

## Terms of Reference of the Assessment Sub-Committee

### 1. Terms of Reference

- (a) The Assessment Sub-Committee is established to receive allegations that a member of the Authority (being either Rother District Council or the Parish & Town Councils in Rother District) has failed, or may have failed, to comply with the Authority's Code of Conduct.
- (b) Upon receipt of each allegation and any accompanying report by the Monitoring Officer, the Sub-Committee shall make an initial assessment of the allegation and shall then do one of the following:
  - (i) refer the allegation to the Monitoring Officer, with an instruction that he/she arrange a formal investigation of the allegation, or directing that he/she arrange training, conciliation or such appropriate alternative steps as permitted by Regulations;  
(NB: 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, the Sub-Committee may, if it thinks it more appropriate, refer the allegation to the Monitoring Officer of that other relevant authority);
  - (ii) refer the allegation to the Standards Board for England;
  - (iii) decide that no action should be taken in respect of the allegation,

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

### 2. Composition of the Assessment Sub-Committee

The Assessment Sub-Committee shall comprise 3 members, of whom 1 shall be an independent member of the Standards Committee, and who shall chair the Sub-Committee, 1 shall be an elected member of the District Council and 1 shall be a Parish or Town Council representative.

### 3. Quorum

The quorum for a meeting of the Sub-Committee shall be 3 members.

### 4. Frequency of Meetings

The Sub-Committee shall meet as and when requested to enable it to undertake its assessment of an allegation and reach a decision thereon within an average of 20 working days from receipt of the allegation.

## Terms of Reference of the Review Sub-Committee

### 1. Terms of Reference

- (a) The Review Sub-Committee is established to review a decision of the Assessment Sub-Committee that no action be taken in respect of that allegation, upon the request of a person who has made an allegation that a member of the Authority (being either Rother District Council or the Parish & Town Councils in Rother District) has failed, or may have failed, to comply with the Authority's Code of Conduct.
- (b) Upon receipt of each such request and any accompanying report by the Monitoring Officer, the Sub-Committee shall review the decision of the Assessment Sub-Committee 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 directing that he/she take an alternative action as permitted by Regulations;  
NB: 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, the Sub-Committee may, if it thinks it more appropriate, refer the allegation to the Monitoring Officer of that other relevant authority;
  - (ii) refer the allegation to the Standards Board for England;
  - (iii) decide that no action should be taken in respect of the allegation,

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

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

### 2. Composition of the Review Sub-Committee

The Review Sub-Committee shall comprise 3 members, of whom 1 shall be an independent member of the Standards Committee and who shall chair the Sub-Committee, 1 shall be an elected member of the District Council and 1 shall be a Parish or Town Council representative.

### 3. Quorum

The quorum for a meeting of the Sub-Committee shall be 3 members

#### 4. Frequency of Meetings

The Review Sub-Committee shall meet as and when required to enable it to undertake the review of any decision of the Assessment Sub-Committee within an average of 20 working days and in any event within 3 months of the receipt of the request for such a review from the person who made the allegation.

## Terms of Reference of the Hearings Sub-Committee

### To be approved by the Standards Committee

1. Terms of Reference
  - a. The Hearings Sub-Committee is established to hear any investigations into complaints against a member of the Authority undertaken by the Monitoring Officers or an Ethical Standards Officer and referred to it by the Assessment Sub-Committee.
  - b. Upon receipt of the Monitoring Officer's or an Ethical Standards Officer's report into any alleged breach of the Authority's Code of Conduct, the Sub-Committee shall come to one of the following decisions:
    - i. That the Member who was the subject of the hearing had not failed to comply with the Authority's Code of Conduct;
    - ii. That the Member who was the subject of the hearing had failed to comply with the Authority's Code of Conduct but that no action needs to be taken in respect of the matters considered at the hearing;
    - iii. That the Member who was the subject of the hearing had failed to comply with the Authority's Code of Conduct and that a sanction is required.

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

- c. Where the Sub-Committee makes the finding in Paragraph 1(b) (iii) above, the Sub-Committee shall apply any one of, or any combination of, the following sanctions:
  - i. Censure of that member;
  - ii. Restriction for a period not exceeding six months of that member's access to the use of the premises of the authority or that member's use of the resources of the authority, provided that those restrictions;
    - Are reasonable and proportionate to the nature of the breach; and
    - Do not unduly restrict the person's ability to perform the functions of a member;
  - iii. Partial suspension of that member for a period not exceeding six months;

- iv. Suspension of that member for a period not exceeding six months;
  - v. That the member submits a written apology in a form specified by the Sub-Committee;
  - vi. That the member undertakes such training as the Sub-Committee specifies;
  - vii. That the member participate in such conciliation as the Sub-Committee specifies;
  - viii. Partial suspension of the member for a period not exceeding six months or until such time as the member submits a written apology in a form specified by the Sub-Committee;
  - ix. Partial suspension of the member for a period not exceeding six months or until such time as the member has undertaken such training or has participated in such conciliation as the Standards Committee specifies;
  - x. Suspension of the member for a period not exceeding six months or until such time as the member has submitted a written apology in a form specified by the Standards Committee;
  - xi. Suspension of the member for a period not exceeding six months or until such time as that member has undertaken such training or has participated in such conciliation as the Sub-Committee specifies.
- d. The Sub-Committee shall be responsible for the enforcement of any protocols in respect of member conduct that supplement the national and local Codes of Conduct and shall be responsible for dealing with any alleged breaches of any protocols by members.
- e. Where the Sub-Committee resolves to do any of the actions set out in Paragraph 1(b), (c) or (d) above, the Sub-Committee shall state its reasons for that decision.

## 2. Composition of the Hearings Sub-Committee

The Hearings Sub-Committee shall comprise 3 members, of whom 1 shall be an independent member of the Standards Committee, and who shall chair the Sub-Committee, 1 shall be an elected member of the District Council and 1 shall be a Parish or Town Council representative.

## 3. Quorum

The quorum for a meeting of the Sub-Committee shall be three members.

## 4. Frequency of Meetings

The Hearings Sub-Committee shall meet on an ad hoc basis as required.

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

1. Receipt of Allegations

- (i) The Monitoring Officer shall set up arrangements to secure that any allegation made in writing that a member of the Authority (being either Ryedale District Council or the Parish & Town Councils in Ryedale District) 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.
- (ii) The Monitoring Officer shall maintain a register of such allegations to ensure that the Authority can comply with its obligations under the relevant legislation.
- (iii) 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.

2. Notification of Receipt of Allegations

- (i) All relevant allegations must be assessed by the Assessment 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 Assessment 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.
- (ii) 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:
  - arrange for a meeting of the Assessment Sub-Committee as soon as reasonably practicable and if possible, within 20 working days from the date of receipt of the complaint;
  - acknowledge to the complainant receipt of the allegation and confirm that the allegation will be assessed by the Assessment Sub-Committee at that meeting;
  - 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 that

meeting of the Assessment Sub-Committee. However, where the Monitoring Officer is of the opinion that such notification would be contrary to the public interest or would prejudice any person's ability to investigate the allegation, he/she shall consult the Chairman of the Standards Committee, and may then decide that no such advance notification shall be given;

- collect such information as is readily available and would assist the Assessment Sub-Committee in its function of assessing the allegation;
- seek local resolution of the matter where practicable, in accordance with Paragraph 3 below;
- place a report, including a copy of the allegation, such readily available information and his/her recommendation as to whether the allegation discloses an apparent failure to observe the Code of Conduct, before that meeting of the Assessment Sub-Committee.

### 3. Local Resolution

- (i) Local resolution is not an alternative to reporting the allegation to the Assessment Sub-Committee, but can avoid the necessity of a formal local investigation.
- (ii) Where the Monitoring Officer is of the opinion that there is the potential for local resolution, he/she 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 could be satisfied by such apology or other remedial action. The Monitoring Officer should then report to the Assessment Sub-Committee as required, and at the same time report the response of the member concerned and of the complainant. Where the member has acknowledged that his/her conduct was inappropriate, and particularly where the complainant would be satisfied with the proffered apology or remedial action, the Assessment Sub-Committee shall take that into account when considering whether the matter merits investigation.

### 4. Review of Decisions not to Investigate

- (i) Where the Assessment 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.
- (ii) 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 Assessment Sub-Committee in respect of the

matter, the summary of the Assessment Sub-Committee and any additional relevant information which has become available prior to the meeting of the Review Sub-Committee.

5. Local Investigation

- (i) It is recognised that the Monitoring Officer will not personally conduct a formal local investigation.
- (ii) It will be for the Monitoring Officer 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.



## **Criteria for decisions by the Assessment Sub-Committee and the Review Sub-Committee**

### **Initial tests**

1. Before assessment of a complaint begins, the Assessment Sub-Committee or Review Sub-Committee should be satisfied that the complaint meets the following tests:
  - (a) it is a complaint against one or more named members of the District Council or a Parish or Town Council within the Rother area;
  - (b) the named member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
  - (c) the complaint, if proven, would be a breach of the Code under which the member was operating at the time of the alleged misconduct.
2. 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 further action will be taken in respect of the complaint.
3. If the complaint passes these tests, the Assessment Sub-Committee or Review Sub-Committee will go on to consider whether to take no action, whether to refer the complaint for investigation, or whether refer it to the Monitoring Officer for other action.

### **Assessment criteria**

4. The Standards Committee has developed these criteria against which the Assessment Sub-Committee and the Review Sub-Committee assess new complaints and decide what action, if any, to take. The aim of these criteria is to reflect local circumstances and priorities, to be simple, clear and open, to ensure fairness for both the complainant and the subject member, and to protect the Sub-Committee members from accusations of bias. These criteria can be reviewed and amended as necessary but this will not be done during consideration of a matter.
5. In drawing up the assessment criteria, the Standards Committees has borne in mind
  - (a) the importance of ensuring that complainants are confident that complaints about member conduct are taken seriously and dealt with appropriately; and

- (b) that deciding to investigate a complaint or to take other action will cost both public money and the officers' and elected members' time. This is an important consideration as it is appropriate to take into account the public benefit in investigating complaints which are less serious, politically motivated, malicious or vexatious.

**Circumstances in which decisions may be to take no action or refer the complaint to another authority's Monitoring Officer**

6. In reaching their decisions on the action to be taken in relation to complaints, the Assessment Sub-Committee and the Review Sub-Committee will ask themselves the following questions and consider the following response statements:

**Q: Has the complainant submitted enough information to satisfy the Assessment Sub-Committee that the complaint should be referred for investigation or other action?**

If the answer is **no**: "The information provided was insufficient to make a decision as to whether the complaint should be referred for investigation or other action. So unless, or until, further information is received, the Assessment Sub-Committee is taking no further action on this complaint."

**Q: Is the complaint about someone who is no longer a member of the District Council or a Parish or Town Council within the Rother area, but is a member of another authority? If so, does the Sub-Committee wish to refer the complaint to the monitoring officer of that other authority?**

If the answer is **yes**: "Where the member is no longer a member of the District Council or a Parish or Town Council within the Rother area but is a member of another authority, the complaint will be referred to the standards committee of that authority to consider."

**Q: Has the same, or substantially similar, complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?**

If the answer is **yes**: "The matter of complaint has already been subject to a previous investigation or other action and there is nothing more to be gained by further action being taken."

**Q: Is the complaint about something that happened so long ago that there would be little benefit in taking action now?**

If the answer is **yes**: "The period of time that has passed since the alleged conduct occurred was taken into account when deciding whether this matter should be referred for investigation or further action. It was decided under the circumstances that further action was not warranted."

**Q: Is the complaint too trivial to warrant further action?**

If the answer is **yes**: "The matter is not considered to be sufficiently serious to warrant further action."

**Q: Does the complaint appear to be simply malicious, politically motivated or tit-for-tat or is the complainant in some other way to be regarded as a vexatious complainant (see below)?**

If the answer is **yes**: "The matter appears to be simply malicious, politically motivated, tit-for-tat or vexatious, and not sufficiently serious, and it was decided that further action was not warranted".

**Q: Is there any other good reason why no action should be taken in relation to the complaint?**

If the answer is **yes**: "The matter is not considered to warrant further action because [and state the reason]."

### **Circumstances in which decisions may be to take action short of investigation ("other action")**

7. When the Assessment Sub-Committee considers a new complaint, it can decide that other action to an investigation should be taken and it can refer the matter to the Monitoring Officer to carry this out. It may not always be in the interests of good governance to undertake or complete an investigation into an allegation of misconduct. The Assessment Sub-Committee must consult its Monitoring Officer before reaching a decision to take other action.
8. The suitability of other action is dependent on the nature of the complaint. Certain complaints that a member has breached the Code will lend themselves to being resolved in this way. They can also indicate a wider problem at the District Council or a Parish or Town Council within the Rother area. Deciding to deal pro-actively with a matter in a positive way that does not involve an investigation can be a good way to resolve matters that are less serious. Other action can be the simplest and most cost effective way of getting the matter resolved, helping the District, Parish or Town Council to work more effectively, and of avoiding similar complaints in the future.
9. The Assessment Sub-Committee can choose this option in response to an individual complaint or a series of complaints. The action decided upon does not have to be limited to the subject member or members. In some cases, it may be less costly to choose to deal with a matter in this way rather than through an investigation, and it may produce a more effective result.
10. It is not possible to set out all the circumstances where other action may be appropriate, but an example could be where the District, Parish or Town Council appeared to have a poor understanding of the Code and related procedures. Evidence for this may include:
  - (a) a number of members failing to comply with the same paragraph of the Code;

- (b) officers giving incorrect advice;
  - (c) failure to adopt the Code;
  - (d) inadequate or incomplete protocols for use of authority resources.
11. Other action may also be appropriate where a breakdown in relationships within the District, Parish or Town Council was apparent, evidence of which could include:
- a) a pattern of allegations of disrespect, bullying or harassment;
  - b) factionalised groupings within the Council;
  - c) a series of 'tit-for-tat' allegations;
  - d) ongoing employment issues, which may include resolved or ongoing employment tribunals, or grievance procedures.
12. The Assessment Sub-Committee is encouraged to consider other action on a practical basis, taking into account the needs of the Council. Everyone involved in the process will need to understand that the purpose of other action is not to find out whether the member breached the Code – the decision is made as an alternative to investigation. If the Monitoring Officer embarks on a course of other action, he should emphasise to the parties concerned that no conclusion has been reached on whether the subject member failed to comply with the Code.
13. Complaints that have been referred to the Monitoring Officer for other action should not then be referred back to the Assessment Sub-Committee if the other action is perceived to have failed. This is unfair to the subject member, and a case may be jeopardised if it has been discussed as part of a mediation process. There is also a difficulty with defining 'failure' in terms of the other action undertaken. The decision to take other action closes the opportunity to investigate and the Sub-Committee should communicate this clearly to all parties.
14. Accordingly the normal practice of the Assessment Sub-Committee will be to require the parties involved to confirm in writing that they will co-operate with the process of other action proposed before making the final decision to proceed. If it adopts this approach, the Assessment Sub-Committee will write to the relevant parties outlining:
- (a) what is being proposed;
  - (b) why it is being proposed;
  - (c) why they should co-operate;
  - (d) what the standards committee hopes to achieve.
15. Whatever approach to other action that the Assessment Sub-Committee adopts, it will ensure that all parties are clear about what is, and what is not, going to happen in response to the complaint.
16. The following are some examples of alternatives to investigation:
- (a) arranging for the subject member to attend a training course;

- (b) arranging for that member and the complainant to engage in a process of conciliation;
- (c) instituting changes to the procedures of the District, Parish or Town Council if they have given rise to the complaint.

**Circumstances in which decisions may be to refer the complaint to the Monitoring Officer for investigation**

17. If the Sub-Committee concludes that none of the above circumstances apply, it will refer the complaint to the Monitoring Officer for investigation, unless it considers that the circumstances warrant the referral of the complaint to the Standards Board for England (SBE), taking account of the criteria set out below.

**Circumstances in which decisions may be to refer the matter to the SBE**

18. There will sometimes be issues in a case, or public interest considerations, which make it difficult for the Assessment Sub-Committee to deal with the case fairly and speedily. In such cases, the Assessment Sub-Committee may wish to refer a complaint to the SBE to be investigated by an ethical standards officer.
19. The Assessment Sub-Committee will take the following matters into account in deciding which cases to refer to the SBE in the public interest:
- (a) Does the Sub-Committee believe that the status of the member or members, or the number of members about whom the complaint is made, would make it difficult for the Sub-Committee to deal with the complaint? For example, is the member a group leader, elected mayor/chairman or a member of the Council's cabinet or standards committee?
  - (b) Does the Sub-Committee believe that the status of the complainant or complainants would make it difficult for the Sub-Committee to deal with the complaint? For example, is the complainant a group leader, elected mayor/chairman or a member of the Council's cabinet or standards committee, the chief executive, the monitoring officer or other senior officer?
  - (c) Does the Sub-Committee believe that there is a potential conflict of interest of so many members of the Sub-Committee and the Standards Committee that it could not properly monitor the investigation?
  - (d) Does the Sub-Committee believe that 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?
  - (e) Is the case so serious or complex, or involving so many members, that it cannot be handled locally?
  - (f) Will the complaint require substantial amounts of evidence beyond that available from the District, Parish or Town Council's documents, its members or officers?

- (g) Is there substantial governance dysfunction in the Council or the Standards Committee?
- (h) Does the complaint relate to long-term or systemic member/officer bullying which could be more effectively investigated by someone outside the Council?
- (i) Does the complaint raise significant or unresolved legal issues on which a national ruling would be helpful?
- (j) Might the public perceive the Council to have an interest in the outcome of a case? For example if the Council could be liable to be judicially reviewed if the complaint is upheld.
- (k) Are there exceptional circumstances which would prevent the Council or its Standards Committee and Sub-Committees investigating the complaint competently, fairly and in a reasonable period of time, or meaning that it would be unreasonable for local provision to be made for an investigation?

### **Circumstances in which complaints may be withdrawn**

- 20. There may be occasions when complainants ask to withdraw their complaints prior to the Assessment Sub-Committee having made decisions on them. In these circumstances, the Assessment Sub-Committee will decide whether to grant such requests.
- 21. The Assessment Sub-Committee will take into account any reasons put forward by the complainant in connection with a request to withdraw and, without limiting its discretion, the Assessment Sub-Committee will have regard to the following considerations in particular:
  - (a) Does the public interest in taking some action on a complaint outweigh the complainant's desire to withdraw it?
  - (b) Is a complaint such that action can be taken on it, for example an investigation, without the complainant's participation?
  - (c) Is there an identifiable underlying reason for the request to withdraw a complaint? For example, is there information to suggest that the complainant may have been pressured by the subject member, or an associate of theirs, to withdraw the complaint?
- 22. If the Assessment Sub-Committee decides that these questions are answered in the affirmative, it is less likely to allow a complaint to be withdrawn.

### **Multiple and vexatious complaints**

- 23. Unfortunately, a small number of people abuse the complaints process. Vexatious or persistent complaints or complainants can usually be identified through the following patterns of behaviour, which may become apparent in the complaints process:

- (a) repeated complaints making the same, or broadly similar, complaints against the same member or members about the same alleged incident;
  - (b) use of aggressive or repetitive language of an obsessive nature;
  - (c) repeated complaints that disclose no potential breach of the Code;
  - (d) where it seems clear that there is an ulterior motive for a complaint or complaints;
  - (e) where a complainant refuses to let the matter rest once the complaints process (including the review stage) has been exhausted.
24. The Standards Committee's general policy is that people who make repetitive or vexatious complaints will be responded to in the ways set out in the Council's Corporate Complaints procedures. However, even where restrictions are placed on an individual's contact with the authority, the individual cannot be prevented from submitting a complaint. New allegations must still be considered as they may contain a complaint that requires some action to be taken.
25. Nevertheless, if the Assessment Sub-Committee has already dealt with substantially the same complaint by the same person and the Monitoring Officer does not believe that there is any new evidence, then any subsequent complaint will not be considered. The guiding principle is that the Sub-Committee will consider every new complaint that it receives in relation to the Code but it will not carry out more than one assessment and review into a complaint from the same person which is basically the same complaint.

### **Complaints about members of more than one authority**

26. This section deals with the issue relating to what should happen if a complaint is made against an individual who is a member of more than one authority – often known as a dual-hatted member.
27. In such cases, the member may have failed to comply with more than one authority's Code. For example, an individual who is a member of the Council and of the County Council could be the subject of complaints that they have breached the Codes of both authorities. As such, it would be possible for the Assessment Sub-Committees of both the authorities to receive complaints against the member.
28. Where a complaint is received about a dual-hatted member, the Monitoring Officer should check if a similar allegation has been made to the other authority, or authorities, on which the member serves.
29. Decisions on which Assessment Sub-Committee should deal with a particular complaint must then be taken by the Assessment Sub-Committees themselves, following discussion with each other. They may take advice as necessary from the SBE.

30. This will allow for a cooperative approach, including sharing knowledge and information about local circumstances, and cooperation in carrying out investigations to ensure resources are used effectively.

**Criteria for withholding from the subject member a summary of the complaint**

31. If the Assessment Sub-Committee decides to take no action over a complaint, then as soon as possible after making the decision it must give notice in writing of the decision and set out clearly the reasons for that decision. Where no potential breach of the Code is disclosed, the Assessment Sub-Committee must explain in the decision notice what the allegation was and why they believe this to be the case. This notice must be given to the relevant parties, ie the complainant, the subject member, and the Parish or Town Council's Clerk if the subject member is a Parish or Town Councillor.
32. If the Assessment Sub-Committee decides that the complaint should be referred to the Monitoring Officer or to the SBE, it must send a summary of the complaint to the relevant parties. It should state what the allegation was and what type of referral it made, for example whether it referred the complaint to the Monitoring Officer or to the SBE for investigation. The decision notice must not explain why a particular referral decision has been made. However, after it has made its decision, the Assessment Sub-Committee does not have to give the subject member a summary of the complaint, if it decides that doing so would be against the public interest or would prejudice any future investigation.
33. This could happen where it is considered likely that the subject member may intimidate the complainant or the witnesses involved. It could also happen where early disclosure of the complaint may lead to evidence being compromised or destroyed.
34. The Assessment Sub-Committee should take advice from the Monitoring Officer in deciding whether it is against the public interest to inform the subject member of the details of the complaint made against them. It should also take advice from the Monitoring Officer in deciding whether informing the subject member of the details of the complaint would prejudice a person's ability to investigate it.
35. The Monitoring Officer will need to help the Assessment Sub-Committee to consider the potential risks to the investigation. This is to determine whether the risk of the case being prejudiced by the subject member being informed of the details of the complaint at that stage may outweigh the fairness of notifying the subject member.
36. The Assessment Sub-Committee can use its discretion to give limited information to the subject member if it decides this would not be against the public interest or prejudice any investigation. Any decision



to withhold the summary must be kept under review as circumstances change.

### **Confidentiality of the Complainant**

37. As a matter of fairness and natural justice, a member should usually be told who has complained about them. However, there may be instances where the complainant asks for their identity to be withheld. Such requests should only be granted in exceptional circumstances and at the discretion of the Sub-Committee. The Sub-Committee should consider the request for confidentiality alongside the substance of the complaint itself.
38. The criteria by which the Sub-Committee will consider requests for confidentiality will include the following:
  - (a) The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed;
  - (b) The complainant is an officer who works closely with the subject member and they are afraid of the consequences to their employment or of losing their job if their identity is disclosed (this should be covered by the authority's whistle-blowing policy);
  - (c) The complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed. In such circumstances, the Sub-Committee may wish to request medical evidence of the complainant's condition.
39. In certain cases, such as allegations of bullying, revealing the identity of the complainant may be necessary for investigation of the complaint. In such cases the complainant may also be given the option of requesting a withdrawal of their complaint.
40. When considering requests for confidentiality, the Sub-Committee will also consider whether it is possible to investigate the complaint without making the complainant's identity known.
41. If a Sub-Committee decides to refuse a request by a complainant for confidentiality, it may wish to offer the complainant the option to withdraw, rather than proceed with their identity being disclosed. In certain circumstances, the public interest in proceeding with an investigation may outweigh the complainant's wish to have their identity withheld from the subject member. The Sub-Committee will decide where the balance lies in the particular circumstances of each complaint.

### **Conflicts of Interest**

42. In certain situations, a Sub-Committee member might initially be involved with the assessment or review of a case that is then referred to the SBE or to the Monitoring Officer. The case might then be referred back to the Sub-Committee to consider again. In such

circumstances, the member may continue their participation in the assessment/review process.

43. However, Sub-Committee members who have been involved in decision making on the assessment of a complaint must not take part in the review of that decision. This is to minimise the risk of conflicts of interest and ensure fairness for all parties.
44. Standards Committee members involved in a complaint's assessment, or in a review can take part in any subsequent determination hearing. The purpose of the assessment decision or review is simply to decide whether any action should be taken on the complaint – either as an investigation or some other action. The Assessment and Review Sub-Committees make no findings of fact. Theoretically, therefore, a member involved at the assessment stage or the review stage may participate in a subsequent hearing, because a conflict of interest does not automatically arise. In practice, however, the perception that this duality of roles may create means that this should be the exception and not the norm.
45. The assessment/review processes must be conducted with impartiality and fairness. In some cases a member of the Standards Committee may be disqualified by law from being involved in a case, for example because of a personal and prejudicial interest under the Code. There will also be cases where it would not be appropriate for a member of the Standards Committee to be involved in the processes, even if not disqualified from doing so by law. A member of the Standards Committee should not participate in the processes on either Sub-Committee if he/she is
  - (a) a complainant,
  - (b) closely associated with someone who is a complainant,
  - (c) a potential witness or victim relating to a complaint or
  - (d) otherwise directly or indirectly connected with a complaint.