

Southend-on-Sea Borough Council

Report of Corporate Director of Support Services
to
Standards Committee
on
24th July 2008

Report prepared by: John Williams,
Head of Legal & Democratic Services

Agenda
Item No.

4

The Local Assessment of Complaints against Members

A Part 1 Agenda Item

1. Purpose of Report

This report sets out proposals for the establishment of 3 Sub-Committees and the introduction of Rules of Procedure to deal with the Local Assessment of Complaints against Members and co-opted Members of the Council and Leigh-on-Sea Town Council. It is based upon guidance issued by the Standards Board for England.

2. Recommendations

- 2.1 To agree the establishment of 3 Sub-Committees of the Standards Committee; the Assessment Sub-Committee, the Review Sub-Committee and the Hearing Sub-Committee with the terms of reference at **Appendix 1**.
- 2.2 To agree the "Complaints Against Members Rules" in **Appendix 2** as a replacement Part 4(i) of the Constitution comprising:
 - New Rules of Procedure for Assessment & Review of Complaints against Members
 - Revised Procedure for Local Investigations
 - Revised Hearing Procedure Rules
- 2.3 To endorse the arrangements for dealing with Complaints against Members at **Appendix 3**, which has been publicised.

3. Background

- 3.1 From May 2008 if any person wants to complain that a Member (or co-opted Member) has breached the Code of Conduct, then that complaint (which must be in writing) will in the first instance be considered by the Council's Standards Committee. Complaints against Leigh-on-Sea Town Council Members are dealt with in the same way. The law requires that the 3 Standards Sub-Committees are established to deal with the new local assessment regime.
- 3.2 On 15th May 2008 the Council agreed new terms of reference for the Standards Committee to meet the requirements of the Local Government & Public Involvement in Health Act 2007 and the Standards Committee (England) Regulations 2008. The relevant part of the report and minute 16.8 are attached at **Appendix 4**.
- 3.3 In particular it is now for the Standards Committee:
- (a) To establish 3 Sub-Committees to deal with the assessment, review and determination of complaints against Members.
 - (b) To agree "Rules of Procedure for Assessment and Review of Complaints against Members" to be inserted in Part 4(i) of the Constitution.
 - (c) To revise the "Procedure for Local Investigations" and "Hearing Procedure Rules" in Part 4(i) of the Constitution to reflect the new legislation.
- 3.4 The Standards Board for England has issued extensive guidance about the Local Assessment of Complaints, Local Investigations and the role and make up of Standards Committees. This guidance has been taken into account in producing this report. Copies of this guidance has been provided to Members of the Standards Committee and can be made available to other Members on request:
- (a) Making a Complaint – Standards Board Leaflet explaining new procedures
 - (b) The Role & Make-up of Standards Committees (May 2008)
 - (c) Local Assessment of Complaints (June 2008)
 - (d) Local Assessment of Complaints Toolkit (May 2008)
 - (e) Local Investigations and other Actions (June 2008)
 - (f) How to conduct an investigation (June 2008)
 - (g) Conducting an Investigation Toolkit (June 2008)
- 3.5 Proposed Terms of Reference for the 3 new Sub-Committees are attached at **Appendix 1**.

3.6 Proposed new Rules of Procedure for Assessment and Review of Complaints Against Members are attached at Appendix 2.

These Rules include provisions covering the following matters:

- Assessment Criteria (see 3.7 below);
- Policies for dealing with vexatious, persistent and anonymous complaints;
- Other Action (see 3.8 below)
- Requests for confidentiality;
- The withdrawal of complaints (see 3.9 below);
- Conflict of interest guidelines

3.7 Assessment Criteria

The Standards Committee must adopt criteria against which it assesses new complaints and decides what action, if any, to take. The criteria should reflect local circumstances and priorities and be simple, clear, open and fair. Assessment Criteria can be reviewed and amended as necessary but not during consideration of a matter. In drawing up the criteria the Committee should bear in mind:

- (a) The importance of complainants being confident that complaints against Members are being taken seriously and dealt with appropriately.
- (b) That an investigation or other action will cost both public money and members and officers' time. This is important where the matter is relatively minor.
- (c) The public benefit in investigating complaints which are less serious, politically motivated, malicious or vexatious.

The Guidance suggests that in developing Assessment Criteria the Standards Committee may wish to ask itself the following questions:

- (a) Has the complainant submitted sufficient information to satisfy the Assessment Sub-Committee that the complaint should be referred for investigation or other action?
- (b) Has the complaint already been the subject of an investigation or other action relating to the Code or the subject of an investigation by another regulatory authority?
- (c) Is the complaint about something that happened so long ago that there would be little benefit in taking action now?
- (d) Is the complaint too trivial to warrant further action?
- (e) Does the complaint appear to be simply malicious, politically motivated or tit for tat?

The Assessment Criteria should be made publicly available and they have been included in the notes attached to the Complaints Form.

Section 1.4 of the Rules of Procedure for Assessment & Review of Complaints against Members incorporate the Assessment Criteria applied by the Standards Board to complaints received by them – these have been amended to apply to this Council. It is recommended that the Committee adopts these criteria and amend them as a later stage if necessary once further experience has been gained.

3.8 Other Action

An option available to the Assessment Sub-Committee is to refer a complaint to the Monitoring Officer for other action – rather than for an investigation e.g. that Member attending training. Other action might be simpler and less costly and a more appropriate response to a complaint. Complaints referred for other action should not then be referred back to the Standards Committee as this could be unfair to the Member and a case may be jeopardised if it has been discussed as part of a mediation process.

Paragraph 1.5 of the Rules of Procedure for the Assessment & Review of Complaints includes a requirement for parties involved to confirm in writing that they will co-operate with other action.

3.9 Requests for Confidentiality

Another matter for consideration is confidentiality. There may be instances where the complainant asks for the identity to be withheld. Such requests should only be granted in exceptional circumstances and at the discretion of the Assessment Sub-Committee. The request should be considered alongside the complaint itself and the criteria are set out at paragraph 1.11 of the Rules of Procedure for Assessment & Review of Complaints against Members.

3.10 Revisions to the existing “Procedure for Local Investigations” and the “Hearing Procedure Rules” in Part 4(i) of the Constitution are also set out in **Appendix 2**.

The Procedures for Local Investigations have been substantially reduced to simply cross-reference the latest Standards Board Guidance and the relevant legislation, which have overtaken the original Procedures.

The Hearing Procedure Rules have only been amended slightly to reflect the new Local Assessment regime.

3.11 The new arrangements for dealing with Complaints against Members have, or will shortly be, publicised:

- (a) On the Internet/Intranet
- (b) In the Council's Complaints Procedure booklet

Attached at **Appendix 3** are details of these arrangements which appear on the Website, together with a Complaint Form (with Information for Potential Complaints) for the Committee to endorse.

4. Corporate Implications

4.1 Contribution to Council's Vision & Critical Priorities Excellent Council

4.2 Financial Implications

The costs of dealing with Complaints against Members under the new regime are not known at the present time, but could be significant depending on the number of complaints received.

4.3 Legal Implications

Guidance has been issued by the Standards Board for England and this report is based on that Guidance. Any risk is therefore minimal if this report is adopted.

4.4 People Implications

There are no HR implications provided that the framework to assess complaints is clear and transparent. Issues surrounding confidentiality and potential conflict of interest are dealt with in the report.

4.5 Property Implications

None

4.6 Consultation

None

4.7 Equalities Impact Assessment

A local Assessment Framework which is transparent, clear and fair and is published assists in equality or treatment. Any risk is therefore minimal.

4.8 Risk Assessment

N/A

4.9 Value for Money

N/A

4.10 Community Safety Implications

N/A

4.11 Environmental Impact

N/A

5. Background Papers

Standards Board for England Guidance (see paragraph 3.4)

6. Appendices

Appendix 1 – Terms of Reference of the 3 Standards Sub-Committees

Appendix 2 – Revised Part 4(i) of the Constitution

Appendix 3 – Published details of arrangements for dealing with Complaints against Members

Appendix 4 – Extract from report to Council on 15th May 2008 re Standards Committee etc and relevant Minute

Terms of Reference of Standards Sub-Committees

Assessment Sub-Committee

1. Membership

3 Members of the Standards Committee, including at least one independent member, who will Chair the Sub-Committee.

The Sub-Committee will be appointed by the Head of Legal & Democratic Services after consultation with the Chairman of the Standards Committee, from Members of the Standards Committee subject to Members availability and ensuring compliance with the legal requirements on the make up of the Sub-Committee.

The Sub-Committee should include one of the Members of Leigh-on-Sea Town Council when the complaint is about a Town Councillor.

2. Quorum

3

3. Terms of Reference

To make an initial assessment of any allegation that a Member or co-opted member of Southend-on-Sea Borough Council or Leigh-on-Sea Town Council has failed or may have failed to comply with the Code of Conduct.

[Note: The Sub-Committee shall carry out these duties in accordance with the Complaints Against Members Rules in Part 4(i) of the Constitution.]

4. Status of Meetings

Private

5. Reports to

Standards Committee

Review Sub-Committee

1. Membership

3 Members of the Standards Committee, including at least one independent member, who will Chair the Sub-Committee.

The Sub-Committee will be appointed by the Head of Legal & Democratic Services after consultation with the Chairman of the Standards Committee, from Members of the Standards Committee subject to Members availability and ensuring compliance with the legal requirements on the make up of the Sub-Committee when the complaint is about a Town Councillor.

The Sub-Committee should include one of the Members of Leigh-on-Sea Town Council.

The Sub-Committee shall not include any Members of the Assessment Sub-Committee whose initial decision that no action should be taken on an allegation is being reviewed.

2. Quorum

3

3. Terms of Reference

Where requested to do so by the person making the allegation, to review a decision of an Assessment Sub-Committee that no action should be taken in respect of allegation that a Member or co-opted member of Southend-on-Sea Borough Council or Leigh-on-Sea Town Council has failed or may have failed to comply with the Code of Conduct.

[Note: The Sub-Committee shall carry out these duties in accordance with the Complaints Against Members Rules in Part 4(i) of the Constitution.]

4. Status of Meetings

Private

5. Reports to

Standards Committee

Hearing Sub-Committee

1. Membership

3 Members of the Standards Committee, including at least one independent member, who will Chair the Sub-Committee.

The Sub-Committee will be appointed by the Head of Legal & Democratic Services after consultation with the Chairman of the Standards Committee, from Members of the Standards Committee subject to Members availability and ensuring compliance with the legal requirements on the make up of the Sub-Committee when the complaint is about a Town Councillor.

The Sub-Committee should include one of the Members of Leigh-on-Sea Town Council.

2. Quorum

3

3. Terms of Reference

To conduct Hearings and make determinations in respect of complaints against Members.

[Note: The Sub-Committee shall carry out these duties in accordance with the Complaints Against Members Rules in Part 4(i) of the Constitution.]

4. Status of Meetings

Private

5. Reports to

Standards Committee