

## **SECTION 6 - STANDARDS COMMITTEE**

The terms of reference of the Standards Committee and its Sub-Committees are set out in Part 3 of the Constitution. Further information regarding the composition is set out in Article 9 (see Part 2 of the Constitution).

The appendices set out the protocols/criteria to which the Monitoring Officer and Standards Committee operate.

## Monitoring Officer Protocol

### **Instructions to the Monitoring Officer on the discharge of functions in relation to the initial assessment and review of allegation that a member of the Authority has failed to comply with the Code of Conduct**

#### **1 Receipt of Allegations**

- a. The Monitoring Officer shall set up arrangements within the Authority to secure that any allegation made in writing that a member of the Authority has or may have failed to comply with the Authority's Code of Conduct is referred to him/her immediately upon receipt by the Authority.
- b. The Monitoring Officer shall maintain a register of such allegations to ensure that the Authority can comply with its obligations under the relevant legislation.
- c. 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.

#### **b) Notification of Receipt of Allegations**

- a. All relevant allegations must be assessed by the Referrals Sub-Committee, 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 Referrals 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 Authority, a statement of policy disagreement, a legal claim against the Authority or a complaint against an officer of the Authority.
- b. 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:
  - i. 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;
  - ii. Notify the member against whom the allegation is made of receipt of the complaint, together with a written summary of the allegation, 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/ shall consult the Chairman of the Standards Committee, or in his/her absence the Vice Chairman of the Standards Committee, and may then decide that no such advance notification shall be given;
  - iii. Collect such information as is readily available and would assist the Referrals Sub-Committee in its function of assessing the allegation;
  - iv. Seek local resolution of the matter where practicable, in accordance with Paragraph 3 below;

v. Place a report, including a copy of the allegation, such readily available information and his recommendation as to whether the allegation discloses an apparent failure to observe the Code of Conduct, on the agenda for the next convenient meeting of the Referrals Sub-Committee.

**c) Local Resolution**

a. Local resolution is not an alternative to reporting the allegation to the Referrals Sub-Committee, but can avoid the necessity of a formal local investigation.

b. Where the Monitoring Officer is of the opinion that there is the potential for local resolution, he 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 Referrals Sub-Committee as required, and at the same time report the response of the member concerned and of the complainant. The idea is that, 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 Referrals Sub-Committee might take that into account when considering whether the matter merits investigation.

**d) Review of Decisions not to Investigate**

a. Where the Referrals Sub-Committee has decided that no action be taken on a particular matter, the Monitoring Officer shall promptly advise the complainant of the decision, and the complainant may then within 30 days of receipt of such notification request that the Review Sub-Committee review that decision.

b. Whilst the review shall normally be a review of the reasonableness of the original decision rather than a reconsideration, the Monitoring Officer shall report to the Review Sub-Committee the information which was provided to the Referrals Sub-Committee in respect of the matter, the summary of the Referrals Sub-Committee and any additional relevant information which has become available prior to the meeting of the Review Sub-Committee.

**e) Local Investigation**

a. It is recognised that the Monitoring Officer will not personally conduct a formal local investigation.

b. It will be for the Monitoring Officer, where appropriate after consultation with the Chairman of the Referrals Sub-Committee, to determine who to instruct to conduct a formal local investigation, and this may include another senior officer of the Authority, a senior officer of another authority or an appropriately experienced consultant.

## Assessment Criteria

### General

Before any assessment is made the sub committee must be satisfied that the complaint meets the following tests

- It is a complaint against one or more named members of the authority or an authority covered by the standards committee
- The named member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time
- The complaint, if proven, would be a breach of the Code under which the member was operating at the time of the alleged misconduct

If the complaint fails one or more of these tests it cannot be investigated as a breach of the code and the complainant must be informed that no formal action will be taken in respect of the complaint.

As part of its consideration the sub committee will promote confidence in the system by demonstrating that their processes and procedures take complaints seriously and are dealt with appropriately, fairly and in a balanced way. However, as part of that consideration regard will be had to the fact that deciding to investigate a complaint or take other action will cost both public money and the officers' and members' time. This will be an important consideration where the matter is relatively minor.

### Specific

**Submission of information** – the Referrals sub committee will only consider cases where they are satisfied that there is sufficient information to ensure it can fulfil its role to treat complaints seriously and for them to be dealt with appropriately, fairly and in a balanced way. If it is not satisfied that it has enough information to make a decision as to whether the complaint should be referred for investigation or other action it will advise the complainant that no further action will be taken on the complaint.

**Identity of person complained against** – If the complaint is about someone who is no longer a member of the authority but is a member of another authority the complaint will be referred to the standards committee of that authority to consider.

**Nature of complaint** – if the complaint has already been the subject of an investigation or other action relating to the Code of conduct or been the subject of an investigation by other regulatory authorities then the complainant will be advised that there is nothing to be gained by further action being taken.

**Timing between alleged breach and receipt of complaint** – if the complaint relates to something that happened so long ago that there would be little benefit in taking action now then the complainant will be advised accordingly. Any notification will make it clear that the period of time that has passed since the alleged conduct occurred was taken into account when deciding whether the matter should be referred for investigation or further action. In the light of this no further action would be warranted.

**Trivial complaints** – if the complaint is considered to be trivial then the complainant will be notified that it was not considered sufficiently serious to warrant further action.

**Malicious, politically motivated or tit for tat complaints** – if the matter is considered to fall within these categories then complainant will be notified that it appears simply to fall into the relevant category and was not considered sufficiently serious to warrant further action.

**Anonymous complaints** -There is nothing in the legislation which requires a complaint to be signed by the complainant. The Standards Board for England has entertained some anonymous complaints, and this has given rise to considerable unease. The Referrals Sub Committee will not entertain anonymous complaints.

**Confidentiality of complainant in the public interest** – To ensure that as many complaints as possible will be considered the Monitoring Officer is authorised to keep the identity of the complainant confidential where he/she is of the opinion that this is in the public interest.

**Multiple complaints** -It is not uncommon that one event gives rise to similar complaints from a number of different complainants. The legislative position is that each separate complaint must be considered, and that even where a meeting of the Referrals Sub-Committee has previously decided that no action be taken upon an identical complaint, a subsequent complaint must still be reported to and considered by the Referrals Sub-Committee.

### **Initial assessment decisions**

The purpose of such decisions is to reach a decision on what should happen with the complaint. In undertaking its function the Referrals Sub Committee will reach one of the following decisions:

- Referral of the complaint to the monitoring officer for further investigation
- Referral of the complaint to the Standards Board for England
- No action be taken

In considering the decisions available the Referrals Sub Committee will have regard to the following

- The public interest
- Any difficulty in dealing with the case fairly and speedily
- The status of the member would make it difficult for the Standards Committee to deal with the complaint
- The status of the complainant
- Whether there is a potential conflict of interest of so many members of the standards committee that it could not properly monitor the investigation
- Whether there is a potential conflict of interest of the monitoring officer or other officers and that suitable alternative arrangements cannot be put in place to address the conflict
- The seriousness or complexity of the case
- Issues of substantial governance dysfunction within the authority concerned
- Whether the complaint relates to long term or systematic/officer bullying which could be more effectively investigated by someone outside the authority
- Any significant legal issues that would benefit from a national ruling
- Any exceptional circumstances

It will also consider whether to refer for other action. This course will be dependent upon the nature of the complaint and will take into account the needs of Swale Borough Council and the parish and town councils which they serve. Certain complaints will lend themselves to being resolved in this way. For instance they may indicate a wider problem of lack of knowledge or understanding of the Code. A proactive approach can be a good way to resolve matters that are less serious. The

following is an indication of circumstances that might be appropriate for this approach:

- A number of members failing to comply with the same paragraph of the Code
- Officers giving incorrect advice
- Failure to adopt the Code
- Inadequate or incomplete protocols for use of authority resources
- Where there is a breakdown in relationships within the authority It should be noted that this approach is an alternative to investigation and no conclusion will be reached on whether the subject member failed to comply with the Code.

Complaints referred to the Monitoring Officer for other action will not be referred back to the standards committee if such action is perceived to have failed.

If other action is proposed then all parties will be asked to confirm in writing that they will cooperate with the process.

The following are some examples of alternatives to investigation

- Arranging for the subject member to attend a training course
- Arranging for that member and the complainant to engage in a process of conciliation
- Instituting changes to the procedures of the authority if they have given rise to the complaint

Any decision to take no action will have regard to the assessment criteria set out. There has to be a potential breach of the code for any action to be considered. It will also consider whether to refer for other action. This course will be dependent upon the nature of the complaint and will take into account the needs of Swale Borough Council and the parish and town councils which they serve. Certain complaints will lend themselves to being resolved in this way. For instance they may indicate a wider problem of lack of knowledge or understanding of the Code. A proactive approach can be a good way to resolve matters that are less serious. The following is an indication of circumstances that might be appropriate for this approach:

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