

REVIEW OF LOCAL ASSESSMENT OF COMPLAINTS

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Summary and Recommendation:

Asks the Committee to review the procedure for Local Assessment of Complaints in the light of the first case.

1. INTRODUCTION

- 1.1 This Committee agreed a set of procedures at its meeting in June to implement the regime for local assessment, review and determination of complaints against elected Members under the Local Government and Public Involvement in Health Act 2007.

2 REVIEW

- 2.1 Since the procedures were agreed, the first case has been received and an Assessment Sub Committee has been convened and a decision made on the complaint.
- 2.2 It has always been accepted that the new procedures would need to be reviewed and if necessary changed or fine-tuned in the light of operational experience. The Standards Committee are therefore invited to consider the Assessment Procedure (attached) in the light of our experience of the first case, and decide if any changes or refinements are needed.

List of Appendices

A) Assessment Procedure

List of Background Documents:

Standards Committee (England) Regulations 2008
Standards Board Guidance

CHECKLIST FOR DEALING WITH KEY ISSUES

Please confirm against the issue if the key issues below have been addressed. This can be by either a short narrative or quoting the paragraph number in the report in which it has been covered.

Impact on Crime and Disorder	Not applicable.
Impact on Sustainability	Not applicable.
Impact on Rural Proofing	Not applicable.
Health and Safety Implications	None
Impact on Equality and Diversity Issues	Not applicable.
Children and Young Persons Implications	Not applicable.
Human Rights Act Implications	Not applicable.

COPELAND BOROUGH COUNCIL STANDARDS COMMITTEE

PROCEDURE FOR THE INITIAL ASSESSMENT OF COMPLAINTS OF BREACH OF THE CODE OF CONDUCT

Introduction

1. This procedure applies when a complaint is received that a Borough Councillor, Co-opted Member or Parish Councillor has or may have failed to comply with the relevant Code of Conduct.
2. The person making the complaint will be referred to as the complainant and the person against whom the complaint is made will be referred to as the subject member.
3. The procedure will also apply if a complaint is referred back to the Standards Committee by the Standards Board for England.
4. No Member or officer will participate in any stage of the assessment process if they have any personal conflict of interest in the matter.

Assessment Sub-Committee

5. Upon receipt of a complaint that a Borough Councillor, Co-opted Member or Parish Councillor has or may have failed to comply with the Code of Conduct, the Monitoring Officer will liaise with the Democratic Services Manager or his representative to convene as soon as possible and in any event within 20 working days a meeting of an Assessment Sub-Committee.
6. The Assessment Sub-Committee will comprise three members of the Standards Committee, including an Independent Member who will act as Chairman. Where the complaint relates to a Parish Councillor, the Assessment Sub-Committee will include a parish member of the Standards Committee. The Sub-Committee will be convened on an ad hoc basis, and members will be appointed by the Democratic Services Manager or his representative on a rotational basis, taking account of availability, and on the basis that so far as possible the Assessment Sub-Committee will not include a Borough Councillor of the same group as the Subject Member or the Complainant.
7. The Assessment Sub-Committee will be advised by the Monitoring Officer, the Deputy Monitoring Officer or another senior officer appointed by the Monitoring Officer.
8. The purpose of the Assessment Sub-Committee will be to decide whether any action should be taken on the complaint – either as an investigation or some other action. The Assessment Sub-Committee will not make any findings of fact.
9. The Assessment Sub-Committee will receive in advance of the meeting a copy of the complaint, together with a report prepared by the Monitoring Officer or his representative which will set out the following details:
 - Whether the complaint is within the jurisdiction of the Standards Committee
 - The paragraphs of the Code of Conduct the complaint might refer to, or the paragraphs the complainant has identified
 - A summary of key aspects of the complaint if it is lengthy or complex

- Any further information that the officer has obtained to assist the Assessment Sub-Committee with its decision. This may include minutes of meetings, a copy of a member's entry in the register of interests, information from Companies House or the Land Registry, or other easily obtainable documents
- Any clarification obtained by the officer from the complainant if the complaint was unclear

It should be noted, however, that pre-assessment inquiries will be limited, and will not be carried out in such a way as to amount to an investigation.

The Assessment Process

10. The Assessment Sub-Committee will first consider whether the complaint meets the following tests:

- The complaint is against one or more named members of the Borough Council or a parish council within Copeland Borough;
- The subject 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 subject member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests, then the decision of the Assessment Sub-Committee must be that no further action will be taken.

11. If the complaint meets the above tests, then the Assessment Sub-Committee will proceed to consider whether to refer it to the Monitoring Officer, to refer it to the Standards Board for England, or whether no action should be taken. In making its decision, the Sub-Committee will take account of the Assessment Criteria at Appendix 1, which have been approved by the Standards Committee, and which will from time to time be reviewed by the Committee.
12. The Assessment Sub-Committee will, unless there are exceptional circumstances, reach a decision within 20 working days of receipt of the complaint.
13. If the Assessment Sub-Committee decides to take no action over a complaint, then it will arrange for notice of that decision, including the reasons for it, to be given to the complainant, the subject member, and, if the subject member is a parish councillor, to the clerk to the relevant parish council. This will be done within 5 working days after the date of the meeting.
14. If the Assessment Sub-Committee decides to refer the complaint to the Monitoring Officer or to the Standards Board for England, it will arrange for a summary of the complaint to be sent to the complainant and the subject member stating what the allegation is, and the type of referral that has been made. This will be done within 5 working days after the date of the meeting.
15. However, the Assessment Sub-Committee may decide not to give the subject member a summary of the complaint if it considers that doing so would be against the public interest or would prejudice any future investigation. In considering this, the Sub-Committee will take advice from the Monitoring Officer, and will consider in particular whether it is likely that the subject member may intimidate the complainant or any witnesses involved or whether early disclosure of the complaint may lead to evidence being compromised or destroyed. The Sub-Committee will balance 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.

The Review Process

16. If the Assessment Sub-Committee decides not to take any action on a complaint, then the Complainant has a right to request a review of that decision, and will be so advised when notified of the decision.
17. When a request for review is received, the Monitoring Officer will liaise with the Democratic Services Manager or his representative to convene as soon as possible and in any event within 20 working days a meeting of a Review Sub-Committee.
18. The Review Sub-Committee will comprise three members of the Standards Committee, including an Independent Member who will act as Chairman. None of these Members will have been members of the Assessment Sub-Committee that considered the original complaint. Where the complaint relates to a Parish Councillor, the Review Sub-Committee will include a parish member of the Standards Committee. The Sub-Committee will be convened on an ad hoc basis, and members will be appointed by the Democratic Services Manager or his representative on a rotational basis, taking account of availability, and on the basis that so far as possible the Review Sub-Committee will not include a Borough Councillor of the same group as the Subject Member or the Complainant.
19. In addition to the documents referred to in paragraph 9 above, the Review Sub-Committee will have a copy of the Assessment Sub-Committee's decision notice, but will consider the complaint afresh, using the Assessment Criteria at Appendix 1. The Review Sub-Committee has the same decisions available to it as the Assessment Sub-Committee and will follow the procedure outlined above in paragraphs 10-15.
20. Where on a request for review further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint, the Review Sub-Committee will consider if it is more appropriate to pass this to an Assessment Sub-Committee as a new complaint. In this instance, the Review Sub-Committee will make a formal decision that the review request will not be granted.

Withdrawing Complaints

21. If a complainant asks to withdraw the complaint prior to the Assessment Sub-Committee having made a decision on it, the Assessment Sub-Committee will decide whether or not to grant the request. In making its decision, the Sub-Committee will consider:
 - Whether the public interest in taking some action on the complaint outweighs the Complainant's wish to withdraw it
 - Whether the complaint is such that action can be taken on it without the complainant's participation
 - Whether there is an identifiable underlying reason for the request to withdraw the complaint, and in particular whether there is any evidence that the Complainant may have been pressured by the subject member or other person to withdraw the complaint

Confidentiality

22. If a Complainant has asked for their identity to be withheld, this request will be considered by the Assessment Sub-Committee at the same time as it considers the complaint.
23. As a matter of fairness and natural justice, the subject member should usually be told who has complained about them. However, in exceptional circumstances, the Assessment Sub-Committee may grant confidentiality if it is satisfied that the Complainant has reasonable grounds for believing that they will be at risk of physical harm, or their employment will be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.
24. The Assessment Sub-Committee will also take into account whether it would be possible to refer the complaint without making the Complainant's identity known, and in particular whether the Complainant's participation would be required if the complaint were referred.
25. If the Assessment Sub-Committee decides to refuse a request from a Complainant for confidentiality, it may offer the Complainant the option to withdraw, rather than proceed with their identity being disclosed. The Assessment Sub-Committee will balance whether the public interest in taking action on a complaint may outweigh the complainant's wish to have their identity withheld from the subject member

Complaints about Members of more than one Authority

26. Where a complaint is received about a Borough or Parish councillor who is known to be a member of another authority, for example the County Council or police authority, the Monitoring Officer will before the meeting of the Assessment Sub-Committee establish whether a similar allegation has been made to the other authority. In the light of information from and in co-operation with the other authority, the Assessment Sub-Committee will consider which authority should deal with the complaint.