

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Standards Committee

11 June 2008

**AUTHOR/S:** Chief Executive / Democratic Services Officer

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### **ESTABLISHING THE NEW REGIME - FROM NATIONAL TO LOCAL INITIAL ASSESSMENT OF STANDARDS COMPLAINTS**

#### **Purpose**

1. This report is intended to advise the Committee of the necessary procedures, protocols and criteria that need to be adopted and publicised. All complaints must be made to the Standards Committee of the authority, and Panels of the Standards Committee will have to decide whether the complaint should be investigated. This report sets out what the changes will be to the system of handling complaints against members, and the issues that the authority needs to address in order to meet these new requirements. It is essential that the first meeting of the Standards Committee after the Annual Meeting of Council to set up the Panels required for this purpose.

#### **Separate Teams**

2. The Act requires the Standards Committee to establish an Assessment Panel and to undertake the initial assessment and decide whether the complaint shows an apparent failure to comply with the Code of Conduct for Members and, if so, whether that complaint merits investigation. The committee will be recommended to establish an Assessment Panel, determine its membership, and approve terms of Reference for the Assessment Panel (**Appendix A**) If the Panel decides not to investigate the complaint, the complainant has 30 days within which to request the authority to review that decision. The Act requires the Standards Committee to set up a Review Panel to conduct that review. No member can sit on the Review Panel in respect of a complaint where they were on the Assessment Panel for the initial assessment of the same complaint. The committee will be recommended to establish a Review Panel, determine its membership, and approve terms of Reference for the Review Panel (**Appendix B**)

The Act requires that no member sit on both the Assessment Panel and the Review Panel on the same matter (because a member cannot fairly review his/her own decision). There is no similar statutory requirement for members of the Hearings Panel to be comprised of members who are on neither the Assessment Panel nor the Review Panel. The committee will be recommended to establish a Hearings Panel, determine its membership, and approve terms of Reference for the Hearings Panel. (**Appendix C**) However, a subject member against whom a complaint has been made might reasonably take exception to a member being part of the Hearings Panel when that member had some 3 months previously seen the complaint without the benefit of any response from the member and decided that the matter should proceed to investigation. Separate membership for all three Sub-Committees clearly increases the minimum size of the Standards Committee and the minimum number of Independent Co-opted Members (and Parish Council representatives) necessary to make up the separate Panels.

Each such Panel must comprise at least 3 members, at least 25% of whom must be Independent Co-opted Members (and at least one of whom must be a Parish Council

representative if the Panel is dealing with a complaint in respect of the conduct of a member of a Parish Council). The ideal construction would be of 5 members, sufficiently small to facilitate decision making yet with sufficient members so as to remain quorate after absences and declarations. The suggestion is that all panels comprise 2 Independent Co-opted members, 2 Members not from the same party group and a Parish Council member. All Panels are to be chaired by an Independent Co-opted member.

This imposes a requirement for a Standards Committee of 15 members, including 6 Independent Co-opted Members.

### **Joint Working Between Authorities**

3. The Act provides that authorities may appoint Joint Committees to discharge all or any of their Standards functions. As set out above, the requirement to populate the different Panels will place a considerable burden on authorities. Joint working could enable authorities to meet their statutory requirements without the cost of maintaining their own separate Panels. Such joint working may be more acceptable in terms of the initial assessment and the review, rather than the actual hearings. The Monitoring Officer might investigate opportunities for Joint Committees or some form of co-operation.

We are still awaiting clarification on Joint Working within the Regulations/Guidance.

### **Notices**

6. The Consultation Paper suggested that there was a danger that a subject member might seek to lobby members of the Standards Committee, and that no notification be made until the Assessment Panel had come to a decision whether to investigate or not. However, the Monitoring Officer must send the complainant a receipt of the complaint and advise him/her when it is going to be assessed. There is nothing to prevent the complainant from then publicising that fact. Accordingly, it will not engender confidence in the system if the Monitoring Officer is seen to be withholding notification to the subject member concerned when that member learns of the complaint from the person making the complaint or from the press. Accordingly, it would be sensible for the Monitoring Officer to notify the subject member of receipt of a complaint at the same time as acknowledging the receipt of the complaint to the complainant and certainly no later than the sending out of the agenda to members of the Assessment Panel. Any subject member who sought to lobby other members in his/her own cause would be committing a further breach of the Code of Conduct. The Consultation Paper also raised the possibility of cases where there was a danger of the member interfering with evidence or intimidating witnesses, and suggested that in such cases the member might not be notified of the summary following an assessment referral for investigation. This is a very remote possibility, but it is suggested that the Monitoring Officer be given the discretion, after consulting the Chairman of the Standards Committee, to defer notification in such exceptional circumstances. In such cases, the Monitoring Officer could notify the member concerned as soon as the reasons for deferral of notification no longer pertain, for example when sufficient investigation had been completed.

### **Referral to the Monitoring Officer for steps other than investigation**

7. Investigations and hearings are expensive. There is no formal process for 'steps other than investigation' in the 2007 Act, although the Regulations enable the Assessment Panel to propose conciliation or some other course as an alternative to a formal

investigation. However, where the member concerned has acknowledged that his/her conduct was at fault and apologised, and 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, the Assessment Panel may determine that the matter should not proceed to investigation.

The decision to refer to the Monitoring Officer for steps other than investigation is for the Assessment or Review Panels. The Monitoring Officer however will need to be able to advise the panels that both the complainant and subject member are willing to participate for this alternative to investigation to stand any chance of success. A complaint that has been referred to the Monitoring Officer for steps other than investigation can not be referred back for investigation at a later date.

### **Filtering out Irrelevant Complaints**

8. Standards Board experience has been that a large number of complaints received do not relate to the Code of Conduct for Members, and it is anticipated that the publicity for the new system will engender more such complaints. Such requests can be categorised as follows:

- a) Requests for additional service from the authority
- b) Statements of policy disagreement
- c) Matters relating to other authorities
- d) Matters relating to a member's private life

The regulations provides that the function of initial assessment of complaints must be conducted by the Assessment Panel, but does not allow for delegation of this function to the Monitoring Officer. Where the Monitoring Officer identifies that a complaint clearly falls within categories a or b above, he/she may be able to ensure that the complaint is dealt with accordingly, responding to the complainant to set out how the matter is being dealt with, and only reporting to the Assessment Panel if the complainant insists that it be dealt with as a Code complaint.

In all other cases, it will be necessary to report to the Assessment Panel and for that Panel to determine which of the following statutory options should apply :

- I. Refer the allegation to the Monitoring Officer;
- II. Refer the allegation to the Standard Board for England;
- III. Decide that no action should be taken in respect of the allegation, or
- IV. Where the allegation relates to a person who is no longer a member of this authority but is a member of another relevant local authority, refer the allegation to the Monitoring Officer of that other authority.

### **Multiple complaints**

9. 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 Assessment Panel has previously decided that no action be taken upon an identical complaint, a subsequent complaint must still be reported to and considered by the Assessment Panel.

## **Pre-Investigation**

10. The Assessments Panel has to decide whether the allegation appears to disclose a failure to comply with the Code of Conduct for Members, and if they decide that it does, whether it merits investigation. Where the Panel has only the letter of complaint, it is not always 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 Panel to decide whether the complaint has any substance. Clearly the Monitoring Officer cannot "investigate whether to investigate". But he/she can usefully check publicly available information between receipt of the complaint and the meeting of the Assessments Panel.

## **Timescale for initial assessment of allegations**

11. The requirement set out in SBE Guidance is that the initial assessment should be undertaken within an average of 20 working days of the receipt of the allegation by the authority. The requirement is set out in Guidance rather than in the Regulations, to allow a bit of flexibility. The Review Panel is then required to determine the review within 3 months of the date when the request for a review is received. In order to ensure that the members of the Panels will be available within the required timescale if and when allegations or requests for reviews are received, it would be sensible to put dates into the Council Diary and reserve rooms for meetings, although an actual meeting would only be held if there was business to be discharged.

## **Public or Private Meetings**

12. Initial assessment determinations, and subsequent reviews of decisions to take no further action on a complaint, must be conducted in closed meetings. Such meetings may have to consider unfounded and potentially damaging complaints about members, which would not be appropriate to conduct in public. As such, a standards sub-committee undertaking its role in the assessment or review of a complaint is not subject to rules over public access to meetings.

## **Public information about complaints received**

13. Initial assessment determinations, and subsequent reviews of decisions to take no further action on a complaint, are not subject to the notice and publicity requirements under Part 5 of the Local Government Act 1972.

Rules regarding notices of meetings, and the circulation of agendas and documents, together with rules on the validity of proceedings do not apply.

## **Member requests for information under the Data Protection Act**

14. Any person is entitled to request access to any personal information which the authority holds in respect of him/her. Accordingly a subject member may request to be informed whether the authority has received a complaint about him/her and may ask to see and correct that information. Section 31 of the Data Protection Act 2000 provides that the authority would not have to disclose such information where it is held for any relevant function which is designed for protecting members of the public against dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorised to carry on any profession or other

activity. Accordingly, the authority would be able to refuse to disclose whether a complaint had been received until the member was notified on the sending out of the Assessments Panel agenda, or where no notification is made because the disclosure of that information would be likely to prejudice the proper conduct of the investigation.

### **Freedom of Information Act**

15. As Freedom of Information requests must be dealt with within 20 days, the authority may need to respond to press and public requests before the Assessments Panel has met. It cannot be stated in advance how individual requests will be resolved, as the authority must determine each request individually. However, the authority may refuse to provide information where such information is held for “law enforcement” purposes, which includes the regulation of improper conduct, and where the disclosure would prejudice the effective conduct of public affairs. However, in each case, disclosure can only be resisted where the public interest in withholding the information outweighs the public interest in its disclosure. Accordingly, the authority may have grounds for resisting early disclosure of information relating to complaints received, but this is likely to be contested by persons making such requests.

### **Notification following initial assessment**

16. Where the Assessments Panel decides that no action is to be taken on a complaint, it must give notice in writing to the complainant of the decision and the reasons for that decision. It must give similar notification to the member concerned of a decision not to take any action. There is a similar requirement governing decision notices for a decision to investigate or to refer a complaint to the Standards Board for England. The monitoring officer must write to the relevant parties informing them of the decision and, if appropriate, advising who will be responsible for conducting the investigation. The Assessment Panel, on the advice of the Monitoring Officer has discretion to withhold the summary from the subject member if it decides this would not be against the public interest or prejudice any investigation. Any decision to withhold the summary shall be kept under review. Assessments shall be conducted with reference to an agreed procedure. **(Appendix D)**

### **Review of Initial Assessment**

17. The review must be, and must be seen to be, independent of the original decision. The Review Panel should apply the same criteria used for initial assessment. The Review Panel has the same options for decision available to it as the Assessment Panel. Where the Assessment Panel 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 Panel to review that decision. 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 Panel should consider carefully if it is more appropriate to pass this to the Assessment Panel to be handled as a new complaint. In this instance, the Review Panel will still need to make a formal decision on the review request. 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 may be more suitable. Reviews Panels shall conduct a re-assessment and not simply a review of the previous decision with reference to an agreed procedure that the committee shall be invited to approve **(Appendix E)**

## **Investigation**

18. The Assessment and Review Panels can decide that complaints should be referred to the Monitoring Officer for investigation. The monitoring officer must write to the relevant parties informing them of the decision and, if appropriate, advising who will be responsible for conducting the investigation. The Assessment Panel, on the advice of the Monitoring Officer has discretion to withhold the summary from the subject member if it decides this would not be against the public interest or prejudice any investigation. Investigations shall be conducted with reference to an agreed procedure that the committee shall be invited to approve. **(Appendix F)**

## **Local hearing**

19. The Investigating Officer's report will come before the Hearings Panel. Should the investigation report's conclusion indicates no breach, the Hearings Panel shall decide whether to conduct a local hearing. Should the investigation report's conclusion indicates that there has been a breach, the Hearings Panel shall conduct a local hearing. Local Hearings shall be conducted with reference to an agreed procedure that the committee shall be invited to approve. **(Appendix G)**

## **Publicity for the new arrangements**

20. Each authority is required to publish a notice detailing where Code of Conduct complaints should be sent. If an authority is responsible for parish and town councils, the notice should also make this clear. The complaints system may be publicised through the authority's website or by advertising in one or more local newspapers, including the authority's own newspaper or circular. Notices might be displayed in public areas such as local libraries or authority reception areas. It is important that members of the public know how to complain.

The Standards Committee must publish, in whatever manner it considers appropriate, details of the procedures it will follow in relation to any written allegation received

## **Conclusions**

21. The Committee will be required to put processes in place to fulfil its legal duties and to set up and operate an effective and smooth local assessment system, which is not susceptible to challenge on the grounds of bias.

## **Recommendations**

22. That the Standards Committee approve:
  - (a) establish an **Assessment Panel**,
  - (b) determine the membership of that Panel as 5 members, of whom 2 shall be District Council members of the Standards committee and 2 shall be Independent Co-opted members of the Standards Committee. The final member shall be a Parish Councillor member of the Standards Committee.
  - (c) approve the Terms of Reference of the Assessment Panel as attached **(Appendix A)**
  - (d) appoint the membership of the Assessment Panel

- (e) establish a **Review Panel**,
- (f) determine the membership of that Panel as 5 members, of whom 2 shall be District Council members of the Standards committee and 2 shall be Independent Co-opted members of the Standards Committee. The final member shall be a Parish Councillor member of the Standards Committee.
- (g) To approve the Terms of Reference of the Assessment Panel as attached **(Appendix B)**
- (h) To appoint the membership of the Review Panel
- (i) to establish a **Hearings Panel**,
- (j) to determine the membership of that Panel as 5 members, of whom 2 shall be District Council members of the Standards committee and 2 shall be Independent Co-opted members of the Standards Committee. The final member shall be a Parish Councillor member of the Standards Committee.
- (k) To approve the Terms of Reference of the Hearings Panel as attached **(Appendix C)**
- (l) To appoint the membership of the Hearings Panel
- (m) Approve the procedure for Initial Assessment as attached **(Appendix D)**
- (n) Approve the procedure for the Review of Initial Assessment as attached **(Appendix E)**
- (o) Approve the procedure for Local Investigation of Referred Complaints as attached **(Appendix F)**
- (p) Approve the Procedure for Local Standards Hearings as attached **(Appendix G)**

authorise the Monitoring Officer to explore the potential for joint working or cooperation with other local authorities.

**Background Papers:** the following background papers were used in the preparation of this report:

The Standards Committee (England) Regulations 2008  
SBE Guidance: "Local Assessment of Complaints" (May 2008)  
SBE Guidance: "The Role and Make-up of Standards Committees" (May 2008)  
The Constitution

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## **DRAFT TERMS OF REFERENCE OF THE ASSESSMENT PANEL**

### **1. Terms of Reference**

- a. The Assessment Panel is established to receive allegations that a member of the authority or a member of a parish council in South Cambridgeshire has failed, or may have failed, to comply with the relevant authority's Code of Conduct.
- b. Upon receipt of each allegation and any accompanying report by the Monitoring Officer, the Panel shall make an initial assessment of the allegation and shall then do one of the following:
  - i. 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
  - ii. refer the allegation to the Standards Board for England
  - iii. decide that no action should be taken in respect of the allegation, or
  - iv. 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 notify the person making the allegation and the member concerned of that decision.

- c. Where the Panel resolves to do any of the actions set out in Paragraph 1.b above, the Panel shall state its reasons for that decision.

### **2. Composition of the Assessment Panel**

The Assessment Panel shall comprise 5 members, of whom 2 shall be District Council members of the Standards committee and 2 shall be Independent Co-opted members of the Standards Committee. The final member shall be a Parish Councillor member of the Standards Committee. The Panel shall be chaired by an Independent Co-opted member. Deputies are allowed under the Constitution, but only so far as to leave the Panel similarly constituted.

### **3. Quorum**

The quorum for a meeting of the Panel shall be 3 members, 1 of whom shall be an independent Co-opted member of the Panel. If the complaint before the Panel concerns an allegation that a Parish Councillor has failed, or may have failed, to



comply with the Code of Conduct, then the Parish Councillor member of the Panel must be present.

4. **Frequency of Meetings**

Standards Committee shall agree a programme of meetings sufficient to enable the Assessment Panel to undertake the initial assessment of any allegation received within 20 working days of receipt of that allegation by the authority, but it shall only meet where one or more allegations have been received which require to be assessed at that meeting.



## **DRAFT TERMS OF REFERENCE OF THE REVIEW PANEL**

### **1. Terms of Reference**

- a. The Review Panel is established to review, upon the request of a person who has made an allegation that a member of the authority or a member of a parish council in South Cambridgeshire has failed, or may have failed, to comply with the relevant authority's Code of Conduct, a decision of the Assessment Panel that no action be taken in respect of that allegation.
- b. Upon receipt of each such request and any accompanying report by the Monitoring Officer, the Panel shall make a further assessment of the allegation and review the decision of the Assessment Panel and shall then do one of the following:
  - i. 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
  - ii. refer the allegation to the Standards Board for England
  - iii. decide that no action should be taken in respect of the allegation, or
  - iv. 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 notify the person making the allegation and the member concerned of that decision.
- c. Where the Panel resolves to do any of the actions set out in Paragraph 1.b above, the Panel shall state its reasons for that decision.

### **2. Composition of the Review Panel**

The Review Panel shall comprise 5 members, of whom 2 shall be District Council members of the Standards Committee and 2 shall be Independent Co-opted members of the Standards Committee. The final member shall be a Parish Councillor member of the Standards Committee. The Panel shall be chaired by an Independent Co-opted Member. No member of the Review Panel shall be a member for the consideration of any request in respect of an allegation, who was a member of the Assessment panel when it undertook the initial assessment of that allegation. Deputies are allowed under the Constitution, but only so far as to leave the Panel similarly constituted.

3. **Quorum**

The quorum for a meeting of the Panel shall be 3 members, 1 of whom shall be an Independent Co-opted member of the Panel. If the complaint before the Panel concerns an allegation that a Parish Councillor has failed, or may have failed, to comply with the Code of Conduct, then the Parish Councillor member of the Panel must be present.

4. **Frequency of Meetings**

The Review Panel shall meet when required so as to undertake the review of any decision of the Assessment Panel within 3 months of the receipt of the request for such a review from the person who made the allegation. The meeting to be called by the Monitoring Office after consultation with the Chairman of the Review Panel



## **DRAFT TERMS OF REFERENCE OF THE HEARINGS PANEL**

### **1. Terms of Reference**

- a. The Hearings Panel is established to receive the Investigating Officers reports for Local Determination of an allegation.
- b. Upon receipt of each such report the Panel shall consider the report and shall then do one of the following, determine:
  - i. that the member has not failed to comply with the code of conduct,
  - ii. that the member has failed to comply with the code of conduct but that no action needs to be taken;
  - iii. that the member has failed to comply with the code of conduct and that a sanction shall be imposed.

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

- c. Where the Panel resolves to do any of the actions set out in Paragraph 1.b above, the Panel shall state its reasons for that decision.

### **2. Composition of the Investigating Reports Panel**

The Hearings Panel shall comprise 5 members, of whom 2 shall be District Council members of the Standards Committee and 2 shall be Independent Co-opted members of the Standards Committee. The final member shall be an appointed Parish Councillor member of Standards Committee. The Panel shall be chaired by an Independent Co-opted Member.

### **3. Quorum**

The quorum for a meeting of the Panel shall be 3 members. If the complaint before the Panel concerns an allegation that a Parish Councillor has failed, or may have failed, to comply with the authority's Code of Conduct, then the Parish Councillor member of the Panel must be present.

### **4. Frequency of Meetings**

The Hearings Panel shall meet as required to undertake the Local Determination of an allegation and shall do so within 3 months of the completion of the Investigation report. The meeting to be called by the Monitoring Office after consultation with the Chairman of the Hearings Panel



## **DRAFT PROCEDURE FOR THE INITIAL ASSESSMENT OF COMPLAINTS**

### **1. Submission of Complaints**

- (a) The authority will maintain a distinct and separate process for the handling of Code complaints and shall attempt through regular advertisement to notify the public where to direct complaints, and provide details of the procedures it will follow.
- (b) Officers administering the existing complaints procedure (none Code complaints) shall be alert to a complaint that a member may have breached the Code and ensure that such complaints are passed to the Monitoring Officer.
- (c) Complaints must be in writing. This will include fax and electronic transmission. This requirement must be read in conjunction with the Disability Discrimination Act 2000 and occasions where the complainant's first language is other than English. Transcriptions of oral complaints will only be accepted in these circumstances.
- (d) The authority will produce a Complaint Form that will be freely available, both on request and from the authority's web site, where it will be readily accessible.
- (e) The form will inform complainants that their identity will normally be disclosed to the subject member. In exceptional circumstances and at the discretion of the Standards Committee this information may be withheld.
- (f) Complainants may only withdraw their complaint with permission of the Assessments Panel.
- (g) Anonymous complaints will be considered in exceptional circumstances and only when the Assessment Panel decides that the allegation is supported by sufficient evidence to suggest an exceptionally serious or significant matter.
- (h) The Monitoring Officer is granted discretion to determine whether a complaint:
  - i. is a Code complaint or not,
  - ii. should be passed to the Assessment Panel or whether a different course of action is more appropriate,
  - iii. if in a manner other than described in 1(c) above, is suitable for informal resolution to satisfy the complainant.

## **2. Acknowledging receipt of a complaint**

On receiving a complaint and after determining that it is a Code complaint, the Monitoring Officer shall:

- (a) Send written acknowledgement to the complainant,
- (b) Normally inform the subject member of that complaint, (*having due regard to the Data Protection Act 1998 and Section 63 of the Local Government Act 2000 as modified by Regulation 12 of the regulations*) including:
  - i. the name of the complainant (unless the complainant has requested confidentiality and the standards committee has not yet considered whether or not to grant it)
  - ii. the relevant paragraphs of the Code of Conduct that are alleged to have been breached.
  - iii. a statement explaining 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,
  - iv. and the date of the meeting of the Assessment Panel, if known.
- (c) The Monitoring Officer has the discretion, to be used in exceptional circumstances only and after consultation with the Chairman of the Standards Committee, to defer notification of the receipt of a complaint, to the subject member. In such cases, the Monitoring Officer shall notify the subject member of that complaint as soon as the reasons for deferral of notification no longer pertain, for example when sufficient investigation has been completed.

## **3. Pre-assessment reports and enquiries**

Prior to the meeting of the Assessment Panel the Monitoring Officer shall prepare a short summary of the complaint. If necessary the Monitoring Officer may seek clarification from the complainant of their complaint and any documentary evidence submitted. Pre-assessment enquiries must not amount to an investigation. The summary shall set out:

- i. whether the complaint is within jurisdiction
- ii. the paragraphs of the Code of Conduct to which the complaint relates or as identified by the complainant,
- iii. any publicly available information which would facilitate their task of determining whether a complaint merits investigation.

## **4. Initial tests**

The Assessment Panel must satisfy itself that the complaint meets the following tests:

- (a) Is it a complaint against one or more named members of the authority or an authority covered by South Cambridgeshire District Council Standards Committee?

- (b) Was the named member in office at the time of the alleged conduct and was the Code of Conduct in force at that time?
- (c) Would the complaint, if proven 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 initial tests it cannot be investigated and the complainant and subject member must be informed that no further action will be taken in respect of the complaint.

## **5. Assessment Criteria**

All complaints coming before the Assessment Panel will be assessed using criteria as set out below. These criteria shall develop to reflect local circumstances and priorities. They shall be simple, clear, open and ensure fairness for both complainant and subject member.

- (a) Should the Assessment Panel determine that insufficient evidence has been submitted by the complainant, on which to base a referral for investigation or other action, the complaint shall warrant no further action. In exceptional circumstances only the complainant may be asked for further information. Unless the complainant submits sufficient further information in time for the following meeting of the Panel, the complaint shall warrant no further action. Should such further information reveal a different complaint, the Panel will determine the initial complaint and refer the different complaint to the Monitoring officer for pre-assessment.
- (b) Complaints of a simply political, malicious, trivial, vexatious, or tit-for-tat nature shall only be investigated if the Assessment Panel decides that the allegation is of a sufficiently serious matter.
- (c) If the subject member of a complaint is no longer a member of this authority but is a member of another authority, the assessment committee shall refer the complaint to the standards committee of that authority.
- (d) If the matter of the complaint has already been subject to an investigation or other action relating to the Code of Conduct then the complaint shall warrant no further action.
- (e) If the matter of the complaint has already been subject to an investigation by another regulatory authority then the complaint shall warrant no further action.
- (f) If the complaint refers to matters that took place some considerable time ago then the complaint shall normally warrant no further action. Only when the Panel regards the allegations to be so extremely serious shall further action be warranted.
- (g) Should the subject member die at any time during the assessment process then the complaint shall warrant no further action.

## **Decisions**

### **6. Timescale**

The Assessment panel shall endeavor to carry out initial assessment of all claims within 20 working days and reach one of following decisions:

- (a) referral of the complaint to the Monitoring Officer of the authority concerned, which under section 57A(3) of the Local Government Act 2000, as amended, may be another authority,
- (b) referral of the complaint to the Standards Board for England,
- (c) no action should be taken in respect of the complaint.

If the Assessment Panel decides to take no action over a complaint, it shall give notice in writing of that decision to the relevant parties as soon as possible and set out clearly the reasons for that decision. Where no potential breach of the Code is disclosed the Panel must explain in the decision notice what the allegation was and why they believe this to be the case. The relevant parties will be the complainant and the subject member. If the subject member is a parish councilor their parish council must, also be notified.

#### **7. Referral for local investigation**

Should the Assessment Panel determine that a complaint be referred to the Monitoring Officer for investigation, the Monitoring Officer shall write to the relevant parties informing them of that decision and, if appropriate, advising who will conduct the investigation.

It shall send a summary of the complaint to the relevant parties, stating what the allegation was and that the referral is to the Monitoring Officer for investigation. The decision notice must explain why the referral decision has been made.

The Assessment Panel, on the advice of the Monitoring Officer has discretion to withhold the summary from the subject member if it decides that doing so would be against the public interest or would prejudice any investigation. Any decision to withhold the summary shall be kept under review.

#### **8. Referral to the Standards Board for England**

Should the Assessment Panel determine that a case be referred to the Standards Board for investigation by an Ethical Standards Officer. The Monitoring Officer shall immediately write to the Standards Board for England notifying them of the Assessment Panels referral, including reference to the paragraph or paragraphs of the Code of Conduct that it believes the allegation refers to and the reasons why the complaint cannot be dealt with locally. The Standards Board will then confirm if they will accept the case or not. The Monitoring Officer shall then write to the relevant parties informing them of that decision.

The Assessment Panel shall send a summary of the complaint to the relevant parties, stating what the allegation was and that the referral is to an Ethical Standards Officer for investigation. The decision notice must explain why the referral decision has been made.

The Assessment Panel, on the advice of the Monitoring Officer has discretion to withhold the summary from the subject member if it decides that doing so would be against the public interest or would prejudice any investigation. Any decision to withhold the summary shall be kept under review.

#### **9. Referral back from the Standards Board for England**

The Standards board may decline to investigate a complaint referred to them and will send it back with reasons for their decision. The Assessment Panel must again make a decision. In exceptional cases the Standards Board may decide to take no further action on a complaint



referred to them and they may offer guidance to the Assessment Panel, which may assist them in their decision

Referrals back to Assessment Panel (where the original referral was from Assessment panel) shall be passed directly to the Assessment Panel for determination.

The Monitoring Officer shall write to the relevant parties informing them of the date for meeting.

The Assessment Panel shall not be constrained by its previous decision and may determine:

- (a) referral of the complaint to the monitoring officer of the authority concerned, which under section 57A(3) of the Local Government Act 2000, as amended, may be another authority, for:
  - i. investigation
  - ii. other action
- (b) no action should be taken in respect of the complaint.

#### **10. Referral for other action**

The Assessment Panel, after consulting the Monitoring Officer may decide that other action rather than an investigation should be taken and will refer the matter to the Monitoring Officer with instructions to implement their decision.

The suitability of other action shall be dependent upon the nature of the complaint.

The requirement outlined in the instruction from the Assessment Panel need not be limited to the subject member/s or the complainant.

The subject member/s or the complainant shall be required to confirm in writing that they will cooperate in the other action proposed.

If the Assessment Panel decides to make a referral to the Monitoring Officer for other action over a complaint, it shall give notice in writing of that decision to the relevant parties as soon as possible and set out clearly the reasons for that decision.

#### **11. Decision to take no action**

The Assessment Panel can decide that no action is required in respect of the complaint.

If the Assessment Panel decides to take no action over a complaint, it shall give notice in writing of that decision to the relevant parties as soon as possible and set out clearly the reasons for that decision. Where no potential breach of the Code is disclosed, the Panel must explain in the decision notice what the allegation was and why they believe this to be the case. The relevant parties will be the complainant and the subject member. If the subject member is a parish councillor, their parish council must also be notified.

The complainant shall be advised of their right to ask for a review of a decision to take no action and that such a request for a review must be received within 30 working days from receipt of the decision.



## **DRAFT PROCEDURE FOR THE REVIEW PANEL**

### **3. Submission of review request**

- (a) The request for a review must be received from the complainant within 30 days of his/her receipt of the notice of the Review Panel's decision.
- (b) Requests received after this deadline will not be accepted

### **4. Acknowledging receipt of a review request**

On receiving a review request the Monitoring Officer shall:

- (a) Send written acknowledgement to the complainant,
- (b) Notify the subject member that a request for a review has been made
- (c) Notify them both of the date of the meeting of the Assessment Panel, if known.

### **4. Pre-assessment reports and enquiries**

Prior to the meeting of Review Panel the Monitoring Officer shall prepare a short summary of the complaint. If necessary the Monitoring Officer may include any further evidence submitted by the complainant and seek clarification from the complainant of their complaint and any documentary evidence submitted. Pre-assessment enquiries must not amount to an investigation. The summary shall set out:

- (a) the paragraphs of the Code of Conduct to which the complaint relates or as identified by the complainant,
- (b) any publicly available information which would facilitate the Panel's task of determining whether a complaint merits investigation.

Where further Information is made available in support of a complaint that changes its nature or gives rise to a new complaint. It is open to the Review Panel to refer the matter back to the Assessment Panel. In those circumstances the Review Panel must determine the review request by indicating that the review request will not be granted

## **6. Initial tests**

The Review Panel must satisfy itself that the complaint meets the following tests:

- (a) Is it a complaint against one or more named members of the authority or an authority covered by South Cambridgeshire District Council Standards Committee?
- (b) Was the named member in office at the time of the alleged conduct and was the Code of Conduct in force at that time?
- (c) Would the complaint, if proven 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 initial tests it cannot be investigated and the complainant and subject member must be informed that no further action will be taken in respect of the complaint.

## **7. Review Criteria**

All complaints coming before the Review Panel will be assessed using criteria as set out below. These criteria shall develop to reflect local circumstances and priorities. They shall be simple, clear, open and ensure fairness for both complainant and subject member.

- (a) Should the Review Panel determine that insufficient evidence has been submitted by the complainant, on which to base a referral for investigation or other action, the complaint shall warrant no further action. In exceptional circumstances only the complainant may be asked for further information. Unless the complainant submits sufficient further information in time for the following meeting of the Panel, the complaint shall warrant no further action. Should such further information reveal a different complaint, the Panel will determine the initial complaint and refer the different complaint to the Monitoring officer for pre-assessment.
- (b) Complaints of a simply political, malicious, trivial, vexatious, or tit-for-tat nature shall only be investigated if the Review Panel decides that the allegation is of a sufficiently serious nature.
- (c) If the subject member is no longer a member of this authority but is a member of another authority, the assessment committee shall refer the complaint to the standards committee of that authority.
- (d) If the matter of the complaint has already been subject to an investigation or other action relating to the Code of Conduct then the complaint shall warrant no further action.
- (e) If the matter of the complaint has already been subject to an investigation by another regulatory authority then the complaint shall warrant no further action.
- (f) If the complaint refers to matters that took place some considerable time ago then the complaint shall normally warrant no further action. Only when the Panel regards the allegations to be so extremely serious shall further action be warranted.

- (g) Should the subject member have died or become seriously ill, or has resigned from the authority, and the Review Panel may determine that in the circumstances it is no longer appropriate to continue.

## **Decisions**

### **6. Timescale**

The Review Panel must complete the review within 3 months of receipt of the request.

The Review Panel shall endeavor to carry out initial assessment of all claims within 20 working days and reach one of following decisions:

- (a) referral of the complaint to the monitoring officer of the authority
  - a. concerned, which under section 57A(3) of the Local Government Act 2000, as amended, may be another authority,
- (b) referral of the complaint to the Standards Board for England,
- (c) no action should be taken in respect of the complaint.

### **7. Referral for local investigation**

Should the Review Panel determine that a complaint be referred to the Monitoring Officer for investigation, the Monitoring Officer shall write to the relevant parties informing them of that decision and, if appropriate, advising who will conduct the investigation.

It shall send a summary of the complaint to the relevant parties, stating what the allegation was and that the referral is to the Monitoring Officer for investigation. The decision notice must explain why the referral decision has been made.

The Review Panel, on the advice of the Monitoring Officer has discretion to withhold the summary from the subject member if it decides that doing so would be against the public interest or would prejudice any investigation. Any decision to withhold the summary shall be kept under review.

### **8. Referral to the Standards Board for England**

Should the Review Panel determine that a case be referred to the Standards Board for investigation by an Ethical Standards Officer. The Monitoring Officer shall immediately write to the Standards Board for England notifying them of the Review Panels referral, including reference to the paragraph or paragraphs of the Code of Conduct that it believes the allegation refers to and the reasons why the complaint cannot be dealt with locally. The Standards Board will then confirm if the will accept the case or not. The Monitoring Officer shall then write to the relevant parties informing them of that decision.

The Review Panel shall send a summary of the complaint to the relevant parties, stating what the allegation was and that the referral is to an Ethical Standards Officer for investigation. The decision notice must explain why the referral decision has been made.

The Review Panel, on the advice of the Monitoring Officer has discretion to withhold the summary from the subject member if it decides that doing so would be against the public interest or would prejudice any investigation. Any decision to withhold the summary shall be kept under review.

## **9. Referral back from the Standards Board for England**

The Standards Board may decline to investigate a complaint referred to them and will send it back with reasons for their decision. The Review Panel must again make a decision. In exceptional cases the Standards Board may decide to take no further action on a complaint referred to them and they may offer guidance to the Review Panel, which may assist them in their decision

The Monitoring Officer shall write to the relevant parties informing them of the date for meeting.

The Review Panel shall not be constrained by its previous decision and may determine:

- (c) referral of the complaint to the monitoring officer of the authority concerned, which under section 57A(3) of the Local Government Act 2000, as amended, may be another authority, for:
  - iii. investigation
  - iv. other action
- (d) no action should be taken in respect of the complaint.

## **10. Referral for other action**

The Review Panel, after consulting the Monitoring Officer may decide that other action rather than an investigation should be taken and will refer the matter to the Monitoring Officer with instructions to implement their decision.

The suitability of other action shall be dependent upon the nature of the complaint.

The requirement outlined in the instruction from the Review Panel need not be limited to the Subject Member/s or the Complainant.

The Subject Member/s or the Complainant shall be required to confirm in writing that they will cooperate in the other action proposed.

If the Review Panel decides to make a referral to the Monitoring Officer for other action over a complaint, it shall give notice in writing of that decision to the relevant parties as soon as possible and set out clearly the reasons for that decision.

## **11. Decision to take no action**

The Review Panel can decide to take no further action.

If the Review Panel decides to take no action over a complaint, it shall give notice in writing of that decision to the relevant parties as soon as possible and set out clearly the reasons for that decision. Where no potential breach of the Code is disclosed, the Panel must explain in the decision notice what the allegation was and why they believe this to be the case. The relevant parties will be the complainant and the subject member. If the subject member is a parish councillor, their parish council must also be notified.