

TO: Standards Committee
DATE: 5th August 2008
SUBJECT: Establishing the New Regime
BY: Corporate Services Director and Monitoring Officer
Classification: Unrestricted.

Summary: The report sets out further details of actions required to establish the new regime for allegations/ Complaints of councillors failing to follow the Code of Conduct. Of necessity the report goes into some detail and length over the issues requiring decision. This is to show members how the thinking has developed from the original consultation, to the Regulations and onto the guidance issued by the Standards Board for England.

Members are asked to consider the following specific areas:

- Notification to the Member
- Local Resolution of Complaints
- Filtering out Irrelevant Complaints
- Assessment Criteria
- Pre-Investigation
- Access to meetings and decision making
- Public information about complaints received
- Notification following initial assessment
- Review of Initial Assessment
- Decision whether to conduct a local hearing
- Publicity for the new arrangements
- Confidentiality
- Member and officer conflicts of interest

Having done so Members are requested to agree the recommendations set out in decision required below

Implications:

Human Resources Implications: none at this stage

Finance Implications: none at this stage but resources will need to be kept under review dependent upon the number of investigations that need to be undertaken.

Legal Implications: the report takes account of the Regulations and the guidance issued by the Standards Board for England.

Crime & Disorder Implications (Section 17) none

Equalities & Diversity Implications: guidance and recommendations have regard to equalities and diversity legislation. The new approach is designed to make arrangements more locally accountable and more accessible to the local community. The approach is based on that adopted by the Standards Board for England and this has been subject to extensive consideration of equalities and diversity issues.

Sustainability Implications: none identified at this stage

Risk and Health and Safety Implications: covered, as appropriate, within the body of the report.

Corporate Plan Implications: The conduct of members is critical to the corporate governance of the authority and contributes to the council priority of becoming a high performing organisation and is reflected in the Use of Resources Assessment for 2008/09.

Decision Required: It is recommended that

1.5

a) The Monitoring Officer be instructed to 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 sending the agenda for the meeting of the Referrals Sub-Committee to members of that sub-committee,

b) Unless after consultation with the Chairman of the Standards Committee he considers it appropriate to defer notification in order to enable a proper investigation to take place, in which case notification should be made as soon as the reasons for the deferral no longer apply.

2.2

The Council adopt a local protocol as set out in the attached Appendix authorising the Monitoring Officer to seek such local resolution in appropriate cases and to incorporate reference to this within the operating framework of the Referrals sub Committee.

3.8

In considering complaints a short summary be agreed and that amongst other things it include:

- Whether the complaint is within jurisdiction**
- The paragraphs of the Code of Conduct the complaint might relate to, or the paragraphs the complainant has identified**
- A summary of key aspects of the complaint if it is lengthy or complex**
- Any other information that the officer has obtained to assist the sub committee with its decision**
- The option for officers to contact complainants for clarification if the document submitted is difficult to understand**

4.2

The assessment criteria set out in the attached Appendix be adopted as the operating framework for the Referrals Sub Committee

5.2

The Monitoring Officer be instructed as set out in the draft protocol attached, where practicable to obtain and inform the Referrals Sub-Committee of any publicly available information which would facilitate their task of determining whether a complaint merits investigation.

7.5

The Referrals and Review Sub-Committees should be recommended to hold its meetings in closed session.

8.3

The Standards Committee approve a protocol in the terms set out in the attached Appendix setting out the responsibilities and discretions of the Monitoring Officer in the provision or withholding of information relating to complaints.

10.4

Until further clarification is received that review criteria be adopted which relate to the bullet points set out in Para 10.3.

11.5

Rather than set up four different sub-committees, any functions of determining whether to accept the Monitoring Officer's finding of no breach, to go to a local hearing, or to refer the matter to a Case Tribunal should be delegated to a Hearings Sub-Committee.

12.2

The Monitoring Officer be delegated to take any action regarding further publicity once he has completed his further enquires of other authorities.

13.4

Guidelines on confidentiality be adopted based on the factors outlined in Para 13.2.

14.9 guidelines on member and officers conflicts of interest be adopted based on the factors outlined in Para 14.8.

A. Local Initial Assessment of Allegations of Misconduct by a Member

For decision and discussion

As we move towards the full implementation and responsibility for local initial assessment the Standards Board for England has issued a number of useful documents and guidance. This report sets out changes we need to address to meet these new requirements.

It is suggested that once Members have decided what actions they wish to take that these matters be brought together into a protocol, which can be incorporated into the Constitution and used as supplementary guidance on complaints raised under the Code of Conduct.

Notification to the Member

1.1 The Act 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 felt that there was a danger that the member might seek to lobby members of the Standards

Committee. It suggested that no notification be made until the Referrals Sub-Committee had come to a decision whether to investigate. However, I believe that we ought to acknowledge receipt of the allegation to the person making the allegation, advise them when it is going to be assessed, and there is nothing to prevent the person making the allegation from publicising that fact.

1.2 The aim and purpose of the new system is to engender confidence in local determination. It does not seem right if the Monitoring Officer was withholding notification to the member concerned when that member learned of the complaint from the person making the complaint or from the press.

1.3 Accordingly, it would be sensible for the Monitoring Officer to notify the member of receipt of the complaint. At the same time he can acknowledge receipt of the complaint to the person making the complaint. This should be done no later than sending the agenda out to members of the Referrals Sub-Committee, i.e. at least five clear working days before the meeting of the 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.

1.4 The DCLG 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. In my view, 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.

1.5 I recommend that:

- a) **The Monitoring Officer be instructed to 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 sending the agenda for the meeting of the Referrals Sub-Committee to members of that sub-committee,**
- b) **Unless after consultation with the Chairman of the Standards Committee he considers it appropriate to defer notification in order to enable a proper investigation to take place, in which case notification should be made as soon as the reasons for the deferral no longer apply.**

Local Resolution of Complaints

2.1 Investigations and hearings are expensive. There is no formal process for local resolution of complaints in the 2007 Act, although the Regulations may enable the Referrals Sub-Committee 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 Referrals 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 Referrals Sub-Committee may avoid the need for a local investigation and/or hearing. But equally, some members may take exception to the Monitoring Officer seeking such local resolution.

2.2 Accordingly, I recommend that the Authority should adopt a local protocol as set out in the attached Appendix authorising the Monitoring Officer to seek such local resolution in appropriate cases and to incorporate reference to this within the operating framework of the Referrals sub Committee as set out in section 4 below.

Filtering out Irrelevant Complaints

3.1 Standards Board experience has been that a large number of complaints received do not relate to the Code of Conduct for Members, and I would anticipate 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

3.2 The 2007 Act provides that the function of initial assessment of complaints must be conducted by the Standards Committee, or by a sub-committee. It 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) 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 Referrals Sub-Committee if the complainant insists that it be dealt with as a standards complaint.

3.3 As an example, where a complaint is addressed to the Monitoring Officer the guidance makes it clear that he/she should determine whether the complaint should be directed to the Referrals Sub Committee or whether another course of action is appropriate. If the complaint is clearly not about member conduct then the monitoring officer does not have to pass it to the Sub Committee.

3.4 A complaint may not necessarily be made in writing, for example it may be a concern raised with the monitoring officer verbally. In such cases the monitoring officer should ask the complainant whether they want to formally put the matter in writing to the standards committee. If not then the Monitoring Officer should consider the options for informal resolution to satisfy the complainant.

3.5 In all other cases, it will be necessary to report to the Referrals Sub-Committee and for the Referrals Sub-Committee to determine which of the following statutory options should apply:

- Refer the allegation to the Monitoring Officer for investigation;
- Refer the allegation to the Standard Board for England;
- Decide that no action should be taken in respect of the allegation, or
- 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.

3.6 It is important to stress that the purpose of the initial 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 Referrals and Appeals Sub Committees make no findings of fact.

3.7 In its guidance on pre assessment the Standards Board for England suggest that it would be appropriate for the monitoring officer, or other officer to prepare a short summary of the complaint for the Referrals sub committee.

3.8 I would recommend that this be agreed and that amongst other things it include:

- **Whether the complaint is within jurisdiction**
- **The paragraphs of the Code of Conduct the complaint might relate to, or the paragraphs the complainant has identified**
- **A summary of key aspects of the complaint if it is lengthy or complex**
- **Any other information that the officer has obtained to assist the sub committee with its decision**
- **The option for officers to contact complainants for clarification if the document submitted is difficult to understand**

3.9 N.B. pre assessment enquiries should not be carried out in such a way as to amount to an investigation. Contact should only be for the purposes of obtaining factual information

Assessment Criteria

4.1 Developing criteria – the following suggests a framework for assessment of complaints against established criteria; this will protect members from accusations of bias.

4.2 I would recommend that the assessment criteria set out in the attached Appendix be adopted as the operating framework for the Referrals Sub Committee

Pre-Investigation

5.1 The Referrals 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 can usefully check publicly available information between receipt of the complaint and the meeting of the Referrals Sub-Committee. The role-plays conducted by the Standards Board and others have demonstrated that such additional information can be very helpful.

5.2 Accordingly I recommend that the Monitoring Officer be instructed as set out in the draft protocol attached, where practicable to obtain and inform the Referrals Sub-Committee of any publicly available information which would facilitate their task of determining whether a complaint merits investigation.

Access to meetings and decision making

6.1 The new Regulations provide that information presented to the Referrals 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. The SBE Guidance goes further and states

Initial assessment decisions, and any subsequent review of decisions to take no further action on a complaint must be conducted in closed meetings. These are not subject to the notice and publicity requirements under Part 5 of the Local Government Act 1972.

6.2 As such a standards committee undertaking its role in the assessment or review of a complaint is not subject to the following rules:

- Rules regarding notices of meetings
- Rules on circulation of agendas and documents
- Rules over public access to meetings
- Rules over validity of proceedings

6.3 The Regulations set out what must be done after the referrals or review sub committee has considered a complaint. The new rules require a written summary to be produced which must include:

- The main points considered
- The conclusions on the complaint
- The reason for the conclusion

6.4 The written summary must have regard with SBE guidance and may give the name of the subject member unless doing so would not be in the public interest or would prejudice any subsequent investigation. It has to be available for public inspection for 6 years.

6.5 Accordingly, I recommend that the Referrals and Review Sub-Committees should be recommended to hold its meetings in closed session.

Public information about complaints received

7.1 Member requests for information under the Data Protection Act

Any person is entitled to request access to any personal information which the Authority holds in respect of him/her. Accordingly a 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 Referrals 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.

7.2 Freedom of Information Act

As FoI requests must be dealt with within 20 days, the Authority may need to respond to press and public requests before the Referrals Sub-Committee has met. I cannot state 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 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. 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.

7.3 I recommend that the Standards Committee approve a protocol in the terms set out in the attached Appendix setting out the responsibilities and discretions of the Monitoring Officer in the provision or withholding of information relating to complaints.

Notification following initial assessment

8.1 Where the Referrals 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.

8.2 There is no such requirement for a decision to investigate or to refer a complaint to the Standards Board for England, but as a matter of policy clearly such notification should be given unless there were exceptional circumstances where such disclosure might impede proper investigation.

8.3 The first point is that, in taking a decision as to whether a complaint should be investigated, the Referrals and Review Sub-Committees will be required to state their reasons for each decision. The second point is that, in practice, it will not be the relevant sub-committee which will notify the complainant and the member, but rather the Monitoring Officer

Review of Initial Assessment

9.1 Where the Referrals 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. I await further guidance which, hopefully, will define whether this is to be a complete reconsideration of the matter, or whether it is merely to identify whether there is anything clearly wrong or unreasonable about the earlier decision, and whether the Review Sub-Committee can take account of additional information received after the initial decision. The Review Sub-Committee’s decision is then notified to the complainant, who then has no further recourse other than judicial review.

9.2 The SBE guidance is currently more process driven. It must be independent of the original decision and apply the same assessment criteria used for the initial assessment. It does however refer to 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 it is likely to be more appropriate to pass this to the Referrals sub committee to be handled as a new complaint.

9.3 Reviews are likely to be more appropriate where a complainant wishes to challenge that:

- Not enough emphasis has been given to a particular aspect of the complaint
- There has been a failure to follow any published criteria
- There has been an error in procedures

9.4 I would recommend that until further clarification is received that review criteria be adopted which relate to the bullet points above.

Decision whether to conduct a local hearing

10.1 Where the Monitoring Officer's investigation concludes that there has not been a failure to observe the Code of Conduct, the Regulations provide for the Monitoring Officer's report to come before the Standards Committee (or a sub-committee of the Standards Committee) which then decides whether it accepts that conclusion, or whether it wishes to conduct a formal hearing. This procedure remains as before.

10.2 Where the Monitoring Officer's investigation concludes that there has been a failure to observe the Code of Conduct, the old Regulations provided for the matter to proceed directly to a local hearing. If the Hearings Sub-Committee decided that it could not fairly hear the matter or that the matter was so serious that it would merit more than the maximum 3 months suspension, the Hearings Sub-Committee could request the Standards Board to take the matter back and direct it to a national Case Tribunal for hearing.

10.3 The new Regulations add in another step. So, the Monitoring Officer's report now has to be reported to the Standards Committee, or a sub-committee, which can only decide to send it for a local hearing or to send it to a Case Tribunal. Given that the maximum local sanction is now increased to six months' suspension, and the Monitoring Officer has the opportunity to refer the matter to the Standards Board at any stage prior to the completion of the investigation, the number of matters which will require to be referred to the Case Tribunal by the sub-committee is going to be very limited.

10.4 However, the new Regulations require that a meeting of this sub-committee is held to consider the report and take this decision before the actual hearing can be arranged. Once the decision has been taken for a local hearing, the Monitoring Officer will then undertake the pre-hearing process, and a Hearings Sub-Committee will then conduct the hearing. Whilst I accept that there is an argument that membership of the sub-committee which considers the Monitoring Officer's report, without any response from the member concerned, and decides to proceed to local hearing could prejudice the members of the sub-committee in the subsequent hearing, it is simply impractical to populate four separate sub-committees.

10.5 Rather than set up four different sub-committees, I recommend that any functions of determining whether to accept the Monitoring Officer's finding of no breach, to go to a local hearing, or to refer the matter to a Case Tribunal should be delegated to a Hearings Sub-Committee.

Publicity for the new arrangements

11.1 DCLG have suggested that the Regulations should 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. SBE guidance requires a notice being published detailing where Code of Conduct complaints should be sent to. I have already arranged for information to be placed on the website and in the council's summer publication of Inside Swale. I propose to consult with other neighbouring authorities before deciding whether any further action is required.

11.2 I would recommend that the Monitoring Officer be delegated to take any action regarding further publicity once he has completed his further enquires of other authorities.

Confidentiality

12.1 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 that their identity be withheld. Such exceptions should only be granted in exceptional circumstances and is a matter of discretion of the Referrals Sub Committee. Any request for confidentiality should be considered alongside the substance of the complaint itself.

12.2 I would propose the following criteria to be considered:

- The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed
- 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 is covered by the council's whistle blowing policy)
- The complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed (medical evidence would be required)

12.3 In exercising its discretion the sub committee will consider whether it is possible to investigate the complaint without making the complainant's identity known. If the Sub committee declines a request for confidentiality it will offer the complainant the opportunity to withdraw the complaint.

12.4 I recommend that guidelines on confidentiality be adopted based on the factors outlined above.

Member and officer conflicts of interest

13.1 The following is specific to consideration of matters arising under the referrals process. The Code does of course continue to apply to all members so personal conflicts giving rise to prejudicial interests would automatically prevent the member from being involved with a complaint.

13.2 We have set up the various sub committees to ensure that members can be part of the committee that hears and determines the complaint at the conclusion of any investigation where they were involved in:

- The initial assessment decision
- A referral back for another assessment decision
- A review of an assessment decision

13.3 The assessment decision relates only to whether the complaint discloses something that needs to be investigated or referred for other action. It does not determine whether the conduct took place or whether it was a breach of the Code.

13.4 To ensure that the process is conducted with impartiality and fairness it will not be appropriate for a member to be involved where the member is:

- A complainant
- Anyone directly associated with the complainant
- A potential witness or victim relating to a complaint

13.5 Decisions made in the referrals and review sub committees should not be influenced by anything other than the papers and advice put before members. No discussion should take place outside the official meetings.

13.6 An officer who has previously advised a subject member or complainant about the issues giving rise to a complaint should consider whether they can properly take part in the assessment process. The officer should also consider whether they should stand aside due to their prior involvement, which may be such that others involved may view them as biased.

13.7 If an officer has taken part in supporting the assessment or hearing process they should not be involved in the investigation.

13.8 I would propose the following criteria to be considered on when a member or officer should not take part in the assessment of a complaint because of personal interests:

- The complaint is likely to affect the well-being or financial position of a friend, family member or person with whom they have a close association
- The member or officer is directly or indirectly involved in the case in any way.
- A family member, friend or close associate of the member or officer is involved in the case.
- The member or officer has an interest in any matter relating to the case.

13.9 I recommend that guidelines on member and officers conflicts of interest be adopted based on the factors outlined above

Cost Implications

14.1 Overall, the change has meant a larger Standards Committee, with more sub-committees, and potentially more meetings. It will require the Monitoring Officer and his/her 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. Even minor ones are estimated to cost between £6000 and £8000.

14.2 Under the legislation, even where complaints relate to the conduct of Parish or Town Councillors, it is this Authority which bears the full cost of investigations and hearings. There are therefore potentially very substantial cost implications, but the actual costs will depend upon whether any complaints of misconduct are received. There is not additional Central Government funding being provided as a result of this change.

14.3 I covered this in my original report to the Executive and suggested that this form part of a six monthly review of the new arrangements.

For information

B. Guidance Issued by Standards Board for England

B.1 The Standards Board for England has issued the following guidance, attached for information and future reference:

- How to conduct an investigation – this is a guide for monitoring officers designed to assist anyone delegated to investigate allegations of misconduct. It is intended to follow this guidance, where appropriate and proportionate, in
 - Planning the investigation
 - Seeking documentary evidence
 - Conducting interviews
 - Drafting reports
 - Producing and referencing the bundle of evidence
 - Considering issues of confidentiality
 - Considering complaints about the investigation
 - Advising on whether other action is more appropriate

- Local investigations and other action – it is intended to use this guidance to supplement the guidance framework and protocol adopted by the Committee. It will cover:
 - Conflicts of interest
 - Conducting investigations
 - Reports
 - Delegation of investigations
 - Other action

C Quarterly return to Standards Board for England

C1. For the period 8th May to 30th June there were no complaints received and a nil return was made to the Standards Board for England.

Author - Ext. Mark Radford, Corporate Services Director and Monitoring Officer

Date Tuesday, 08 July 2008

Ext: 7368

List of background documents -

Standards Board for England Guidance on:

- a) Local Assessment of complaints
- b) Local Investigations and other action
- c) How to conduct an investigation

Appendix

Monitoring Officer Protocol

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

1 Receipt of Allegations

- a. The Monitoring Officer shall set up arrangements within the Authority to secure that any allegation made in writing that a member of the Authority has or may have failed to comply with the Authority's Code of Conduct is referred to him/her immediately upon receipt by the Authority.
- b. The Monitoring Officer shall maintain a register of such allegations to ensure that the Authority can comply with its obligations under the relevant legislation.
- c. Complaints shall only be entertained where they are signed by the complainant, but the Monitoring Officer is authorised to maintain the confidentiality of the identity of the complainant where and for so long as in his/her opinion that would be in the public interest.

b) Notification of Receipt of Allegations

- a. All relevant allegations must be assessed by the Referrals Sub-Committee, so the Monitoring Officer has no authority to deal with an allegation which appears to be an allegation of failure by a relevant member to observe the Code of Conduct other than by reporting it to the Referrals Sub-Committee. The Monitoring Officer shall therefore determine whether the allegation appears to be a substantive allegation of misconduct. Where it appears not to be, he/she shall ensure that the matter is dealt with under a more appropriate procedure, for example where it is really a request for service from the Authority, a statement of policy disagreement, a legal claim against the Authority or a complaint against an officer of the Authority.
- b. Following receipt of the allegation, and where the allegation does appear to be a complaint of misconduct against a relevant member, the Monitoring Officer will promptly, and in any case in advance of the relevant meeting:
 - i. Acknowledge to the complainant receipt of the allegation and confirm that the allegation will be assessed by the Referrals Sub-Committee at its next convenient meeting;
 - ii. Notify the member against whom the allegation is made of receipt of the complaint, together with a written summary of the allegation, and state that the allegation will be assessed at the next convenient meeting of the Referrals Sub-Committee. However, where the Monitoring Officer is of the opinion that such notification would be contrary to the public interest or would prejudice any person's ability to investigate the allegation, he/ shall consult the Chairman of the Standards Committee, or in his/her absence the Vice Chairman of the Standards Committee, and may then decide that no such advance notification shall be given;

- iii. Collect such information as is readily available and would assist the Referrals Sub-Committee in its function of assessing the allegation;
- iv. Seek local resolution of the matter where practicable, in accordance with Paragraph 3 below;
- v. Place a report, including a copy of the allegation, such readily available information and his recommendation as to whether the allegation discloses an apparent failure to observe the Code of Conduct, on the agenda for the next convenient meeting of the Referrals Sub-Committee.

c) Local Resolution

- a. Local resolution is not an alternative to reporting the allegation to the Referrals Sub-Committee, but can avoid the necessity of a formal local investigation.
- b. Where the Monitoring Officer is of the opinion that there is the potential for local resolution, he shall approach the member against whom the allegation has been made and ask whether he/she is prepared to acknowledge that his/her conduct was inappropriate, and whether he/she would be prepared to offer an apology or undertake other appropriate remedial action. With the consent of the member concerned, the Monitoring Officer may then approach the complainant and ask whether the complainant is satisfied by such apology or other remedial action. The Monitoring Officer should then report to the Referrals Sub-Committee as required, and at the same time report the response of the member concerned and of the complainant. The idea is that, where the member has acknowledged that his/her conduct was inappropriate, and particularly where the complainant is satisfied with the proffered apology or remedial action, the Referrals Sub-Committee might take that into account when considering whether the matter merits investigation.

d) Review of Decisions not to Investigate

- a. Where the Referrals Sub-Committee has decided that no action be taken on a particular matter, the Monitoring Officer shall promptly advise the complainant of the decision, and the complainant may then within 30 days of receipt of such notification request that the Review Sub-Committee review that decision.
- b. Whilst the review shall normally be a review of the reasonableness of the original decision rather than a reconsideration, the Monitoring Officer shall report to the Review Sub-Committee the information which was provided to the Referrals Sub-Committee in respect of the matter, the summary of the Referrals Sub-Committee and any additional relevant information which has become available prior to the meeting of the Review Sub-Committee.

e) Local Investigation

- a. It is recognised that the Monitoring Officer will not personally conduct a formal local investigation.
- b. It will be for the Monitoring Officer, where appropriate after consultation with the Chairman of the Referrals Sub-Committee, to determine who to instruct to conduct a formal local investigation, and this may include

another senior officer of the Authority, a senior officer of another authority or an appropriately experienced consultant.

Assessment Criteria

General

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

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

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

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

Specific

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

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

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

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

Trivial complaints – if the complaint is considered to be trivial then the

complainant will be notified that it was not considered sufficiently serious to warrant further action.

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

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

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

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

Initial assessment decisions

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

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

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

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

outside the authority

- Any significant legal issues that would benefit from a national ruling
- Any exceptional circumstances

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

- A number of members failing to comply with the same paragraph of the Code
- Officers giving incorrect advice
- Failure to adopt the Code
- Inadequate or incomplete protocols for use of authority resources
- Where there is a breakdown in relationships within the authority

It should be noted that this approach is an alternative to investigation and no conclusion will be reached on whether the subject member failed to comply with the Code.

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

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

The following are some examples of alternatives to investigation

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

Any decision to take no action will have regard to the assessment criteria set out. There has to be a potential breach of the code for any action to be considered.