



# Ryedale District Council

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**REPORT TO:** Standards Committee

**DATE:** 19 June 2008

**REPORTING OFFICER:** Council Solicitor & Monitoring Officer  
Anthony Winship

**SUBJECT:** **Local Assessment of Member Misconduct Allegations**

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## **1.0 PURPOSE OF REPORT**

- 1.1 To inform the Committee of the new arrangements for the determination by Standards Committees of complaints of breaches of the Members' Code of Conduct in place of the Standards Board for England.
- 1.2 To enable the Standards Committee, having due regard to guidance from the Standards Board for England, to adopt effective procedures to fulfill its legislative requirements in relation to Local Assessment.

## **2.0 RECOMMENDATIONS**

- 2.1 It be resolved as set out in this report.

## **3.0 INTRODUCTION**

### **From National to Local Assessment of Standards Complaints**

- 3.1 Prior to 8 May 2008, a complaint of misconduct by a member had to be submitted to the Standards Board for England (SBE), and the Referrals Unit of the SBE determined whether the allegation appeared to disclose a failure by a member to comply with the Authority's Code of Conduct, and then whether the allegation merited investigation. From 8 May 2008, all such complaints must be made to the Standards Committee of the Authority, and a sub-committee of the Standards Committee will have to decide whether the complaint should be investigated.

- 3.2 This report sets out what the changes will be to the system of handling complaints against members, and the issues which the Authority needs to address in order to meet these new requirements.
- 3.3 The SBE has issued guidance with respect to the local assessment of complaints and the role and make-up of Standards Committees. A copy of the guidance document entitled "Local Assessment of Complaints" is attached to this report. By law the Council is required to have regard to this guidance in setting up its new procedures and in undertaking the new function.

## **4.0 REPORT**

### **Sub-Committees**

- 4.1 Regulation 6 of the Standards Committee (England) Regulations 2008 (the 2008 Regulations) requires the Standards Committee to establish a sub-committee (the "Assessment Sub-Committee") that will be required 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 or other action. The guidance from the Standards Board for England at page 13 of Local Assessment of Complaints indicates that each allegation must be assessed within an average of 20 working days of receipt. If the Assessment Sub-Committee decides to take no action in respect of an allegation, the complainant will have 30 days within which to request the Authority to review that decision. Regulation 6 of the 2008 Regulations requires the Standards Committee to set up a second sub-committee (the "Review Sub-Committee") to conduct that review. No member can sit on the Review Sub-Committee in respect of a complaint where they were on the Assessment Sub-Committee for the initial assessment of the same complaint. Flowcharts showing the operation of the assessment and review functions are attached as Annex A and Annex B respectively.
- 4.2 If the matter then goes for investigation and the Investigating Officer concludes that there has been a failure to comply with the Code of Conduct for Members, a hearing would then be held. The Standards Board recommends that such hearings should be held before a sub-committee (a "Hearings Sub-Committee") of between three and five members. The role of the Hearings Sub-Committee is to determine whether the Member has breached the Code and, where appropriate, to impose a sanction on the Member.
- 4.3 Whilst Regulation 7 of the 2008 Regulations prohibits any member from sitting on both the Assessment Sub-Committee and the Review Sub-Committee on the same matter (on the basis that a member cannot fairly review his/her own decision), there is no similar prohibition of a member sitting on the Hearings Sub-Committee when that member was previously on either the Assessment Sub-Committee or the Review Sub-Committee in respect of the same matter.

The danger is, however, that a member against whom a complaint has been made might reasonably take exception to a member being part of the Hearings Sub-Committee when that member had some months previously seen the complaint without the benefit of any response from the member and decided that the matter should proceed to investigation. Separate fixed membership for all three sub-committees would however appear to increase still further the minimum size of the Standards Committee and the minimum number of Independent Members and Parish and Town Council representatives necessary to make up the separate Sub-Committees, as well as “straight jacketing” members in one of the three roles.

**Recommendation: That as with the Council’s Licensing Sub-Committee, the membership and chairmanship of the three Sub-Committees be not fixed, but instead the Monitoring Officer in consultation with the Chairman of the Standards Committee be authorised to constitute each of the Sub-Committees comprising one District Councillor, one Independent Member and one Parish representative from meeting to meeting having regard to Member availability and any other relevant factors such as actual or potential conflicts of interest.**

4.4 The quorum (minimum actual attendance) for each such Sub-Committee is three members:

- at least 25% of each sub-committee must be Independent Members, one of whom must be present to chair the meeting;
- at least one elected member of the District Council must be present at each meeting;
- at least one member must be a Parish or Town Council representative if the Sub-Committee is dealing with a complaint in respect of the conduct of a member as a member of a Parish or Town Council.

4.5 The recommendation adopted by the Standards Committee meeting on 3 April 2008 was for each Sub-Committee to comprise three Members (one Independent Member, one elected Member of the District Council and one Parish or Town Council representative). Not only does this secure parity of representation across the three membership elements of the Committee, but it also:

- avoids the possibility of a split vote;
- helps to ensure that in any given complaint, the representation on the three Sub-Committees would be mutually exclusive;
- helps to meet the requirement that a Member participating in any assessment should not participate in any review; and
- helps to meet the recommendation that any Member participating in either the assessment or review should ideally not participate in any subsequent hearing.

- 4.6 The Assessment Sub-Committee must be available at short notice to deal with any allegation within 20 working days of receipt. One possibility would be for it to have a monthly meeting diarised, to be held if there is actual business to be conducted, but given the lack of complaints received in the last two years, it is probably best to convene the sub-committee on an ad hoc basis, but revisit this if circumstances change.

**Recommendation: That an Assessment Sub-Committee be established comprising one Independent Member, one elected member of the District Council and one Parish or Town Council representative with the terms of reference set out in Annex 1 to this report.**

- 4.7 The Review must be conducted within three months of a request for review (though the guidance recommends that the review be undertaken within the same 20 working day average timescale as the initial assessment decision is taken), and the hearing within three months of receipt of the investigation report, so there is more flexibility to arrange such meetings on a date to suit the available members.

**Recommendation: That a Review Sub-Committee be established comprising one Independent Member, one elected member of the District Council and one Parish or Town Council representative with the terms of reference set out in Annex 2 to this report.**

- 4.8 For any hearings, that would leave one Independent Member, three elected Members of the District Council and one Parish or Town Council representative who would not have been members of either the Assessment or Review Sub-Committee. Where the matter had been sent for investigation by the Assessment Sub-Committee, the members of the Review Sub-Committee would also be available for a Hearings Sub-Committee.

**Recommendation: That a Hearings Sub-Committee be established, comprising one Independent Member, one elected member of the District Council and one Parish or Town Council representative, and that the members thereof be generally (but not exclusively) members who have not been involved on the assessment or review of the particular matter. The terms of reference of the Hearings Sub-Committee will be that set out in Annex 3 to this report.**

#### **Joint Working Between Authorities**

- 4.9 The Act provides that authorities may appoint Joint Committees to discharge all or any of their Standards functions. Populating three different sub-committees will place a considerable burden on authorities, particularly in terms of the Independent Member role. Joint working would help authorities to meet their statutory requirements without the cost of maintaining their own separate sub-committees. Such joint working may be more acceptable in terms of the initial assessment and the review, rather than the actual hearings. The Regulations which will bring these provisions into force have

not yet been made, but once they are, it would be desirable to see if there is scope for joint working.

**Recommendation: That the potential for joint working be explored with other North Yorkshire authorities once the appropriate Regulations are made.**

- 4.10 The Act does however confer a specific power on authorities to appoint anyone who is an independent person serving on the Standards Committee of another authority as an additional independent person. This power would be exercised to make temporary appointments to deal with particular complaints, for example, if the independent persons on this Council's Standards Committee were unavailable or conflicted out of a particular case.

**Recommendation: That a report be submitted to a future meeting of the Standards Committee about making appointments of independent persons to the Standards Committee on a temporary basis for dealing with particular complaints, from independent persons who serve on other authorities' Standards Committees.**

#### **Notification to the Member**

- 4.11 Section 57C of the Local Government Act 2000 as amended by the Local Government and Public Involvement in Health Act 2007 requires the Standards Committee to notify the member of the receipt of a complaint and to provide a written summary of the allegation. In practice, the first meeting at which the Committee itself could notify the member is likely to be the meeting at which it conducts the initial assessment. The Consultation Paper suggested that there was a danger that the member might seek to lobby members of the Standards Committee, and suggested that no notification be made until the Assessment Sub-Committee had come to a decision whether to investigate. However, the Authority ought to acknowledge receipt of the allegation to the person making the allegation and advise them when it is going to be assessed, and there is nothing to prevent the person making the allegation from publicising that fact.
- 4.12 It will not engender confidence in the system if the Monitoring Officer were withholding notification to the member concerned when that member learned 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 member of receipt of the complaint at the same time as acknowledging the receipt of the complaint to the person making the complaint. This should be no later than the date the agenda is sent out to members of the Assessment Sub-Committee. Any member who sought to lobby other members in his/her own cause would be committing a further breach of the Code of Conduct.
- 4.13 The Consultation Paper 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

complaint until the investigation had secured such evidence. This is a very remote possibility, but I would suggest 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 would notify the member concerned as soon as the reasons for deferral of notification no longer pertained, for example, when sufficient investigation had already been completed.

**Recommendation: That the Monitoring Officer notify the member of receipt of a complaint and provide a written summary of the allegation at the same time as acknowledging receipt of the allegation to the person making the allegation and no later than the date the agenda is sent out for the meeting of the Assessment Sub-Committee, unless, after consultation with the Chairman of the Standards Committee, it is considered appropriate to defer notification in order to enable a proper investigation to take place. In such cases notification should be made as soon as the reasons for the deferral no longer apply.**

### **Local Resolution of Complaints**

- 4.14 Investigations and hearings are expensive and not always appropriate. The Regulations therefore enable the Assessment Sub-Committee to propose training, 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 Sub-Committee may determine that the matter should not proceed to investigation. Accordingly, there will be cases in which informal mediation by the Monitoring Officer before reporting to the Assessment Sub-Committee may avoid the need for a local investigation and/or hearing.

**Recommendation: That a local protocol as set out in Annex 4 to this report be adopted authorising the Monitoring Officer to seek such local resolution in appropriate cases.**

### **Filtering out Irrelevant Complaints**

- 4.15 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:
- Requests for additional service from the Authority
  - Statements of policy disagreement
  - Matters relating to other authorities
  - Matters relating to a member's private life

4.16 The function of initial assessment of complaints must be conducted by a Sub-Committee, but does not allow for delegation of this function to the Monitoring Officer. Where the Monitoring Officer identifies that a complaint clearly falls within the above categories, 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. In all other cases where the complaint is clearly about Member conduct, it will be necessary to report to the Assessment Sub-Committee and for that Sub-Committee to determine which of the following statutory options should apply:

- refer the allegation to the Monitoring Officer;
- refer the allegation to the Standard Board for England;
- decide that no action should be taken in respect of the allegation,
- 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.

4.17 In determining which of the options should apply, regard will need to be had to the Standards Board's published guidance. Appropriate criteria for this and for other elements of the assessment and review function have been set down in Annex 5 to this report.

**Recommendation: That the criteria set down in Annex 5 to this report with respect to the assessment and review function be adopted.**

### **Anonymous Complaints**

4.18 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. In such cases, it is, of course, not possible to meet the requirements to notify the complainant of the decision in respect of the complaint.

**Recommendation: That anonymous complaints be not entertained, but that the Monitoring Officer be 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**

4.19 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 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 Assessment Sub-Committee.

## **Pre-Investigation**

- 4.20 The Assessment Sub-Committee has to decide whether the allegation appears to disclose a failure to comply with the Code of Conduct for Members, and then whether it merits investigation. Where the sub-committee has only the letter of complaint, it 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 sub-committee 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 Assessment Sub-Committee.

**Recommendation: That in accordance with the local protocol attached as Annex 4 to this report, where it is practicable to do so the Monitoring Officer obtain and inform the Assessment Sub-Committee of any publicly available information which would facilitate their task of determining whether a complaint merits investigation.**

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

- 4.21 The initial assessment should be undertaken within an average of 20 working days of the receipt of the allegation by the Authority. This average period therefore allows a bit of flexibility in exceptional circumstances. The Review Sub-Committee is then required to determine the review within three months of the date when the request for a review is received, but the guidance suggests that this should again be carried out if possible within an average of 20 working days. It should be the Council's aim that these respective targets are met.

### **Public or Private Meetings**

- 4.22 The 2008 Regulations provide that information presented to the Assessment Sub-Committee, to a Review Sub-Committee or to a Hearings Sub-Committee for the purpose of these new procedures shall be "exempt information" for the purpose of Schedule 12A to the Local Government Act 1972, thus giving each of the Sub-Committees a power to exclude the press and public from their meetings. This is a discretion, so it will still be necessary for each meeting to start by resolving whether to exclude press and public. If the Sub-Committee did not exclude press and public, the member concerned would be unable to attend as he or she would have a prejudicial interest in the matter under consideration, whereas the complainant would have the right to attend (unless the complainant was also a member). Neither party has a right of audience at the meeting.

**Recommendation: That the Hearings and Review Sub-Committees hold their meetings in camera unless the relevant Sub-Committee determine otherwise in any particular instances.**



## **Public information about complaints received**

### **Advance publication of the agenda and reports**

Under existing legislation, the Council must publish an agenda stating the date, time and location of the meeting and in general terms the business to be transacted, but it can withhold copies of the reports and background papers where they would disclose exempt information and the meeting is likely to be held in private. Once a meeting had decided that particular complaints be investigated, or be not investigated, a minute of that meeting would be prepared, and the minute can again be withheld from publication if it would disclose exempt information. By this stage, the member will normally have been notified of the complaint, and the complainant will also be notified of the decision in respect of his or her complaint. Accordingly, it is suggested that the minute should be published unless the Monitoring Officer has any reason to believe that such publication was likely to prejudice the investigation of a complaint.

### **Member requests for information under the Data Protection Act 1998**

Persons are entitled to request access to any personal information which the Council holds in respect of them. Accordingly a member may request to be informed whether the Council has received a complaint about him or her and may ask to see and correct that information. Section 31 of the Data Protection Act 1998 provides that the Council 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 Council is able to refuse to disclose whether a complaint had been received until the member is notified on the sending out of the Assessment Sub-Committee 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 2000**

As FOI requests must be dealt with within 20 working days, the Authority may need to respond to press and public requests before the Assessment Sub-Committee has met. It cannot be stated in advance how individual requests will be resolved, as the Council must determine each request individually. However, the Council may refuse to provide information where the 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.

In each case, disclosure could only be resisted where the public interest in withholding the information outweighs the public interest in its disclosure. Accordingly, the Council 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.

**Recommendation: That the Standards Committee approves a protocol in the terms set out in Annex 4 to this report setting out the responsibilities and discretions of the Monitoring Officer in the provision or withholding of information relating to complaints.**

#### **Notification following initial assessment**

4.23 Where the Assessment Sub-Committee decides that no action be taken on a complaint, it must take reasonable steps to give notice in writing to the complainant of the decision and the reasons for that decision. It must also give similar notification to the member concerned of a decision not to take any action. Where the decision is that the complaint should be investigated or referred to the Standards Board for England, notification by way of a summary of the complaint and a statement of the reasons for the decision should be given unless there are exceptional circumstances where such disclosure would be against the public interest or might impede proper investigation.

#### **Review of Initial Assessment**

4.24 Where the Assessment Sub-Committee decides that no action should be taken on a complaint, the complainant may, within 30 days of being notified of that decision, request the Review Sub-Committee to review that decision. It appears that this is not to be by way of a complete reconsideration of the matter, but rather to identify whether there is anything clearly wrong or unreasonable about the earlier decision. Whether the Review Sub-Committee can take account of additional information received after the initial decision remains unclear at the moment. The Review Sub-Committee's decision is then notified to the complainant, who then has no further recourse other than judicial review.

#### **Publicity for the new arrangements**

4.25 The Regulations place an obligation on each Standards Committee to publicise the new arrangements and the fact that allegations should now be sent to the Authority rather than to the SBE. The Standards Board states that such notice should be advertised in one or more local newspapers, the Authority's own newspaper, on the Authority's website and in appropriate public areas such as local libraries or authority reception areas. The following steps have been taken:-

- (i) The Chairman of the Standards Committee issued a press release on 23 April 2008;
- (ii) The press release was included on the Council's website on Monday, 28 April 2008;

- (iii) Publicity for the new local assessment arrangements was made by including a public notice in the Malton & Pickering Mercury published on 14 May 2008.
- (iv) A complaints form with guidance notice has been prepared and is available at reception at Ryedale House. It is also proposed to include these documents on the Council's website.

**Recommendation: That the Monitoring Officer arrange appropriate publicity in accordance with the Regulations and Guidance**

## **5.0 FINANCIAL IMPLICATIONS**

- 5.1 Overall, this change will mean a much greater role for the Standards Committee, with more Sub-Committees, and more meetings. It will require the Monitoring Officer and his staff to undertake a significant amount of additional work in receiving any allegations of misconduct and reporting them to the relevant Sub-Committees. The experience from the role-plays undertaken by the Standards Board for England is that local Standards Committees are likely to refer about twice as many matters for investigation than have hitherto been referred by the SBE.
- 5.2 The new statutory duty has already brought about the need for a larger Standards Committee. The creation of separate sub-committees will require the Monitoring Officer, Legal Services and Member Services staff to undertake a significant amount of additional work in receiving any allegations of misconduct and reporting them to the relevant sub-committees. The experience from the role-plays undertaken by the Standards Board for England is that local Standards Committees are likely to refer about twice as many matters for investigation than have hitherto been referred by the SBE. There is a significant cost to conducting any investigations and hearings.
- 5.3 Under the legislation, even where complaints relate to the conduct of Parish or Town Councillors, it is the District Council which bears the full cost of investigations and hearings. There are, therefore, potentially very substantial cost implications, but the actual costs will depend upon the number of complaints of misconduct received. The provision of additional Central Government funding as a result of this change has been limited in the current year to just £2,000. The cost of a single case which proceeds to hearing is likely to exceed this, quite apart from the officer time entailed.
- 5.4 The cost of the new arrangements will be met from existing resources but there may be external costs, which cannot be predicted, in investigating any serious complaints which are made in due course.

## **6.0 LEGAL IMPLICATIONS**

6.1 Each authority must develop effective procedures to fulfill its legislative requirements. Members and officers involved in the assessment of complaints must take the guidance published by the Standards Board for England into account when doing so. This report seeks to ensure that the Standards Committee receives the necessary advice to fulfill its statutory obligations.

## **7.0 RISK ASSESSMENT**

7.1 Section 57D of the Local Government Act 2000 as inserted by the Local Government and Public Involvement in Health Act 2007, gives the Standards Board for England a power to suspend a Standards Committees functions in prescribed circumstances. This power could be exercised if the Standards Committee failed to fulfil its statutory obligations.

7.2 To avoid the risk of the suspension of the Council's Standards Committees function, the Committee must prepare itself to undertake the duties formerly undertaken by the Standards Board for England in respect of the assessment of allegations of misconduct by members, and if appropriate, the review and hearing functions.

7.3 The Board's guidance has been given in the exercise of its statutory power to do so. The guidance must be taken into account by the authority and the Standards Committee when adopting effective procedures to implement local assessment. This does not mean that the guidance has to be slavishly adhered to, but it does mean that the authority should specifically address its mind to it and weigh this against any competing considerations.

### **Background Papers:**

"Local Assessment of Complaints" published by the Standards Board for England on 2 May 2008 and subsequently revised on 16 May 2008

### **OFFICER CONTACT:**

Please contact Anthony Winship, Council Solicitor, if you require any further information on the contents of this Report. The Officer can be contacted at Ryedale House, Telephone 01653 600666 ext.267 or e-mail: [anthony.winship@ryedale.gov.uk](mailto:anthony.winship@ryedale.gov.uk)