision.

6. TERMS OF REFERENCE OF REVIEW SUB-COMMITTEE

- (1) To review, upon the request of a person who has made an allegation that a member of the Authority has failed, or may have failed, to comply with the Authority's Code of Conduct, a decision of the Assessment Sub-Committee that no action be taken in respect of that allegation.
- (2) Upon receipt of each such request and any accompanying report by the Monitoring Officer, the Sub-Committee shall review the decision of the Referrals Sub-Committee and shall then do one of the following:
 - (a) refer the allegation to the Monitoring Officer, with an instruction that he/she arrange a formal investigation of the allegation, or specifying that he/she take an alternative action as permitted by Regulations;
 - (b) refer the allegation to the Standards Board for England;
 - (c) decide that no action should be taken in respect of the allegation; or
 - (d) where the allegation is in respect of a person who is no longer a member of the Authority, but is a member of another relevant authority (as defined in Section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other relevant authority;

and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the member concerned of that decision.

- (3) Where the Sub-Committee resolves to do any of the actions set out in paragraph (2) above, the Sub-Committee shall state its reasons for that decision.

7. CHAIRMAN

- (1) A Sub-Committee shall be chaired by an Independent Member.

8. QUORUM

- (1) The quorum for a meeting shall be three persons.

9. MEETINGS

- (1) Meetings shall be convened by the Proper Officer by sending notice in writing to each member of the Sub-Committee.
- (2) Meetings convened to consider an allegation by way of local assessment or a review on a decision on local assessment shall not be open to the public.
- (3) A member who is the subject of an allegation shall not be entitled to attend a meeting of a sub-committee considering that matter.

10. SUMMARY OF DECISIONS

- (1) The Monitoring Officer shall keep a written summary of decisions of a sub-committee which shall be made available to the public.

11. PROCEDURE FOR RECEIPT OF ALLEGATIONS

- (1) The Monitoring Officer shall ensure that there are procedures in place to secure that any allegation made in writing that a member of the Council or a member or Town or Parish Councillor has or may have failed to comply with the Council's Code of Conduct or the Code of Conduct for a Town or Parish Council.
- (2) The Monitoring Officer shall maintain a register of allegations and shall make periodic returns as required to the Standards Board for England.
- (3) Complaints shall only be entertained where they are signed by the complainant, but the Monitoring Officer is authorised to maintain the confidentiality of the identity of the complainant where and for so long as in his/her opinion that would be in the public interest.
- (4) All relevant allegations must be assessed by the Assessment Sub-Committee. The Monitoring Officer has no authority to deal with an allegation which appears to be an allegation of failure by member of a Relevant Authority to observe the Code of Conduct other than by reporting it to the Assessment Sub-Committee.
- (5) The Monitoring Officer shall 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 Authority, a statement of policy disagreement, a legal claim against the Authority or a complaint to be dealt with under the Council's corporate complaints procedure.
- (6) 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 Referrals Sub-Committee at its next convenient meeting;
 - (b) notify the member against whom the allegation is made of receipt of the

complaint, and state that the allegation will be assessed at the next convenient meeting of the Referrals Sub-Committee. However, where the Monitoring Officer is of the opinion that such notification would be contrary to the public interest or would prejudice any person's ability to investigate the allegation, he/she shall consult the Chairman of the Referrals Sub-Committee, or in his/her absence the Chairman of the Standards Committee, and may then decide that no such advance notification shall be given.

- (7) Where the Monitoring office is advised by a complainant that the identity of that complainant is to be kept confidential, the Monitoring Officer shall be authorised to do so where he/she considers it to be in the public interest.

12. PROCEDURE FOR CONSIDERATION OF ALLEGATIONS

- (1) As soon as reasonably practicable after an allegation is received the Proper Officer shall convene a meeting of the Assessment Sub-Committee to consider the allegation received. The meeting should be convened within 20 days of the receipt of the complaint.
- (2) The Monitoring officer shall not be under any obligation to carry out any preliminary investigation or inquiry into the allegation before it has been considered by the Local Assessment Sub-Committee but may make such inquiries as to matters that are in the public domain as may assist the Sub-Committee in its deliberations.
- (3) Neither the Proper Officer nor the Monitoring officer shall provide the member the subject of an allegation with details of the allegation until instructed to do so by the Sub-Committee.
- (4) The Sub-Committee shall, following considering an allegation for local assessment, instruct the Monitoring officer to communicate a written summary of the allegation to the member the subject of the allegation unless the Sub-Committee determine that to do so would be contrary to the public interest or would prejudice any person's ability to investigate the allegation.¹

13. INFORMING THE MEMBER- PUBLIC INTEREST CONSIDERATIONS

- (1) In cases where the Sub-Committee determine that to inform the member would be contrary to the public interest or would prejudice any person's ability to investigate the allegation the written summary of the allegation must be provided:-
 - (a) when the Monitoring officer has advised the Sub-Committee that it would no longer be contrary to the public interest or prejudicial to any investigation; and in any event;
 - (b) before the consideration of the recommendation of the report or recommendation from the Monitoring Officer relating to that allegation.

¹ It is a statutory requirement for a complainant to be notified with reasons where the Assessment Sub-Committee or the Review Sub-Committee decide to take no action. Where a matter is referred to the Monitoring Officer for investigation the Investigations Procedure provides for the complainant to be notified and kept informed.

14. CRITERIA

- (1) The Standards Committee shall in considering whether to refer a matter to the Monitoring Officer for investigation apply its criteria as set out in the Appendix.
- (2) The criteria set out in the Appendix to this procedure shall apply and shall be subject to review from time to time.

15. REVIEW

- (1) Where the complainant requests a review of a decision made by the Assessment Sub-Committee the Monitoring Officer shall arrange for a meeting of the Review Sub-Committee to be convened with the statutory period of 3 months.
- (2) The member who is subject to the complaint shall be notified of the request for a review.
- (3) The Review Sub-Committee shall apply the same criteria used for initial assessment.

16. REFERENCE OF MATTERS TO THE MONITORING OFFICER

- (1) Where the Assessment Sub-Committee decides to refer a matter to the Monitoring Officer it may:-
 - (a) Refer the matter to the Monitoring Officer to undertake an investigation in accordance with the Investigation Procedure: or
 - (b) Having consulted with the Monitoring officer refer the matter to the Monitoring officer to take steps other than investigation as follows:-
 - (i) Arranging for the member who is the subject of an investigation to undertake a training course in respect of the Code of Conduct; or
 - (ii) Arranging for the member and the complainant to engage in a process of conciliation; or
 - (iii) Arranging for such other steps (not including an investigation) as appear appropriate to the sub-committee.

17. REFERENCE OF MATTERS TO THE STANDARDS BOARD FOR ENGLAND

- (1) In determining whether to refer a complaint to the Standards Board for England the Sub-Committee shall consider the matter in accordance with the Standards Board for England guidance.

18. CONFLICTS OF INTEREST AND ROLE OF MONITORING OFFICER

- (1) No officer of the council shall attend any meeting of the Assessment or Review Sub-Committee or deal with any part of the procedure relating to a complaint if that officer has previously given advice to the complainant (other than to provide general information) or otherwise has a conflict of interest.

- (2) The role of the Monitoring officer shall be to act as the main adviser to the Standards Committee and its Sub-Committees and he/she shall not personally conduct an investigation but shall delegate that role to the Deputy Monitoring Officer or a third party

Note: This procedure was approved by the Standards Committee on 3rd July 2008.

Amended 3 July 2008
Amended 3 December 2008

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APPENDIX

ASSESSMENT CRITERIA FOR REFERRAL FOR INVESTIGATION

Is there an apparent breach of the Code?

The first assessment which will be undertaken by the Sub-Committee will be to determine whether the complaint appears to show that a breach of the Code of Conduct may have occurred.

For this purpose, the Sub-Committee will take into account the complaint letter and any other information which is readily available to them. Accordingly, it is the responsibility of a complainant to set out clearly:

- (a) who the complaint is against
- (b) what they understand that the relevant member did
- (c) why they consider that the member's conduct amounted to a breach of the Code of Conduct

And to provide copies of any documents which they want the Sub-Committee to consider.

Following receipt of a complaint, the Monitoring Officer will collect any other information which is readily available and which may assist the Sub-Committee in its consideration of the complaint. This will not include conducting interviews with witnesses, but may include providing the Sub-Committee with copies of the agenda, reports and minutes of a meeting of the authority at which the alleged misconduct occurred, or providing copies of the member's entry in the register of members' interests.

The Sub-Committee will then consider whether, on the basis of the complaint and that additional information, there appears to have been a breach of the Code of Conduct.

If the Sub-Committee concludes that the evidence does not disclose an apparent breach of the Code of Conduct, it has no further jurisdiction in respect of the matter.

Possible actions where an apparent breach of the Code of Conduct has occurred

Where the Sub-Committee has concluded that there appears to have been a breach of the Code of Conduct, it has four options available to it. These are as follows:

(a) direct the Monitoring Officer to secure that the complaint is investigated locally

A local investigation will normally be appropriate where the alleged conduct is sufficiently serious to merit the imposition of a sanction against the member, but not so serious that it would merit a greater sanction than the Standards Committee could impose following a formal hearing. In practice, this means that a local investigation would not be appropriate where the appropriate sanction is likely to be a suspension as a member of the relevant authority for a period of more than 6 months, or disqualification as a member of any local authority.

However, recognising that a formal investigation is an expensive and time-consuming process, and can only address the immediate subject matter of the complaint, the Sub-Committee can direct the Monitoring Officer to take other appropriate action short of a formal investigation.

In addition, particularly where the conduct complained of is not sufficiently serious to merit any action or occurred a considerable time ago, the Sub-Committee may determine that no action should be taken in respect of it.

(b) refer the matter to the Standards Board for England with a request that the Board undertakes a national investigation into the complaint;

The following factors will be considered by the Sub-Committee to be factors which support referring the complaint to the Standards Board for England for a national investigation:

- (i) that the complaint is so serious that, if proven, the conduct complained of merits a sanction in excess of that which could be imposed by the Standards Committee. In practice this means that the appropriate sanction would be either a suspension from the relevant authority for a period of more than 6 months, or a disqualification from any local authority
- (ii) that the investigation required is so extensive that it would impose an unreasonable burden on the authority and/or that any hearing conducted on the basis of that investigation would be unreasonably complex for the Standards Committee
- (iii) that the status of the member against whom the complaint has been made or of the person by whom the complaint has been made is such that either the authority could not conduct a full and impartial investigation and hearing, or that there is likely to be a public perception that the authority could not conduct a full and impartial investigation and hearing
- (iv) that so many members of the Standards Committee have a conflict of interest in respect of the matter that the authority is going to be in difficulty in organising an impartial Hearings panel for the matter
- (v) that the complaint raises significant or unresolved legal issues where a national ruling would be helpful
- (vi) that the authority itself has an interest in the outcome of the investigation and/or hearing, for example where the report may lead to a judicial review of a decision of the authority
- (vii) that there are other exceptional circumstances which would prevent the authority from securing a timely, full and impartial investigation and/or hearing of the matter, or which are likely to give rise to the perception that the authority cannot secure a timely, full and impartial investigation and/or hearing of the matter.

(c) direct the Monitoring Officer to take other appropriate action short of a formal investigation;

The Assessment Sub-Committee cannot impose a sanction on the member against whom the complaint has been made without a formal investigation and hearing. But it can direct the Monitoring Officer to take a range of other actions, including providing training for members, securing conciliation or mediation between competing interests, or reviewing procedures to minimise conflict.

In some instances, the conduct complained of may be a symptom of wider issues within the authority. A formal investigation and hearing would only deal with the particular complaint and may not resolve such underlying issues.

Such alternative action is therefore most suitable where:

- (i) the conduct complained of is a symptom of wider underlying issues which, if unresolved, are likely to lead to further misconduct or allegations of misconduct;
- (ii) the conduct complained of is apparently common to a number of members of that authority, demonstrating a lack of awareness or recognition of the particular provisions of the Code of Conduct;
- (iii) the conduct complained of is not so serious that it requires a substantive formal sanction such as suspension or disqualification;
- (iv) the complaint reveals a lack of guidance by way of a protocol or procedures within the authority;
- (v) the member complained of and the person making the complaint are amenable to engaging in such alternative action, as there is no power to require them to participate.

(d) **decide to take no action in respect of the complaint.**

The following factors are likely to lead the Sub-Committee to decide to take no action in respect of the matter:

- (i) the complaint appears to be trivial, vexatious, malicious, politically motivated or tit for tat.
- (ii) the complaint is anonymous. The Sub-Committee can protect the confidentiality of the identity of the complainant where that is justified by a real fear of intimidation or victimisation. However, where this is not an obvious risk, the fact that the complainant has not disclosed his/her identity can indicate that the complaint is less serious, is malicious or is politically motivated
- (iii) a significant period of time has elapsed since the events which are the subject of the complaint. This is both because, where a matter is serious, it would be reasonable to expect the complainant to make a complaint promptly, and because the passage of time may make it more difficult to obtain documentary evidence and reliable witness evidence
- (iv) the complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter. This could be where the matter is such that there is unlikely to be any firm evidence on the matter.

Confidentiality

As a matter of fairness and natural justice, a member should usually be told who has complained about them and what the complaint is about. There may be occasions where the complainant requests that their identity is withheld. Such a request should only be granted in circumstances which the Assessment Sub-Committee consider to be exceptional, for example: -

- (a) the complainant has reasonable grounds for believing that he/she will be at risk of physical harm if his/her identity is disclosed

(b) the complainant is an officer who works closely with the member and they have a reasonable fear of intimidation or victimisation if their identity is disclosed

(c) the complainant suffers from a serious health condition which might be adversely affected if his/her identity is disclosed. The Assessment Sub-Committee may wish to request medical evidence.

Withdrawing complaints

Where the complainant purports to withdraw the complaint before the Assessment Sub-Committee has had the opportunity to take a decision on it, the Sub-Committee will consider whether to accept such withdrawal.

(a) Where the complainant submits further evidence demonstrating that the complaint was ill-founded, it may be appropriate for the Sub-Committee formally to resolve that the complaint as amended shows no evidence of a breach of the Code of Conduct, so that the matter is formally concluded.

(b) Where the alleged misconduct is simply a matter of alleged failure on the part of the respondent to treat the complainant with respect, and raises no wider issues of public interest, the Sub-Committee will normally accept such withdrawal.

(c) However, where the complaint raises issues of wider public interest, it may be appropriate for the Sub-Committee to ensure that such wider issues are formally investigated and resolved.

Review

Where the Assessment Sub-Committee has resolved to take no action in respect of a matter (that is, not to refer the matter to the Standards Board for England for investigation, and not to refer the matter to the Monitoring Officer either for investigation or for other appropriate action), the complainant may request the Review Sub-Committee to review the decision of the Assessment Sub-Committee.

Such a review shall be conducted in two stages:

(a) First, the Review Sub-Committee will determine whether the original decision of the Assessment Sub-Committee was unreasonable on the basis of the information available to the Assessment Sub-Committee at the time of its decision and in accordance with these approved criteria for assessment. This review shall be conducted on the basis of the original complaint, the Monitoring Officer's report to the Assessment Sub-Committee, the decision-notice of the Assessment Sub-Committee and any information contained within the complainant's request for a review. Note that this is a review of the initial decision, rather than a reconsideration of the matter afresh.

(b) Second, the Review Sub-Committee shall consider whether there is any new evidence which demonstrates that the initial assessment decision is no longer the correct decision. This consideration shall take into account any new information provided by the complainant and/or the Monitoring Officer.

If the Review Sub-Committee determines that the initial decision was unreasonable, or that new information now available to the Sub-Committee demonstrates that the original decision is no longer the correct decision, it shall take a new decision in relation to the matter in accordance with these approved criteria.

