

Standards Committee

Council Chamber, Town Hall

22 May 2008 at 2:00pm

The Standards Committee deals with
the local code of conduct for councillors and
complaints against individual councillors.

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**COLCHESTER BOROUGH COUNCIL
STANDARDS COMMITTEE
22 May 2008 at 2:00pm**

Members

Mr Andrews (Independent Member)
Mr Coe (Independent Member)
Mr Farmer (Independent Member)
Mr Fitton (Independent Member)
Mr Roberts-Mee (Independent Member)
Councillor Chapman (Former Mayor)
Councillor Gamble (Former Mayor)
Councillor Spyvee (Deputy Mayor)
Mr Bartier (Parish Council Representative)
Mrs Brown (Parish Council Representative)
Ms Eden (Parish Council Representative)
(Chairman and Deputy Chair to be appointed at first meeting)

AGENDA - Part A

(open to the public including the media)

Members of the Public may wish to note that Agenda items 1 to 4 are normally brief

Pages

1. Election of Chairman

To Elect a Chairman for the forthcoming Municipal Year

2. Election of Deputy Chairman

To elect a Deputy Chairman for the forthcoming Municipal Year

3. Welcome and Announcements

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched to off or to silent;

- location of toilets;
- introduction of members of the meeting.

4. Urgent Items

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent and to give reasons for the urgency.

5. Declarations of Interest

The Chairman to invite Councillors to declare individually any personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

6. Minutes

1 - 2

To confirm as a correct record the minutes of the meeting held on 24 April 2008.

7. Local Assessment of Complaints Against Members // Update and Local Assessment Criteria

3 - 23

See report by the Monitoring Officer

8. Work Programme

24 - 26

To consider draft work programme for 2008/09 municipal year

24 - 26

9. Exclusion of the Public

In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

STANDARDS COMMITTEE

24 APRIL 2008

Present:- Mr S. Farmer (Independent Member)
Mr P. Fitton (Independent Member)
Mrs G. Brown (Parish Representative)
Councillor Gamble (The Mayor)
Councillor Gower (The Former Mayor)

In attendance:- Andrew Weavers, Monitoring Officer
Richard Clifford, Democratic Services Officer

11. Election of Chairman

RESOLVED that Mr P. Fitton be appointed as Chairman for the meeting.

12. Minutes

The minutes of the hearing held on 25 January 2008 and the meeting held on 4 February 2008 were confirmed as a correct record.

In relation to the recommendations made to Tiptree Parish Council by the Standards Committee at the hearing on 25 January 2008, it was noted that Tiptree Parish Council had submitted revised Standing Orders before 31 March 2008 and that the revised Standing Orders had been approved by the Chairman of the Standards Committee.

13. Local Assessment of Complaints Against Members

The Monitoring Officer presented a report updating the Committee on the timetable for the introduction of the new framework for the handling of complaints against local authority members and suggesting the creation of three sub-committees to deal with the local assessments of complaints.

The Monitoring Officer reported that the new framework would be introduced on 8 May 2008. However the guidance to support local authorities in the implementation and function of the new framework had not yet been published. Therefore the report set out the general structure but requested that delegated authority be given to the Chairman and Monitoring Officer to deal with the detail of the arrangements.

The Committee supported the proposals set out in the Monitoring Officer's report. The Committee discussed whether the Allegations Sub-Committee and the Allegations Appeals Sub-Committee should have five members, but considered that in view of the nature of the work and the considering the overall workload that the new system may impose on members of the Standards Committee that the membership of both these sub-committee should be three.

The Monitoring Officer explained that training on the new arrangements for all Councils in

Essex was scheduled for 12 May 2008. Colchester Borough Council would also be providing training on the new arrangements to its members.

RESOLVED that:-

- (i) Three Sub-Committees of the Standards Committee be established with effect from 1 May 2008, to be known respectively as the Allegations Sub-Committee, the Allegations Appeals Sub Committee and the Standards Hearing Sub Committee;
- (ii) The terms of reference of the Sub-Committees be as detailed at paragraph 3.5 of the Monitoring Officer's report;
- (iii) The Monitoring Officer in consultation with the Chairman be given delegated authority to make any subsequent or consequential changes required to the structure or terms of reference of the Standards Committee and/or Sub-Committees and the Standards Committee Procedure Rules in the light of the publication of the required Orders, Regulations and Standards Board Guidance;
- (iv) The Monitoring Officer be requested to ensure that processes were in place to ensure adequate and relevant training for members of the Committee, Borough Councillors and Parish Councils.



Standards Committee

Item
7

22 May 2008

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Local Assessment of Complaints Against Members // Update and Local Assessment Criteria		
Wards affected	Not applicable		

**This report updates the Committee on the conduct framework
and suggests local assessment criteria**

1. Decision(s) Required

- 1.1 To approve the recommendations numbered 1 to 13 contained in this report.
- 1.2 The Monitoring Officer be authorised to amend the Standards Committee Procedure Rules to reflect the changes contained in this report.

2. Establishing the New Regime

- 2.1 At its meeting on 24 April 2008 the Committee considered a report on a suggested way forward to enable the Council to meet the challenges of the new local assessment of complaints regime which came into force on 8 May 2008. The Committee agreed the formation of three Sub-Committees; namely the Allegations Sub-Committee, Allegations Appeals Sub-Committee and the Hearings Sub-Committee. This report deals with the more detailed issues in light of the subsequent Guidance issued by the Standards Board for England (SBE), which will be provided to members at the meeting.

2.2 From National to Local Assessment of Standards Complaints

Previously a complaint of misconduct by a member was submitted to the SBE, and the Referrals Unit of the SBE determined whether the allegation appeared to disclose a failure by a member to comply with the Authority's Code of Conduct, and then whether the allegation merited investigation. From 8 May 2008, all such complaints must now be made to the Standards Committee of the Authority concerned with a sub-committee of the Standards Committee deciding on whether the complaint should be investigated.

This report sets out what the changes will be to the system of handling complaints against members, and the issues which the Council needs to address in order to meet these new requirements. The new rules only apply to complaints received from 8 May 2008 onwards.

2.3 Terms of reference for Standards Committee

The Council at its meeting on 14 May 2008 approved revised terms of reference for the Standards Committee which took account of its revised responsibilities. These are attached to this report at Appendix 1. The Council in addition approved the revised membership of the Standards Committee which was previously reported to the 24 April meeting of the Committee.

3 Sub-Committees

- 3.1 Members will recall that the Local Government and Public Involvement in Health Act 2007 requires the Standards Committee to establish a sub-committee (the “Allegations Sub-Committee”) which will be required to undertake the initial assessment and decide whether a complaint shows an apparent failure to comply with the Code of Conduct for Members and, if so, whether that complaint merits investigation or other action. If the Allegations Sub-Committee decides to take no action in respect of an allegation, the complainant will have 30 days within which to request the Authority to review that decision. The Act requires the Standards Committee to set up a second sub-committee (the “Allegations Appeals Sub-Committee”) to conduct that review. No member can sit on the Allegations Appeal Sub-Committee in respect of a complaint where they were on the Allegations Sub-Committee for the initial assessment of the same complaint.
- 3.2 If the matter then goes for investigation and the Investigating Officer concludes that there has been a failure to comply with the Code of Conduct for Members, a hearing would then be held. The Standards Board recommends that such hearings should be held before a sub-committee (a “Hearings Sub-Committee”) of between three and five members. We have agreed that the Sub-Committee should comprise 5 members.
- 3.3 Whilst the Act prohibits any member from sitting on both the Allegations Sub-Committee and the Allegations Appeals Sub-Committee on the same matter (on the basis that a member cannot fairly review his/her own decision), there is no similar statutory prohibition of a member sitting on the Hearings Sub-Committee when that member was previously on either the Allegations Sub-Committee or the Allegations Appeals Sub-Committee in respect of the same matter. However, a member against whom a complaint has been made might reasonably take exception to a member being part of the Hearings Sub-Committee when that member had some months previously seen the complaint without the benefit of any response from the member and decided that the matter should proceed to investigation (and later received the Investigating Officer’s report and finding of breach, and referred the matter for local hearing, without at that stage having the benefit of a response from the member concerned). Separate membership for all three sub-committees clearly increases the minimum size of the Standards Committee and the minimum number of Independent Members and Parish representatives necessary to make up the separate Sub-Committees.
- 3.4 The quorum (minimum actual attendance) for each such Sub-Committee is three members:
- at least 25% of each sub-committee must be Independent Members, one of whom must be present to chair the meeting;
 - at least one elected member of this Council must be present at each meeting;
 - at least one of whom must be a Parish representative if the Sub-Committee is dealing with a complaint in respect of the conduct of a member as a member of a Parish or Town Council.
- 3.5 Since the Allegations Sub-Committee must be available at short notice to deal with any allegation within 20 working days of receipt, regular meetings have been included in the municipal diary, to be held if there is actual business to be conducted. This urgency means that we need to ensure that a quorum will be available.

Recommendation 1

It is recommended that the Standards Committee confirm that the members of the Allegations Sub-Committee shall comprise one Independent Member, one elected member of the Council and one Parish representative drawn from the Standards Committee (such membership to be on a rotational basis).

That the terms of reference of the Sub-Committee be as set out in Appendix 2.

- 3.6 The review must be conducted within three months of a request for review, and the hearing within three months of receipt of the investigation report, so there is more flexibility to arrange such meetings on a date to suit the available members.

Recommendation 2

It is recommended that the Standards Committee confirm that the members of the Allegations Appeals Sub-Committee shall comprise one Independent Member, one elected member of the Council and one Parish representative drawn from the Standards Committee (such membership to be on a rotational basis).

That the terms of reference of the Sub-Committee be as set out in Appendix 3.

- 3.7 In a case where a complaint was considered by both the Allegations and the Allegations Appeals Sub-Committee that would leave three Independent Members, one elected Council Member and one Parish representative who would be able to determine the complaint in the Hearings Sub-Committee. The Standards Committee (England) Regulations 2008 provide that Authorities may “borrow” Independent Members for individual cases or otherwise. However this would not get around a possible conflict of interest for an elected Council Member.

Recommendation 3

It is recommended that the Standards Committee confirm that Hearings Sub-Committees be established as and when required for particular hearings. Such Sub-Committees to comprise five members who have not been involved in the initial assessment or review of the complaint.

That the terms of reference for the Sub-Committee be as set out in Appendix 4 and that the procedure to be followed at any hearing be as contained in Standards Committee Procedure Rules 10(5) –(11).

4. Joint Working Between Authorities

- 4.1 The Act provides that authorities may appoint Joint Committees to discharge all or any of their Standards functions. As set out above, the requirement to populate three different sub-committees will place a considerable burden on authorities. Joint working would enable authorities to meet their statutory requirements without the cost of maintaining their own separate sub-committees. Such joint working may be more acceptable in terms of the initial assessment and the review, rather than the actual hearings. The regulations which will bring these provisions into force have not yet been made.

Recommendation 4

It is recommended that the Council explores the potential for joint working with other authorities.

5. Notification to the Member

- 5.1 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 suggested that there was a danger that the member might seek to lobby members of the Standards Committee, and suggested that no notification be made until the Allegations Sub-Committee had come to a decision whether to investigate. However, the Authority ought to acknowledge receipt of the allegation to the person making the allegation and advise them when it is going to be assessed, and there is nothing to prevent the person making the allegation from publicising that fact.

- 5.2 It would not engender confidence in the system 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. Accordingly, it would be sensible for the Monitoring Officer to notify the member of receipt of the complaint at the same time as acknowledging the receipt of the complaint to the person making the complaint and no later than sending the agenda out to members of the Allegations 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.
- 5.3 The DCLG Consultation Paper raised the possibility of cases where there was a danger of the member interfering with evidence of intimidating witnesses, and suggested that in such cases the member might not be notified of the complaint until the investigation had secured such evidence. This is a very remote possibility, but I would suggest that the Monitoring Officer be given the discretion, after consulting the Chairman of the Standards Committee, to defer notification in such exceptional circumstances. In such cases, the Monitoring Officer would notify the member concerned as soon as the reasons for deferral of notification no longer pertained, for example when sufficient investigation had already been completed.

Recommendation 5

It is recommended that 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 Allegations Sub-Committee to members of that sub-committee, 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.

6. Local Resolution of Complaints

- 6.1 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 Allegations Sub-Committee to propose conciliation or some other course as an alternative to 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 Allegations 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 Allegations 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.

Recommendation 6

It is recommended that the Standards Committee should adopt the local protocol as set out in Appendix 5 authorising the Monitoring Officer to seek such local resolution in appropriate cases.

7. Filtering out Irrelevant Complaints

7.1 SBE 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

7.2 The 2007 Act provides that the function of initial assessment of complaints must be conducted by the Standards Committee, or by a sub-committee, but 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 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 Allegations Sub-Committee if the complainant insists that it be dealt with as a standards complaint. In all other cases, it will be necessary to report to the Allegations Sub-Committee and for the Allegations Appeals Sub-Committee to determine which of the following statutory options should apply:

- a) refer the allegation to the Monitoring Officer;
- b) refer the allegation to the Standard Board for England;
- c) decide that no action should be taken in respect of the allegation; or
- d) 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.

7.3 in the event that the Allegations Sub-Committee decide that no action should be taken and that member is Town or Parish Councillor, the Sub-Committee must also inform the Town or Parish Council of its decision.

8. Anonymous complaints

8.1 There is nothing in the legislation which requires a complaint to be signed by the complainant. The SBE has entertained some anonymous complaints, and this has given rise to considerable unease. In such cases, it is, of course, not possible to meet the requirements to notify the complainant of the decision in respect of the complaint.

Recommendation 7

It is recommended that the Standards Committee adopt a policy decision that anonymous complaints should not be entertained, but that the Monitoring Officer be authorised to keep the identity of the complainant confidential where he is of the opinion that this is in the public interest.

9. **Multiple complaints**

- 9.1 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 on its merits, and that even where a meeting of the Allegations 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 Allegations Sub-Committee.

10. **Pre-Investigation**

- 10.1 The Allegations 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 Allegations Sub-Committee.

Recommendation 8

It is recommended that the Monitoring Officer be instructed as set out in the protocol set out at Appendix 5, where practicable to obtain and inform the Allegations Sub-Committee of any publicly available information which would facilitate their task of determining whether a complaint merits investigation.

11. **Timescale for initial assessment of allegations**

- 11.1 The DCLG Consultation Paper suggested that the initial assessment should be undertaken within 20 working days of the receipt of the allegation by the Authority. This requirement is set out in SBE Guidance rather than in the Regulations, to allow a bit of flexibility in exceptional circumstances. The Allegations Appeals Sub-Committee is then required to determine the review within three months of the date when the request for a review is received.

12. **Public of Private Meetings**

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

Recommendation 9

It is recommended that the Allegations Sub-Committee and the Allegations Appeals Sub-Committee should be recommended to hold its meetings in private unless the relevant sub-committee determine otherwise in any particular instance.

13. Public information about complaints received

13.1 Advance publication of the agenda and reports

Under existing legislation, the Authority must publish an agenda stating the date, time and location of the meeting and in general terms the business to be transacted, but it can withhold copies of the reports and background papers where they would disclose exempt information and the meeting is likely to be held in private. Once a meeting had decided that a particular complaint be investigated, or be not investigated, a minute of that meeting would be prepared, and the minute can again be withheld from publication if it would disclose exempt information. By this stage, the member will normally have been notified of the complaint, and the complainant will also be notified of the decision in respect of his/her complaint. The 2008 Regulations and SBE Guidance require that a written summary to be produced once the Allegations Sub-Committee or the Allegations Appeals Sub-Committee has considered the complaint. The summary has to be written with regard to the SBE Guidance and be available for public inspection for six years at the Authority's office and be given to any town or parish council concerned.

13.2 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 Allegations 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.

13.3 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 Allegations 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.

Recommendation 10

It is recommended that the Monitoring Officer in consultation with the Chairman of the Standards Committee prepare a protocol setting out the responsibilities and discretions of the Monitoring Officer in the provision or withholding of information relating to complaints.

14. Local Assessment Criteria

- 14.1 Neither the 2008 Regulations nor the Guidance prescribe what local assessment criteria authorities should adopt. However the SBE Guidance makes it clear that both the Allegations and the Allegations Appeal Sub-Committee should both use the same criteria. The criteria adopted should be simple, clear and open and should ensure fairness for both the complainant and the member who is the subject of the complaint. By assessing all complaints by established criteria this will protect committee members from accusations of bias. It is suggested that the criteria should be revised and amended as necessary.

Recommendation 11

It is recommended that the Standards Committee approve and adopt the local assessment criteria contained at Appendix 6 and that such criteria be reviewed in twelve months time or sooner if necessary.

15. Notification following initial assessment

- 15.1 Where the Allegations 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. There is no such requirement for a decision to investigate or to refer a complaint to the SBE, but as a matter of policy clearly such notification should be given unless there were exceptional circumstances where such disclosure might impede proper investigation. The first point is that, in taking a decision as to whether a complaint should be investigated, the Allegations and Allegations Appeal 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.

16. Review of Initial Assessment

- 16.1 Where the Allegations 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 Allegations Appeal Sub-Committee to review that decision. The 2008 Regulations define that this is to be a complete reconsideration of the matter, however the Allegations Appeal Sub-Committee will be able to take account of additional information received after the initial decision. The Allegations Appeal Sub-Committee's decision is then notified to the complainant, who then has no further recourse other than judicial review.

17. Decision whether to conduct a local hearing

- 17.1 Where the Monitoring Officer's investigation concludes that there has not been a failure to observe the Code of Conduct, the 2008 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.
- 17.2 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 SBE to take the matter back and direct it to a national Case Tribunal for hearing.
- 17.3 The 2008 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 SBE 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.

- 17.4 However, the 2008 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.

Recommendation 12

It is recommended that the functions of determining whether to accept a Monitoring Officer's finding of no breach, or to go to a local hearing or to refer the matter to a Case Tribunal where the Monitoring Officer's finding is that there has been a breach should be delegated to the Allegations Sub-Committee.

18. Publicity for the new arrangements

- 18.1 The 2008 Regulations place an obligation on each Standards Committee to publicise the new arrangements and the fact that allegations should now be sent to the Authority rather than to the SBE. The SBE Guidance provides that such notice should be advertised in one or more local newspapers, the Authority's own newspaper and on the Authority's website.

Recommendation 13

It is recommended that the Monitoring Officer be instructed to arrange appropriate publicity in accordance with the 2008 Regulations and Guidance, in consultation with the Chairman of the Standards Committee.

19. Cost Implications

- 19.1 Overall, this change has meant a larger Standards Committee, with more Sub-Committees, and more meetings. It will require the Monitoring Officer 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 SBE 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. 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.

20. Strategic Plan References

- 20.1 The new arrangements will underpin the Council's commitment to quality services and customer excellence.

21. Financial Considerations

21.1 None other than mentioned above..

22. Equality, Diversity and Human Rights Implications

22.1 None

23. Publicity Considerations

23.1 These are dealt with above and will be included within the Council's constitution .

24. Consultation Implications

24.1 None.

25. Community Safety Implications

25.1 None

26. Health and Safety Implications

26.1 None

27. Risk Management Implications

27.1 None.

Standards Committee Terms of Reference

1. To promote and maintain high ethical standards of conduct for elected and co-opted Members.
2. To help elected and co-opted Members to observe the Members' Code of Conduct.
3. To give the Council advice on adoption or revision of the Members' Code of Conduct and on informal codes/protocols covering matters such as planning and Member/officer relations.
4. To monitor the effectiveness of the Members' Code of Conduct.
5. To train or arrange training for elected and co-opted Members on matters relating to the Members' Code of Conduct.
6. To assess and review complaints that elected and co-opted Members have breached the Members' Code of Conduct and in connection with this function:
 - 6.1 To develop and adopt:
 - (a) Assessment Criteria for dealing with complaints;
 - (b) Policies for dealing with vexatious, persistent and anonymous complaints and requests by complainants for confidentiality;
 - (c) Arrangements for dealing with complaints and publicising the arrangements;
 - (d) Procedures for dealing with local investigations and
 - (e) Such other provisions and procedures as may be required.
 - 6.2 To establish and maintain the following 2 sub-committees each with their own terms of reference:
 - An Allegations Sub-Committee
 - An Allegations Appeal Sub-Committee
7. To conduct Hearings and make determinations in respect of complaints that elected and co-opted Members have breached the Members' Code of Conduct in accordance with relevant statutory requirements and guidance issued by the Standards Board for England and in connection with this function:
 - 7.1 To develop and adopt procedures for dealing with such Hearings; and
 - 7.2 To establish and maintain a Hearings Sub-Committee with its own terms of reference.
8. To grant dispensations to elected and co-opted Members with prejudicial interests.
9. To grant exemptions from politically restricted posts.
10. To maintain an overview of the Council's arrangements for dealing with complaints and Local Government Ombudsman investigations.

11. To undertaken the functions set out at 1. to 8. above in respect of all Parish and Town Councils wholly or mainly within the Borough of Colchester and the members of those Parish or Town Councils.

Allegations Sub-Committee Terms of Reference

1. Terms of Reference
 - (a) The Allegations Sub-Committee is established to receive allegations that a member of the Authority (including a member of a town or parish council situated within the Borough of Colchester) 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;
 - (ii) refer the allegation to the Standards Board for England;
 - (iii) decide that no action should be taken in respect of the allegation; or
 - (iv) 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 (as defined in Section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other relevant authority;

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) Upon completion of an investigation by the Monitoring Officer, the Sub-Committee shall be responsible for determining whether:
 - (i) it accepts the Monitoring Officer's finding of no failure to observe the Code of Conduct;
 - (ii) the matter should be referred for consideration at a hearing before the Hearings Sub-Committee of the Standards Committee; or
 - (iii) the matter should be referred to the Adjudication Panel for determination.
 - (d) Where the Sub-Committee resolves to do any of the actions set out in Paragraph 1(b) or 1(c) above, the Sub-Committee shall state its reasons for that decision.
 - (e) Where the Sub-Committee resolves that no action should be taken and the Councillor concerned is a member of a Town or Parish Council it shall inform their Town and parish council of its decision.
 - (f) The Sub-Committee shall consider any application received from any officer of the Authority for exemption from political restriction under Sections 1 and 2 of the Local Government and Housing Act 1989 in respect of the post held by that officer and may direct the Authority that the post shall not be considered to be a politically

restricted post and that the post be removed from the list maintained by the Authority under Section 2(2) of that Act.

- (g) The Sub-Committee shall, upon the application of any person or otherwise, consider whether a post should be included in the list maintained by the Authority under Section 2(2) of the 1989 Act, and may direct the Authority to include a post in that list.

2. Composition of the Allegations Sub-Committee

The Allegations Sub-Committee shall comprise three members, of whom one shall be an independent member of the Standards Committee who shall chair the Sub-Committee, one elected member of the Authority and one Parish representative. The membership shall be rotated from the membership of the Standards Committee.

3. Quorum

The quorum for a meeting of the Sub-Committee shall be three members, with an independent member as Chairman, one elected member of the Council and one Parish representative.

4. Frequency of Meetings

The Sub-Committee shall only meet where one or more allegations has been received which require to be assessed at that meeting.

Allegations Appeals Sub-Committee Terms of Reference

1. Terms of Reference

- (a) The Allegations Appeal Sub-Committee is established to review, upon the request of a person who has made an allegation that a member of the Authority (including a member of a town or parish council situated within the Borough of Colchester) has failed, or may have failed, to comply with the Authority's Code of Conduct, a decision of the Allegations Sub-Committee that no action be taken in respect of that allegation.
- (b) Upon receipt of each such request and any accompanying report by the Monitoring Officer, the Sub-Committee shall review the decision of the Allegations 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 specifying that he/she take an alternative action as permitted by Regulations;
 - (ii) refer the allegation to the Standards Board for England;
 - (iii) decide that no action should be taken in respect of the allegation; or
 - (iv) 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 (as defined in Section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other relevant authority;

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.
- (d) Where the Sub-Committee resolves that no action should be taken and the Councillor concerned is a member of a Town or Parish Council it shall inform their Town and parish council of its decision.

2. Composition of the Allegations Appeals Sub-Committee

The Allegations Appeals Sub-Committee shall comprise three members, of whom one shall be an Independent member of the Standards Committee who shall chair the Sub-Committee. One shall be an elected member of the Council and the other a Parish representative. The members shall be rotated from the members of the Standards Committee provided that the members shall not have been involved in the initial assessment of a complaint by the Allegations Sub-Committee.

3. Quorum

The quorum for a meeting of the Sub-Committee shall be three members, with an independent member as Chairman, one elected member of the Council and one Parish representative.

4. Frequency of Meetings

The Allegations Appeals Sub-Committee shall meet as and when required to enable it to undertake the review of any decision of the Allegations Sub-Committee within three months of the receipt of the request for such a review from the person who made the allegation.

Hearings Sub-Committee Terms of Reference
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1. Terms of Reference

To conduct Hearings and make determinations in respect of complaints that elected and co-opted Members have breached the Members' Code of Conduct in accordance with relevant statutory requirements and Guidance issued by the Standards Board for England

2. Composition of the Hearings Sub-Committee

The Hearings sub-Committee shall comprise five members.

- In respect of hearings into complaints against Colchester Borough Councillors, the Sub-Committee shall comprise two Borough Councillors and three members drawn from the Independent Members on the Standards Committee, all members to be selected in rotation on the basis of availability;
- In respect of hearings into complaints against Parish or Town Councillors, the Sub-Committee shall comprise two Borough Councillors and two members drawn from the Independent Members and one Parish representative, all members to be selected in rotation on the basis of availability.

The members shall be rotated from the members of the Standards Committee provided that the members shall not have been involved in the initial assessment of a complaint by the Allegations Sub-Committee or a review by the Allegations Appeals Sub-Committee.

3. Quorum

The quorum for a meeting of the Sub-Committee shall be three members who must be present for the duration of the meeting. At least one Independent member must be present in order to act as Chairman. At least one elected member of the Council must be present when the matter relates to a Colchester Borough Council member. At least one Parish representative must be present when the matter relates to a Town or Parish Council member.

4. Frequency of Meetings

The Hearings Sub-Committee shall meet as and when required within three months following a decision by the Allegations Sub-Committee that it agrees with a Monitoring Officers finding that a member has breached the code of conduct.

Monitoring Officer Initial Assessment 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 Colchester Borough Council or a member of a Town or Parish Council situated in the Borough of Colchester has failed to comply with the Code of Conduct.

1. Receipt of Allegations

- 1.1 The Monitoring Officer shall set up arrangements within the Authority to secure that any allegation made in writing that a member of the Authority or a Town and Parish Council has or may have failed to comply with that Authority's Code of Conduct is referred to him immediately upon receipt by the Authority.
- 1.2 The Monitoring Officer shall maintain a register of such allegations to ensure that the Authority can comply with its obligations under the relevant legislation.
- 1.3 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

- 2.1 All relevant allegations must be assessed by the Allegations 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 Allegations 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 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.
- 2.2 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:
 - 2.2.1 acknowledge to the complainant receipt of the allegation and confirm that the allegation will be assessed by the Allegations Sub-Committee at its next convenient meeting;
 - 2.2.2 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 Allegations 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 Deputy Chairman of the Standards Committee, and may then decide that no such advance notification shall be given;
 - 2.2.3 collect such information as is readily available and would assist the Allegations Sub-Committee in its function of assessing the allegation;

2.2.4 seek local resolution of the matter where practicable, in accordance with Paragraph 3 below;

2.2.5 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, on the agenda for the next convenient meeting of the Allegations Sub-Committee.

3. Local Resolution

3.1 Local resolution is not an alternative to reporting the allegation to the Allegations Sub-Committee, but can avoid the necessity of a formal local investigation.

3.2 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 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 Allegations 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 Allegations Sub-Committee might take that into account when considering whether the matter merits investigation.

4. Review of Decisions not to Investigate

4.1 Where the Allegations 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 Allegations Sub-Committee review that decision.

4.2 Where the subject member is a parish or town councillor, their parish or town council will also be notified

4.3 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 Allegations Sub-Committee the information which was provided to the Allegations Sub-Committee in respect of the matter, the summary of the Allegations Sub-Committee and any additional relevant information which has become available prior to the meeting of the Allegations Appeals Sub-Committee.

5. Local Investigation

5.1 It is recognised that the Monitoring Officer will not personally conduct a formal local investigation.

5.2 It will be for the Monitoring Officer, where appropriate after consultation with the Chairman of the Allegations 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 person.

Standards Committee Local Assessment Criteria
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The following criteria shall be followed by the Allegations Sub-Committee and the Allegations Appeals Sub-Committee when considering allegations that a member of Colchester Borough Council or member of any Town or Parish Council situated within the Borough of Colchester has failed to follow the Members Code of Conduct:

A. If an allegation discloses a potential breach of the Code of Conduct then the Allegations Sub-Committee will consider what action to take using the following criteria and the Standards Board for England's Guidance:

1. Is there prima facie evidence of a breach of the Code?
2. Is it serious enough to warrant a sanction?
3. Is this part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the authority and are there no other avenues left to deal with it except investigation?
4. In considering the case the Sub-Committee will take into account the time that has passed since the alleged conduct occurred.
5. Would an investigation serve a useful purpose?
6. Is the case suitable for local investigation?
7. Is this a case where alternative action such as training or mediation would be more appropriate?
8. Would an apology be appropriate?
9. It is malicious, relatively minor or tit for tat?
10. The same, or substantially similar, complaint has already been the subject of an investigation or inquiry and there is nothing further to be gained by seeking the sanctions available to the Adjudication Panel or the Standards Committee.
11. The complaint concerns acts carried out in the Member's private life, when he/she are not carrying out the work of the authority or have not misused their position as a Member.
12. It appears that the complaint is really about dissatisfaction with a council decision.
13. There is not enough information currently available to justify a decision to refer the matter for investigation.

May 2008

B. Circumstances when the Allegations Sub-Committee will refer a complaint to the Standards Board for England:

1. Complaints concerning the Leadership of the Council or in some cases the opposition.
2. Complaints from the Chief Executive and Monitoring Officer.
3. Instances where a large number of key people are conflicted out and there is a risk of successful judicial review.
4. Instances where there has been national attention, or where the Standards Committee feels that the matter turns on an important point of interpretation of the Code (a test case).

C. Allegations Appeals Sub-Committee

1. All appeals considered by the Sub-Committee shall be carried out in accordance with the above criteria.
2. The Sub-Committee shall decide whether the original decision of the Allegations Sub-Committee is either upheld or overturned.

(NB. if there is any conflict between the Standards Board for England's Guidance and these criteria then the Standards Board for England's Guidance shall prevail)

May 2008



Standards Committee

Item
8

22 May 2008

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Standards Committee Draft Work Programme 2008/09		
Wards affected	Not applicable		

**This report suggests a draft work programme for the
Standards Committee for 2008/09**

1. Decision(s) Required

- 1.1 To approve the draft work programme for 2008/09.

2. Background

- 2.1 The Standards Committee's role has changed significantly since it was created in 2001. More responsibilities have been placed upon it by successive legislation recently culminating in the local assessment of complaints against members.
- 2.2 In order for the Committee to keep track of its responsibilities and to ensure that it reviews issues within its terms of reference a suggested draft work programme for 2008/09 is attached for the Committee's consideration.
- 2.3 The work programme sets out comments on progress in respect of each issue and the target date for each one to next come before the Committee. This will enable the Committee to identify issues which it wishes to see addressed and give officers a clear indication of those issues.

3. Strategic Plan References

- 3.1 The new arrangements will underpin the Council's commitment to quality services and customer excellence.

4. Financial Considerations

- 5.1 None.

5. Equality, Diversity and Human Rights Implications

- 5.1 None

6. Publicity Considerations

- 6.1 None.

7. Consultation Implications

- 7.1 None.

8. Community Safety Implications

8.1 None

9. Health and Safety Implications

9.1 None

10. Risk Management Implications

10.1 None.

STANDARDS COMMITTEE DRAFT WORK PROGRAMME 2008/2009

ISSUE	PROGRESS	MEETING DATE
Review of training for Members on the code of conduct (a) Borough Councillors (b) Town and Parish Councillors		
Review of training for Members on local assessment of complaints		
Review of Local Assessment process		
Review publicity for Local Assessment process		
Review of Council's Whistleblowing Policy		
Consideration of the Local Government Ombudsman's Annual Letter		
Raising the profile of the Committee: (a) produce an annual report (b) increase presence on Council website		
Review of Local Code of Corporate Governance		
Committee's role in appeals against designation of politically restricted posts		

