

Standards Committee

**Grand Jury Room, Town Hall
26 November 2010 at 2.00pm**

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

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at www.colchester.gov.uk or from Democratic Services.

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Private Sessions

Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

Mobile phones, pagers, cameras, audio recorders

Please ensure that all mobile phones and pagers are turned off before the meeting begins and note that photography or audio recording is not permitted.

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There is wheelchair access to the Town Hall from St Runwald Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please take it to Angel Court Council offices, High Street, Colchester or telephone (01206) 282222 or textphone 18001 followed by the full number that you wish to call and we will try to provide a reading service, translation or other formats you may need.

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**COLCHESTER BOROUGH COUNCIL
STANDARDS COMMITTEE
26 November 2010 at 2:00pm**

Members

**Independent
Members**

Mr Derek Coe (Chairman)
Mr Peter Fitton (Deputy Chairman)
Mr Ian Andrews
Mr Sven Farmer
Mr Steven Roberts-Mee

**Parish
Representatives**

Councillor Terence Abnett
Councillor Malcolm Bartier
Councillor Vivienne Eden

Councillors

Councillor Nigel Chapman
Councillor Helen Chuah
Councillor Ray Gamble
Councillor Terry Sutton

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. 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 off or to silent;
- location of toilets;

- introduction of members of the meeting.

2. 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.

3. 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.

4. Minutes

1 - 3

To confirm as a correct record the minutes of the meeting held on 11 June 2010.

5. The Future of Standards for England and the Standards Framework

4 - 6

See report by the Monitoring Officer

6. Annual Review of Local Assessment of Complaints Against Members 7 - 21

See report by the Monitoring Officer

7. Review of Training for Members on the Code of Conduct and Local Assessment 22 - 23

See report by the Monitoring Officer

8. Local Government Ombudsman Annual Review 2009/2010 24 - 37

See report by the Monitoring Officer

9. Revised Whistleblowing Policy 38 - 46

See report by the Monitoring Officer

10. 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

11 JUNE 2010

Present :- Mr D. Coe (Independent Member) Chairman
Mr Andrews (Independent Member)
Councillor Bartier
Councillor Chapman
Councillor Chuah
Councillor Eden
Mr Farmer (Independent Member)
Mr Fitton (Independent Member)
Mr Roberts-Mee (Independent Member)
Councillor Sutton

1. Election of Chairman

RESOLVED that Derek Coe be appointed Chairman for the ensuing Municipal Year.

2. Election of Deputy Chairman

RESOLVED that Peter Fitton be appointed Deputy Chairman for the ensuing Municipal Year.

3. Urgent Items

The Monitoring Officer reported that the new Coalition Government had indicated its intention to abolish the Standards for England "regime". What this would mean in practice was unclear at this stage and it was anticipated that a Code of Conduct and local Standards Committee would remain in place. In the meantime, Standards for England had made clear that the local assessment process would continue to operate.

4. Minutes

The minutes of the meeting held on 5 March 2010 were confirmed as a correct record.

5. Review of Local Standards Framework

The Committee considered a report by the Monitoring Officer about the review by Standards for England of the local standards framework entitled "Local Standards 2.0 - the Proportionality Upgrade". The Committee noted that there was evidence that the local assessment process was working well, but with scope for improvements. The Committee noted the recommendations that were proposed by Standards for England and considered that in general these were sensible, common sense recommendations that would improve the local assessment process and should be considered in any reform of the standards framework. In particular recommendations 10 (that the

monitoring officer be able to recommend to the Standards Committee , at any stage and for any reason, that an investigation be stopped) and 12 (that decision notices be published on the Council's website rather than in the local press) were welcomed.

RESOLVED that the review by Standards for England of the local standards framework be noted.

6. Appointment of Sub-Committees

The Committee considered a report from the Head of Corporate Management about the membership of the Allegations Sub-Committee, Allegations Appeals Sub-Committee and Hearings Sub-Committee for the 2010-11 Municipal Year.

RESOLVED that the membership of the Standards Committee sub-committee for the 2010-11 municipal year be as follows:-

Allegations Sub-Committee

Derek Coe (Independent Member) (Chairman)
Vivienne Eden (Parish Councillor)
Ray Gamble (Borough Councillor)
Terry Sutton (Borough Councillor)

Allegations Appeals Sub-Committee

Steve Roberts-Mee (Independent Member) (Chairman)
Malcolm Bartier (Parish Councillor)
Helen Chuah (Borough Councillor)

Hearings Sub-Committee

Ian Andrews (Independent Member) (Chairman)
Terence Abnett (Parish Councillor)
Nigel Chapman (Borough Councillor)
Sven Farmer (Independent Member)
Peter Fitton (Independent Member)

7. Corporate Governance

The Committee received a presentation from Andrew Weavars, Monitoring Officer, and Hayley McGrath, Risk and Resilience Manager. The presentation explained the definition of corporate governance, how the principles of good corporate governance were applied within Colchester Borough Council, the role of the Standards Committee in ensuring good corporate governance and the consequences and examples of poor corporate governance.

RESOLVED that the contents of the presentation on Corporate governance be noted.



Standards Committee

Item
5

26 November 2010

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	The Future of Standards for England and the Standards Framework		
Wards affected	Not applicable		

This report updates the Committee on the Government's proposals in relation to standards

1. Decision(s) Required

1.1 To note the contents of this report.

2. Background

2.1 The Government's 'Programme for Government' of 20 May 2010 contained the commitment to "abolish the Standards Board regime". Primary legislation is needed to abolish Standards for England, and it is anticipated that the provisions to do this will be included in the proposed Decentralisation and Localism Bill which is due to be presented in late 2010, with Royal Assent anticipated between July and October 2011. This is likely to lead to final closure of Standards for England sometime between 31 December 2011 and 31 March 2012.

2.2 In the light of these circumstances Standards for England has reviewed its business plan for this year and next. Its current priorities are to fulfil its statutory duties, to support local authorities in maintaining high standards and to assist the government in developing and implementing any new arrangements they may choose to put in place.

2.3 In the meantime, the local standards framework still exists and Standards Committees and Monitoring Officers have an obligation to keep the system operating.

In order to assist both Standards Committees and Monitoring Officers Standards for England will:

- Continue to provide advice and information to those who contact it with queries about the standards regime via its enquiries helpline, monitoring officer helpline or press helpline. It will respond immediately where it can by telephone or in writing by post or email.
- Update its guidance on the framework to make it easier to use.

2.4 There will be changes to the content of the guidance where sections may be out of date, inaccurate or incorrect. Standards for England has received several suggestions from stakeholders and will incorporate these in the guidance where appropriate.

2.5 Standards for England are to change the format of its guidance to make it easier to use and more helpful. It will highlight all statutory requirements and provide a link to the relevant legislation. It is not proposing to produce any other new guidance products, unless a specific need is identified. All revised guidance will only be available via its website.

- 2.6 As a result of a request from the Association of Council Secretaries and Solicitors, and to assist the standards community as a whole, it will be updating the Case Review 2007 to reflect cases decided by the First Tier and Upper Tribunals since the Case Review was last updated in 2008.
- 2.7 Standards for England will continue to carry out investigations referred to it by Standards Committees. However it has reviewed the factors it takes into account when assessing if it will accept cases in the public interest, referred to it by Standards Committees, for investigation. It reviewed the factors to see whether they were still appropriate taking into account the Government's stated policy, its localist approach to regulation of local government and Standards for England's reduced budget.
- 2.8 Standards for England concluded that both the underlying criterion of public interest and the relating factors are consistent with its statutory purpose and continue to be valid while the current standards framework remains in place. Therefore it has not made any changes to the factors or criterion. However, when considering whether to accept cases it will have to have regard to the resources it has available and take account of the relative importance of cases
- 2.9 Standards for England will continue to provide support to those in the regulated and standards community who have requested its help with ethical issues. In addition, it will continue to provide staff and material for presentations and training events where it is requested to attend and where it fits in with its current business plan.
- 2.10 Ministers have confirmed that the Decentralisation and Localism Bill will not only abolish Standards for England but will also abolish Standards Committees and the Members Code of Conduct. However Councillors will have to register certain personal interests in a publicly available register; this could include anything that could reasonably be regarded as likely to influence or affect their actions, conduct when on business for the authority or voting. It is also the Government's intention to make any serious misconduct a criminal offence and also to strengthen the powers of the Local Government Ombudsman by making his findings binding.
- 2.11 The future at present is not clear but will no doubt become clearer in the coming months once the Bill commences its passage through Parliament. If there are any updates on this they will be presented to the meeting. Although the future of the standards regime is currently uncertain, the standards framework remains in force and Members remain subject to it until it is amended or abolished by Parliament. It is anticipated that the standards regime will be abolished on 2012

3. Strategic Plan References

- 3.1 The Council's ethical arrangements forms parts of the Council's commitment to customer excellence which underpins the Council's Strategic Plan vision.

4. Financial Considerations

- 4.1 No particular implications.

5. Equality, Diversity and Human Rights Implications

- 5.1 No particular implications.

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

Item
6

26 November 2010

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Annual Review of Local Assessment of Complaints Against Members		
Wards affected	Not applicable		

**This report provides the Committee with a review of
the local assessment process**

1. Decision(s) Required

- 1.1 To note the contents of this report and to suggest whether any amendments to the local assessment process are necessary.

2. Introduction

- 2.1 The Committee will recall that since 8 May 2008 the function of making an initial assessment of allegations that members may have breached the members Code of Conduct was transferred from Standards for England to Standards Committees.
- 2.2 The Committee received a series of reports in 2008 which established how the Committee would meet the challenges posed by the new regime. The Committee considered a report at its meeting on 5 December 2008 which contained a review of our experience of the process. This further report brings the Committee up to date.

3. The Local Assessment Process

- 3.1 The Council at its meeting on 14 May 2008 agreed revised terms of reference for the Standards Committee and these are attached at Appendix 1. The Standards Committee subsequently established 3 sub-committees; the Allegations Sub-Committee, the Allegations Appeals Sub-Committee and the Hearings Sub-Committee. The Standards Committee approved each of the Sub-Committees terms of reference and these are attached at Appendix 2.
- 3.2 Standards for England issued guidance and Regulations which the Committee is bound to follow. Our procedures are compliant with both.
- 3.3 The Allegations Sub-Committee comprises one independent member, one parish representative and one Borough councillor. The Allegations Appeals Sub-Committee comprises one independent member, one parish representative and one Borough councillor (none of whom are members of the Allegations Sub-Committee). The Hearings Sub-Committee comprises three independent members and three Borough councillors in relation to Borough council matters and two independent members, two Borough councillors and one parish representative in relation to parish matters.
- 3.4 The Committee also approved Local Assessment Criteria against which all allegations are assessed. This has been used by both the Allegations Sub-Committee and the Allegations Appeals Sub-Committee. The criteria are attached at Appendix 3.

4. Our Experience so far

- 4.1 The following is a summary of our experience of implementing the local assessment process to date.

Allegations Sub-Committee

The Sub-Committee has met on five occasions in 2009/10. All allegations received were assessed against the Local Assessment criteria.

Allegations	May 2008 – December 2008	Jan 2009 – Nov 2009	Dec 2009- Nov 2010	Total
No. of allegations received	5	11	3	19
Borough Councillors	2	7	1	10 (52%)
Parish Councillors	3	4	2	9 (48%)

Source of complaints	May 2008 – Dec 2008	Jan 2009 – Nov 2009	Dec 2009- Nov 2010	Total
Members of the public	3	7	2	12 (66%)
Borough Councillors	1	2	1	4 (21%)
Parish Councillors	1	1	0	2 (11%)
County Councillors	0	1	0	1 (2%)

- 4.2 The Allegations Sub-Committee has made the following findings:

Findings	May 2008 – Dec 2008	Jan 2009 – Nov 2009	Dec 2009- Nov 2010	Total
No further action	2	10	3	15
Referred for investigation	2	1	0	3
Referred to Standards for England	1	0	0	1

- 4.3 Monthly meetings of the Allegations Sub-Committee have been included in the municipal diaries and are utilised when necessary. This arrangement seems to be working well. Both the Allegations Appeals Sub-Committee and the Hearings Sub-Committee meetings are scheduled as and when necessary.

4.4 Allegations Appeals Sub-Committee

The Sub-Committee has met on four occasions in 2009/10 to determine review requests following a finding of no further action by the Allegations Sub-Committee. The Sub-Committee upheld the decision of no further action on three cases and referred one to the Monitoring Officer for investigation. The investigating officer's report was subsequently considered by the Sub-Committee when they agreed with the finding of no failure to follow the code.

4.7 Hearings Sub-Committee

The Hearings Sub-Committee did not meet during 2009/10.

5. Publicity

- 5.1 Publicity is a key part of the Local Assessment process and this reflected both in the legislation and Standards for England guidance.
- 5.2 A press release was issued at the beginning of May 2008 which highlighted the changes to the Local Assessment process. The Autumn 2008 edition of the Courier carried an article on how to make allegations under the Local Assessment process.
- 5.3 The Borough Council's web site has a dedicated page on Standards. This includes details of the Local Assessment process, the Committee, the Annual report and includes a link to an electronic version of the complaint form. This can be found at www.colchester.gov.uk/standards.
- 5.4 In addition there are also links to Parish and Town Councils and Borough Councillors. The Committee is required to keep its publicity arrangements under review however, it appears that the current arrangements are working satisfactorily.

6. Performance Monitoring

- 6.1 The Committee will recall that the Monitoring Officer was until recently required by Standards for England to provide quarterly performance monitoring information on how we are implementing the local assessment process. This was done online. All cases were required to be logged with Standards for England together with key dates and outcomes in the process.
- 6.2 The Regulations do not specify statutory targets however the Standards for England's Guidance recommends 20 working days for the initial assessment of a complaint from the date of its receipt .
- 6.3 The Guidance also recommends that any appeals are determined by the Allegations Appeals Sub Committee within three months of a decision by the Allegations Sub Committee of no further action. Any hearings must be completed within three months of a decision by the Allegations Sub Committee that it agrees with a Monitoring Officers finding that a member has breached the code of conduct. The following table confirms our performance to date against these targets.
- 6.4 Although the target is not monitored we have strived to continue to meet it where possible. It has proved difficult on a few occasions to convene a meeting which has led to a longer timeframe than preferable.

Allegation No.	Date Received	Allegations Sub - date	20 working day target met?	Allegations Appeals Sub date	3 month target met?	Hearings Sub date	3 month target met?
CBC001.08	10/06/08	04/07/08	✓	05/09/08	✓		
CBC002.08	07/08/08	05/09/08	x				
CBC003.08	10/09/08	03/10/08	✓			30/09/09	x
CBC004.08	27/10/08	14/11/08	✓				
CBC005.08	28/10/08	14/11/08	✓				
CBC001.09	07/01/09	06/02/09	x				
CBC002.09	26/01/09	06/02/09	✓				
CBC003.09	02/06/09	12/06/09	✓				
CBC004.09	15/06/09	10/07/09	✓	17/08/09	✓		
CBC005.09	26/06/09	10/07/09	✓				
CBC006.09	06/07/07	10/07/09	✓				
CBC007.09	05/10/09	22/10/09	✓	16/12/09	✓		
CBC008.09	05/10/09	22/10/09	✓	19/12/09	✓		
CBC009.09	10/12/09	08/01/10	✓				
CBC010.09	15/12/09	08/01/10 05/02/10	✓	18/09/10	✓		
CBC011.09	27/10/09	08/01/10	x	02/03/10	✓		
CBC001.10	22/02/10	05/03/10	✓				
CBC002.10	24/06/10	23/07/10	x				
CBC003.10	21/09/10	05/11/10	x				

7. National Picture

7.1 Standards for England have published its latest statistics for the period from 8 May 2008 to 31 March 2010 and these are set out below for the Committee's information.

Source of complaint

7.2 The following statistics were compiled from data submitted on quarterly return forms. Monitoring officers have reported a total of 6134 cases received in the period.

The sources of these are broken down as follows:

Source	Total	Percentage
Member of the public	3436	56%
Member	2107	34.3%
Council Officer	186	3%
Other	186	3%
Parish/Town Clerk	172	2.8%
Monitoring Officer	33	0.5%
MP	14	0.2%

7.3 The split of cases by authority type is as follows:

Authority Type	Total
District Council	3258
Unitary	1366
Metropolitan Council	716
County Council	272
London Borough	242
National Park Authority	16
Police Authority	14
Integrated Transport Authority	8
Fire Authority	5
Total	5897

7.4 Initial assessment decisions

The following statistics were compiled from data submitted on quarterly return forms, covering the period 8 May 2008 to 31 March 2010.

Of the 6134 complaints received, 210 (3%) did not yet have an initial assessment decision.

Initial Assessment Decision	Total
No further action	52.2%
Referred to another authority	0.2%
Other action	12.7%
Investigation	28.4%
Referred to SfE	6.5%

7.5 Timeliness of Decisions

As of 31 March 2010, 64% of initial assessments during the financial year 2009/10 were made within 20 working days.

7.6 Review Requests

There were 1107 review requests which equates to 36% of no further action decisions being reviewed. Of the total requests, 94% of review decisions were to take no further action, 5.5% were to refer to the Monitoring Officer and 0.5% being referred to Standards for England.

8. Conclusions

8.1 It would appear that our process continues to perform well. Our Local Assessment Criteria appears to be fit for purpose and we should continue to use it but keep it under review.

- 8.2 An important part of the local assessment process is communication, and all parties are informed as to progress of the allegations. This includes ensuring that Parish/Town Clerks are also informed.
- 8.3 The terms of reference for all the Sub-Committees appear to be fit for purpose however should be kept under review in the light of further experience.
- 8.5 Monthly meetings of the Allegations Sub-Committee should continue to be diarised. The Allegations Appeals Sub-Committee and the Hearings Sub-Committee meeting should be called when necessary.
- 8.6 Publicity arrangements in relation to the Local Assessment process have been appropriate to date but need to be kept under review.

9. Standards Committee

- 9.1 Meetings of the Standards Committee will be scheduled in the Municipal Diary for 2011/2012.

10. Strategic Plan References

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

11. Financial Considerations

- 11.1 None other than the ongoing cost of investigations which have to be borne by the Council.

12. Equality, Diversity and Human Rights Implications

- 12.1 No specific implications.

13. Publicity Considerations

- 13.1 These are dealt with above.

14. Consultation Implications

- 14.1 None.

15. Community Safety Implications

- 15.1 None

16. Health and Safety Implications

- 16.1 None

17. Risk Management Implications

- 17.1 None.

Colchester Borough Council Standards Committee Terms of Reference
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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.

Colchester Borough Council
Standards Committee Terms of Reference

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.

**Colchester Borough Council
Standards Committee
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 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.

Colchester Borough Council
Standards Committee
Allegations Sub-Committee Terms of Reference

- (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.

Colchester Borough Council
Standards Committee
Allegations Appeals Sub-Committee Terms of Reference

1. Terms of Reference

- (a) The Allegations Appeals 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 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 or 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.

Colchester Borough Council
Standards Committee
Allegations Appeals Sub-Committee Terms of Reference

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.

Colchester Borough Council
Standards Committee
Hearings Sub-Committee Terms of Reference

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 Standards 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.

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 and the Allegations Appeals Sub-Committee will consider what action to take using the following criteria and Standards for England's Guidance:

CRITERIA	
1	Is there prima facie evidence of a breach of the Code?
2	Is it serious enough to warrant 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 this a case where alternative action such as training or mediation would be more appropriate?
7	Would an apology be appropriate?
8	It is malicious, relatively minor or tit for tat?
9	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.
10	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.
11	It appears that the complaint is really about dissatisfaction with a council decision.
12	There is not enough information currently available to justify a decision to refer the matter for investigation.

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

CRITERIA	
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 or there is a risk of successful judicial review for any other reason.
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).

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

May 2009



Standards Committee

Item
7

26 November 2010

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Review of Training for Members on the Code of Conduct and Local Assessment		
Wards affected	Not applicable		

This report provides the Committee with an update of training for Members on the code of conduct and the local assessment process

1. Decision(s) Required

- 1.1 To consider what training should be provided in the coming year.

2. Introduction

- 2.1 The Committee's terms of reference state that it will:

"Train or arrange training for elected and co-opted Members on matters relating to the Members' Code of Conduct."

This requirement is both for Borough and Town and Parish Councillors.

- 2.2 The Committee last considered Member training at its meeting on 11 September 2009. It was then anticipated that a revised code of conduct would be introduced in either November 2009 or May 2010. Following on from the formation of the Coalition Government it is now clear that the Code of Conduct will be abolished. However until it is actually abolished, the Code of Conduct remains in force and this Committee has a continuing remit to ensure adequate Member training.

3. Update

- 3.1 A training session was provided by the Chairman and the Monitoring Officer for a Parish Council in September 2009 following a recommendation by the Allegations Sub-Committee. Another session was conducted by the Monitoring Officer following on from the Borough Council elections in May 2010 for newly elected Councillors which covered both the Code of Conduct and the Local Assessment process.
- 3.2 I would suggest that the Committee should consider organising a number of training sessions which could be either generic or adapted specifically if required. The subjects covered should continue to be the Code of Conduct, Local Assessment and possibly governance issues particularly to assist Town and Parish Councils.

4. Strategic Plan References

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

5. Financial Considerations

5.1 No direct implications.

6. Equality, Diversity and Human Rights Implications

6.1 No direct implications.

7. Publicity Considerations

7.1 No direct implications.

8. Consultation Implications

8.1 No direct implications.

9. Community Safety Implications

9.1 No direct implications.

10. Health and Safety Implications

10.1 No direct implications.

11. Risk Management Implications

11.1 No direct implications.



Standards Committee

Item

8

26 November 2010

Report of	Monitoring Officer	Author	Andrew Weavers
Title	Local Government Ombudsman – Annual Review 2009/2010		
Wards affected	Not applicable		

This report request the Committee to note the Local Government Ombudsman’s Annual Review for 2009/2010

1. Decision Required

- 1.1 To note the contents of the Local Government Ombudsman’s Annual Review for 2009/2010.

2. Reasons for Decision(s)

- 2.1 To inform the Committee of the number and type of decisions made by the Local Government Ombudsman in relation to Colchester during 2009/2010.

3. Alternative Options

- 3.1 No alternative options are presented.

4. Supporting Information

- 4.1 The Local Government Ombudsman issues an Annual Review to each local authority. The Annual Review for the Colchester for the year ending 31 March 2010 is attached to this report at Appendix 1. Appendix 2 comprises statistical data. The Local Government Ombudsman has re-organised the manner in which they handle complaints so that the information provided is now divided between the Advice Team, which deals with initial assessments of enquiries and/or complaints and the Investigative Team which actually investigates complaints.
- 4.2 It is worth noting that anyone can choose to make a complaint to the Local Government Ombudsman. Accordingly, the number of complaints is not an indicator of performance or level of customer service. In most instances there was no case to answer. The Local Government Ombudsman will normally insist that the Council has the opportunity to resolve the complaint locally through its own complaints procedure before commencing its own investigation.
- 4.3 The Standards Committee has an overview of Local Government Ombudsman investigations as part of its terms of reference. The contents of this report were initially reported to Cabinet on 8 September 2010 when Cabinet noted the report

5. Key Headlines

- 5.1 There were no findings of maladministration against the Council and no formal reports were issued.
- 5.2 Last year 34 enquires were received by the Advice Team a 29% decrease from the 48 received in the previous year. Of these 6 were referred back to the Council to be considered as through its own complaints procedure. A further 7 enquiries were dealt with by the Ombudsman providing advice and the remaining 21 were referred to the Investigative Team for consideration.
- 5.3 The main subject areas covered by the Advice Team were housing (which includes homelessness and repairs) where 11 enquires were received. Of these 6 were referred for investigation. They also received 10 enquires in relation to planning issues. Of these 4 were referred for investigation.
- 5.4 The Investigative Team decided 21 complaints against the Council which is a 25% reduction from the 28 decided in the previous year. A total of 4 local settlements were agreed (where the Council agreed to take action which the Ombudsman considered was a satisfactory response to a complaint) which is an increase from the previous years total of 2. The Council paid a total of £575 in compensation. However, this was a reduction from the previous year's total of £1768. The service areas involved have learnt from the circumstances of the particular complaints and have improved their procedures accordingly.
- 5.5 The Council's average response time to the Ombudsman's written first enquiries was 29.3 days which is an improvement from the previous year's figure of 34.5 days. The Ombudsman's target is 28 days. Steps are being taken to continue to improve the response times in order to meet the Ombudsman's target.
- 5.6 The Annual Review refers to training and we are reviewing this option for officers within the Services who respond to Ombudsman queries in order to assist in improving our response times.

6. Financial Considerations

- 6.1 No direct implications other than mentioned in this report.

7. Strategic Plan References

- 7.1 The lessons learnt from complaints to the Ombudsman link in with our Customer Excellence element of the Strategic Plan by constantly learning and putting lessons learnt into practice. This will in turn lead to improved customer service as we continue to meet and exceed our customers' expectations

8. Equality, Diversity and Human Rights Implications

- 8.1 No direct implications.

9. Publicity Considerations

- 9.1 Details of the Annual Review will be posted on the Council's website.

10. Consultation Implications

- 10.1 No direct implications.

11. Community Safety Implications

11.1 No direct implications.

12. Health and Safety Implications

12.1 No direct implications.

13. Risk Management Implications

13.1 No direct implications.

**The Local Government Ombudsman's
Annual Review
Colchester Borough Council
for the year ended
31 March 2010**

Local Government Ombudsmen (LGOs) provide a free, independent and impartial service. We consider complaints about the administrative actions of councils and some other authorities. We cannot question what a council has done simply because someone does not agree with it. If we find something has gone wrong, such as poor service, service failure, delay or bad advice, and that a person has suffered as a result, we aim to get it put right by recommending a suitable remedy. We also use the findings from investigation work to help authorities provide better public services through initiatives such as special reports, training and annual reviews.

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Section 1: Complaints about Colchester Borough Council 2009/10

Introduction

This annual review provides a summary of the complaints we have dealt with about Colchester Borough Council. We have included comments on the authority's performance and complaint-handling arrangements, where possible, so they can assist with your service improvement.

I hope that the review will be a useful addition to other information your authority holds on how people experience or perceive your services.

Two appendices form an integral part of this review: statistical data for 2009/10 and a note to help the interpretation of the statistics.

Enquiries and complaints received

During the year our advice team received 34 enquiries about the Council; this was a decrease from the 41 enquiries received in the previous year. We treated six of these enquiries as premature and referred them back to be dealt with under the Council's complaints procedure. We gave advice in response to a further seven enquiries. The other 21 complaints were passed to the investigation team. This figure included seven complaints that we had previously referred to the Council to be dealt with under its complaints procedure but where the complainants remained dissatisfied with the outcome.

As has been the case in previous years, housing (mainly allocations, tenancy management and repairs) and planning and building control were the most common subjects of complaint.

Complaint outcomes

During the year we decided 21 complaints. In 10 cases we decided there was no or insufficient fault to justify further investigation. One complaint fell outside my jurisdiction because the complainant had a right of appeal to the Parking Adjudicator in relation to the issue of penalty charge notices.

Sometimes I will exercise discretion not to pursue a complaint even though there may have been some fault by a council. Often this is done where the fault has not caused any significant injustice to the person making the complaint. However, in some cases there will still be lessons for the council to learn. I used my discretion in this way on six complaints. In one case, the Council agreed to review the wording of the standard letters it sends to notify neighbours that it has received a planning application which may affect them. In another case, I suggested that the Council might wish to review its procedure for visiting elderly tenants without prior notice.

Local settlements

A 'local settlement' is a complaint where, during the course of our investigation, a council takes or agrees to take some action that we consider to be a satisfactory response to the complaint. In 2009/10, 26.9% of all complaints the Ombudsmen decided and which were within our jurisdiction were local settlements. Four of the complaints we decided against your authority this year resulted in local settlements (20% of decided cases which were within jurisdiction). Two of them were complaints which we had previously asked the Council to deal with but the complainants then resubmitted their complaints, dissatisfied with the outcome.

One local settlement was in relation to a (resubmitted) complaint made by a person whose application for planning permission had been refused. We do not normally investigate complaints about refusal of planning permission because an appeal can be made to the Planning Inspectorate but in this case, the applicant had been incorrectly advised by officers that an access and design statement was not required. The failure to submit an access and design statement meant that the Planning Inspectorate would not accept an appeal, so the applicant had to reapply to the Council, and so I asked the Council to pay £500 compensation to reflect the inconvenience of this unnecessary effort.

Two housing complaints resulted in local settlements: in one (resubmitted) case the Council had decided that the applicant was not entitled to bid for a bungalow but, in the light of new medical information that became available during our investigation, the Council changed its decision. In another case a person in temporary accommodation complained about delays in dealing with repairs and damp issues. I asked the Council to pay £75 compensation for delay in carrying out some minor repair work but I felt the complainant had contributed to the problem by failing to follow advice provided by the Council.

The other local settlement arose in a complaint where a family with a disabled child was unsuitably housed and there was a question over whether the problem could be solved by moving home or by having adaptations done in their current property. The Council agreed to amend the standard letter that it had been sending to housing applicants with disabilities (or with family members with disabilities) saying that it would not be able to fund adaptations if they selected a property that is not suitable for them and did not already meet their needs. The Council agreed to add a statement confirming that if applicants needed a number of adaptations, and could not find properties which had all of them, they should discuss with the adaptations coordinator whether funding would be available.

Liaison with the Local Government Ombudsman

The Council took an average of 29.3 days to reply to our written enquiries on complaints. This is an improvement on the previous year when the average response time was 34.5 days. However, we expect councils to reply to our enquiries within 28 days and so I hope the Council will continue to improve its response times over the coming year.

Two of your officers attended the link officer seminar which we held in May 2009 and I hope this was a useful experience for them.

Training in complaint handling

I would like to take this opportunity to remind the Council that part of our role is to provide advice and guidance about good administrative practice. We offer training courses for all levels of local authority staff in complaints handling and investigation. All courses are presented by experienced investigators. They give participants the opportunity to practise the skills needed to deal with complaints positively and efficiently. We can also provide customised courses to help authorities to deal with particular issues and occasional open courses for individuals from different authorities.

I have enclosed some information on the full range of courses available together with contact details for enquiries and bookings.

Conclusions

I welcome this opportunity to give you my reflections about the complaints my office has dealt with over the past year. I hope that you find the information and assessment provided useful when seeking improvements to your authority's services.

**Tony Redmond
Local Government Ombudsman
10th floor
Millbank Tower
Millbank
London
SW1P 4QP**

June 2010

Section 2: LGO developments

Introduction

This annual review also provides an opportunity to bring councils up to date on developments in the LGO and to seek feedback.

New schools complaints service launched

In April 2010 we launched the first pilot phase of a complaints service extending our jurisdiction to consider parent and pupil complaints about state schools in four local authority areas. This power was introduced by the Apprenticeships, Skills, Children and Learning Act 2009.

The first phase involves schools in **Barking and Dagenham, Cambridgeshire, Medway and Sefton**. The Secretary of State no longer considers complaints about schools in these areas. In September the schools in a further 10 local authority areas are set to join the pilot phase.

We are working closely with colleagues in the pilot areas and their schools, including providing training and information sessions, to shape the design and delivery of the new service. It is intended that by September 2011 our jurisdiction will cover all state schools in England.

A new team in each office now deals with all complaints about children's services and education on behalf of the Ombudsman. Arrangements for cooperation with Ofsted on related work areas have been agreed.

For further information see the new schools pages on our website at www.lgo.org.uk/schools/

Adult social care: new powers from October

The Health Act 2009 extended the Ombudsmen's powers to investigate complaints about privately arranged and funded adult social care. These powers come into effect from 1 October 2010 (or when the Care Quality Commission has re-registered all adult care providers undertaking regulated activity). Provision of care that is arranged by an individual and funded from direct payments comes within this new jurisdiction.

Each Ombudsman has set up a team to deal with all adult social care complaints on their behalf. We expect that many complaints from people who have arranged and funded their care will involve the actions of both the local authority and the care provider. We are developing information-sharing agreements with the Care Quality Commission and with councils in their roles as adult safeguarding leads and service commissioners.

Council first

We introduced our Council first procedure in April last year. With some exceptions, we require complainants to go through all stages of a council's own complaints procedure before we will consider the complaint. It aims to build on the improved handling of complaints by councils.

We are going to research the views of people whose complaints have been referred to councils as premature. We are also still keen to hear from councils about how the procedure is working, particularly on the exception categories. Details of the categories of complaint that are normally treated as exceptions are on our website at www.lgo.org.uk/guide-for-advisers/council-response

Training in complaint handling

Demand for our training in complaint handling has remained high, with 118 courses delivered over the year to 53 different authorities. Our core Effective Complaint Handling course is still the most popular – we ran some of these as open courses for groups of staff from different authorities. These are designed to assist those authorities that wish to train small numbers of staff and give them an opportunity to share ideas and experience with other authorities.

The new Effective Complaint Handling in Adult Social Care course, driven by the introduction of the new statutory complaints arrangements in health and adult social care in April 2009, was also popular. It accounted for just over a third of bookings.

Over the next year we intend to carry out a thorough review of local authority training needs to ensure that the programme continues to deliver learning outcomes that improve complaint handling by councils.

Statements of reasons

Last year we consulted councils on our broad proposals for introducing statements of reasons on the individual decisions of an Ombudsman following the investigation of a complaint. We received very supportive and constructive feedback on the proposals, which aim to provide greater transparency and increase understanding of our work. Since then we have been carrying out more detailed work, including our new powers. We intend to introduce the new arrangements in the near future.

Delivering public value

We hope this information gives you an insight into the major changes happening within the LGO, many of which will have a direct impact on your authority. We will keep you up to date through LGO Link as each development progresses, but if there is anything you wish to discuss in the meantime please let me know.

Mindful of the current economic climate, financial stringencies and our public accountability, we are determined to continue to increase the efficiency, cost-effectiveness and public value of our work.

Tony Redmond
Local Government Ombudsman
10th Floor
Millbank Tower
Millbank
London
SW1P 4QP

June 2010

Appendix 1: Notes to assist interpretation of the statistics 2009/10

Table 1. LGO Advice Team: Enquiries and complaints received

This information shows the number of enquiries and complaints received by the LGO, broken down by service area and in total. It also shows how these were dealt with, as follows.

Premature complaints: The LGO does not normally consider a complaint unless a council has first had an opportunity to deal with that complaint itself. So if someone complains to the LGO without having taken the matter up with a council, the LGO will either refer it back to the council as a 'premature complaint' to see if the council can itself resolve the matter, or give advice to the enquirer that their complaint is premature.

Advice given: These are enquiries where the LGO Advice Team has given advice on why the LGO would not be able to consider the complaint, other than the complaint is premature. For example, the complaint may clearly be outside the LGO's jurisdiction.

Forwarded to the investigative team (resubmitted premature and new): These are new cases forwarded to the Investigative Team for further consideration and cases where the complainant has resubmitted their complaint to the LGO after it has been put to the council.

Table 2. Investigative Team: Decisions

This information records the number of decisions made by the LGO Investigative Team, broken down by outcome, within the period given. **This number will not be the same as the number of complaints forwarded from the LGO Advice Team** because some complaints decided in 2009/10 will already have been in hand at the beginning of the year, and some forwarded to the Investigative Team during 2009/10 will still be in hand at the end of the year. Below we set out a key explaining the outcome categories.

MI reps: where the LGO has concluded an investigation and issued a formal report finding maladministration causing injustice.

LS (local settlements): decisions by letter discontinuing our investigation because action has been agreed by the authority and accepted by the LGO as a satisfactory outcome for the complainant.

M reps: where the LGO has concluded an investigation and issued a formal report finding maladministration but causing no injustice to the complainant.

NM reps: where the LGO has concluded an investigation and issued a formal report finding no maladministration by the council.

No mal: decisions by letter discontinuing an investigation because we have found no, or insufficient, evidence of maladministration.

Omb disc: decisions by letter discontinuing an investigation in which we have exercised the LGO's general discretion not to pursue the complaint. This can be for a variety of reasons, but the most common is that we have found no or insufficient injustice to warrant pursuing the matter further.

Outside jurisdiction: these are cases which were outside the LGO's jurisdiction.

Table 3. Response times

These figures record the average time the council takes to respond to our first enquiries on a complaint. We measure this in calendar days from the date we send our letter/fax/email to the date that we receive a substantive response from the council. The council's figures may differ somewhat, since they are likely to be recorded from the date the council receives our letter until the despatch of its response.

Table 4. Average local authority response times 2009/10

This table gives comparative figures for average response times by authorities in England, by type of authority, within three time bands.

Appendix 2: Local Authority Report -Colchester BC For the period ending -31/03/2010 LGO Advice Team

(Figures in brackets for the period ending 31/03/2009)

Enquiries and complaints received	Housing	Benefits	Planning and building control	Transport and highways	Other	Total
Formal/informal premature complaints	0 (4)	0 (2)	3 (2)	0 (1)	3 (4)	6 (15)
Advice given	2 (2)	1 (1)	1 (2)	1 (2)	2 (3)	7 (10)
Forwarded to investigative team (resubmitted premature)	3 (2)	0 (1)	2 (3)	1 (0)	1 (0)	7 (6)
Forwarded to investigative team (new)	6 (5)	0 (0)	4 (4)	2 (2)	2 (6)	14 (17)
Total	11	1	10	4	8	34

Investigative Team

Decisions	MI reps	LS	M reps	NM reps	No mal	Omb disc	Outside jurisdiction	Total
2009 / 2010	0	4	0	0	10	6	1	21
2008 / 2009	0	2	0	0	12	12	1	27

Appendix 2: Local Authority Report -Colchester BC For the period ending -31/03/2010

Average local authority resp times 01/04/2009 to 31/03/2010

Response times	Avg no. of days to respond No. of First Enquiries FIRST ENQUIRIES
1/04/2009 / 31/03/2010	11 29.3
2008 / 2009	16 34.5
2007 / 2008	18 30.7

Types of authority	<= 28 days %	29 -35 days %	> = 36 days %
District Councils	61	22	17
Unitary Authorities	68	26	6
Metropolitan Authorities	70	22	8
County Councils	58	32	10
London Boroughs	52	36	12
National Parks Authorities	60	20	20

26 November 2010

Report of	Monitoring Officer	Author	Hayley McGrath
Title	Revised Whistleblowing Policy		☎ 508902
Wards affected	Not applicable		

This report recommends that the Committee approves a revised Whistleblowing Policy

1. Decision(s) Required

- 1.1 To agree the revised Whistleblowing Policy and to recommend to Cabinet that it be approved and referred to Council for inclusion in the Council's Policy Framework.

2. Background

- 2.1 The Committee on Standards in Public Life recommended in 1997 that 'every local authority should institute a procedure for whistleblowing, which would enable concerns to be raised confidentially inside and, if necessary, outside the organisation'. The Government accepted this recommendation in 1998 and the Council duly introduced such a procedure, which has been updated subsequently.
- 2.2 The Public Interest Disclosure Act 1998 provides employees with statutory protection against dismissal and victimisation when raising genuine concerns about crime, civil offences, miscarriages of justice and danger to health and safety and the environment, so long as the manner in which the concerns are raised complies with the requirements of the Act.
- 2.3 The Whistleblowing Policy seeks to follow the latest guidance and supports the Council's strategy to help fight fraud and corruption. It makes it clear that concerns can be raised without fear of reprisals. It is intended to encourage and enable councillors, employees, contractors, suppliers and members of the public to raise concerns with the Council, irrespective of status, rather than overlooking the issue or reporting the matter.
- 2.4 The Whistleblowing policy was reissued in April 2009 following a fundamental review of its contents. It is appropriate that it is reviewed on an annual basis to ensure that it is still meeting the Council's objectives.
- 2.5 No instances of 'whistleblowing' have occurred since the policy was reissued in April 2009.

3. Changes introduced in the new Policy

- 3.1 The policy was fully revised in April 2009 and there have been no changes in relevant legislation since that time. Therefore there have been no fundamental changes to the policy following this review.
- 3.2 The most significant change in the updating of the Policy is the inclusion of whistleblowing by volunteers. Previously employees, Councillors and contractors were listed but the Council is supported by volunteers in various capacities and it is important that they recognise that they are covered by the policy.

3.3 The policy has been reviewed to ensure that it compliments the Council's anti-fraud and corruption policy.

4. Strategic Plan References

4.1 The standards regime forms parts of the Council's commitment to customer excellence which underpins the Council's Strategic Plan vision.

5. Financial Considerations

5.1 None.

6. Equality, Diversity and Human Rights Implications

6.1 None

7. Publicity Considerations

7.1 The Whistleblowing Policy forms part of the Council's Ethical Framework and will be placed on the Council's website.

8. Consultation Implications

8.1 None.

9. Community Safety Implications

9.1 None

10. Health and Safety Implications

10.1 None

11. Risk Management Implications

11.1 A clear Whistleblowing Policy which can encourage individuals to make contact where they have serious concerns about inappropriate behaviour occurring at or against the Council is a key element in being able to mitigate against the risk of fraud or corruption being perpetrated against the Council.

Colchester Borough Council

Whistleblowing Policy and Procedure

1. Introduction

- (1) Employees or Councillors are often the first to realise that there may be some form of inappropriate conduct within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances it may be easier to ignore the concern rather than report what may just be a suspicion of misconduct, but this can have serious consequences if wrongdoing goes undetected.
- (2) The Council is committed to the highest possible standards of openness, probity, accountability and honesty. In line with that commitment we expect employees, councillors and others that we deal with who have serious concerns about any aspect of the Council's work to come forward and voice those concerns.
- (3) This policy document makes it clear that employees and councillors can do so without fear of victimisation, subsequent discrimination or disadvantage. This Whistleblowing Policy and Procedure is intended to encourage and enable employees and councillors to raise serious concerns within the Council rather than overlooking a problem or 'blowing the whistle' outside. With the exception of employment related grievances, this policy will apply to any act of Whistleblowing, as defined by the charity Public Concern at Work to mean;" A disclosure of confidential information which relates to some danger, fraud or other illegal or unethical conduct connected with the workplace, be it of the employer or of its employees." Examples of these matters are given below in paragraph 2.2.
- (4) This policy and procedure applies to all employees, councillors, partners, volunteers and contractors. It also covers suppliers and members of the public.
- (5) These procedures are in addition to the Council's complaints procedures and other statutory reporting procedures. Officers are responsible for making customers aware of the existence of these procedures.
- (6) This policy has been discussed with the relevant trade unions and has their support.

REVIEW DRAFT

2. Aims and Scope of this Policy

2.1 This policy aims to:

- (a) encourage you to feel confident in raising serious concerns and to question and act upon concerns about practice without fear of recrimination.
- (b) provide avenues for you to raise those concerns and receive feedback on any action taken
- (c) ensure that you receive a response to your concerns and that you are aware of how to pursue them if you are not satisfied
- (d) reassure you that you will be protected from possible reprisals or victimisation if you have a reasonable belief that you have made any disclosure in good faith.
- (e) advise you of the support that the Council will provide if you raise concerns in good faith.

2.2 There are existing procedures in place to enable you to lodge a grievance relating to your own employment. This Whistleblowing Policy and Procedure is intended to cover major concerns that fall outside the scope of other procedures. These include:

- (a) conduct which is an offence or a breach of law
- (b) disclosures related to miscarriages of justice
- (c) health and safety risks, including risks to the public as well as other employees
- (d) damages to the environment
- (e) the unauthorised use of public funds
- (f) possible fraud and corruption
- (g) other unethical conduct
- (h) unacceptable business risks.

2.3 This concern may be about something that:

- (a) makes you feel uncomfortable in terms of known standards, your experience or the standards you believe the Council subscribes to; or
- (b) is against the Council's Procedure Rules and policies; or
- (c) falls below established standards of practice; or
- (d) amounts to improper conduct.

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3. Safeguards

Harassment or Victimisation

- 3.1 The Council is committed to good practice and high standards and wants to be supportive of employees and councillors.
- 3.2 The Council recognises that the decision to report a concern can be a difficult one to make. If what you are saying is true, you should have nothing to fear because you will be doing your duty to the Council and those for whom you are providing a service. In these situations you are a witness and not a complainant.
- 3.3 The Council will not tolerate the harassment or victimisation of any person who raises a concern. The Council's disciplinary procedures will be used against any employee who is found to be harassing or victimising the person raising the concern and such behaviour by a councillor will be reported under the Members' Code of Conduct.
- 3.4 Any investigation into allegations of potential malpractice will not influence or be influenced by any disciplinary or redundancy procedures that already affect you if you are an employee.

Confidentiality

- 3.5 All concerns will be treated in confidence and the Council will do its best to protect your identity if you do not want your name to be disclosed. If investigation of a concern discloses a situation that is sufficiently serious to warrant disciplinary action or police involvement, then your evidence may be important. Your name will not however be released as a possible witness until the reason for its disclosure at this stage has been fully discussed with you.

Anonymous Allegations

- 3.6 This policy encourages you to put your name to your allegation whenever possible.
- 3.7 Concerns expressed anonymously are much less powerful but will be considered at the discretion of the Council.
- 3.8 In exercising this discretion the factors to be taken into account would include the:
 - (a) seriousness of the issues raised;
 - (b) credibility of the concern; and
 - (c) likelihood of confirming the allegation from attributable sources.

Untrue Allegations

- 3.9 If you make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against you. If however, you make an allegation maliciously or for personal gain, disciplinary action may be

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taken against you, or if you are a councillor a complaint may be made under the Members' Code of Conduct.

4. How to raise a concern

- 4.1 As a first step, if you are an employee you should normally raise concerns with your immediate manager or their superior. This depends however, on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. For example, if you believe that your line manager or one of their superiors is involved, you should approach the Chief Executive, an Executive Director, the Monitoring Officer, the Head of Resource Management (in his/her capacity as the Council's Chief Finance Officer) or the Audit Manager.
- 4.2 Concerns may be raised verbally or in writing. Employees or councillors who wish to make a written report are invited to use the following format:
- (a) the background and history of the concern (giving relevant dates); and
 - (b) the reason why you are particularly concerned about the situation.
- 4.3 The earlier you express the concern the easier it is to take action.
- 4.4 Although you are not expected to prove beyond doubt the truth of an allegation, you will need to demonstrate to the person contacted that there are reasonable grounds for your concern.
- 4.5 Advice and guidance on how matters of concern may be pursued can be obtained from:
- Chief Executive, Adrian Pritchard ☎ 282211
Executive Director, Ian Vipond ☎ 282717
Executive Director, Ann Wain ☎ 282212
Executive Director, Pamela Donnelly ☎ 282212
Monitoring Officer, Andrew Weavers ☎282213
Finance Manager Audit and Governance, Elfreda Walker ☎282461.
- 4.6 You may wish to consider discussing your concern with a colleague first and you may find it easier to raise the matter if there are two (or more) of you who have had the same experience or concerns.
- 4.7 If you are an employee you may invite your trade union or a friend to be present during any meetings or interviews in connection with the concerns you have raised. If you are a councillor you may be accompanied by your group leader.

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5. How the Council will respond

- 5.1 The Council will respond to your concerns. Do not forget that testing out your concerns is not the same as rejecting them.
- 5.2 Where appropriate, the matters raised may be:
- (a) investigated by management, internal audit, or through the disciplinary process
 - (b) referred to the police
 - (c) referred to the Council's external auditor
 - (d) the subject of an independent inquiry.
- 5.3 In order to protect individuals and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle, which the Council will have in mind, is the public interest.
- 5.4 Some concerns may be resolved by agreed action without the need for investigation.
- 5.5 Within **five** working days of a concern being raised, one of the Officers named at 4.5 above will write to you:
- (a) acknowledging that the concern has been received
 - (b) indicating how it is proposed to deal with the matter
 - (c) giving an estimate of how long it will take to provide a final response
 - (d) informing you whether any initial enquiries have been made
 - (e) supplying you with information on staff support mechanisms, and
 - (f) informing you whether further investigations will take place and if not, why not.
- 5.6 The amount of contact between the officers considering the issues and you will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the Council will seek further information from you.

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- 5.7 Where any meeting is arranged, off-site where appropriate, if you so wish, you can be accompanied by a union or professional association representative or a friend, or the group leader if you are a councillor.
- 5.8 The Council will take steps to minimise any difficulties, which you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings the Council will arrange for you to receive advice about the procedure and will help you with the preparation of statements.
- 5.9 The Council accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, you will receive information about the outcomes of any investigation.

6. The Responsible Officer

- 6.1 The Monitoring Officer has overall responsibility for the maintenance and operation of this policy. That officer maintains a record of concerns raised and the outcomes (but in a form which does not endanger your confidentiality) and will provide an annual report on the operation of the policy to the Standards Committee.

7. How the matter can be taken further

- 7.1 This policy is intended to provide you with an avenue to raise concerns within the Council. The Council hopes you will be satisfied with any action taken. If you are not, and if you feel it is right to take the matter outside the Council, the following are possible contact points:

- (a) the Audit Commission hotline - 0845 052 2646
- (b) your local Citizens Advice Bureau
- (c) relevant professional bodies or regulatory organisations
- (d) the police
- (e) Local Government Ombudsman
- (f) the Council's Standards Committee.

- 7.2 If you are considering taking the matter outside of the Council, you should ensure that you are entitled to do so and that you do not disclose confidential information. An independent charity, Public Concern at Work, can offer independent and confidential advice. They can be contacted on ☎ 020 7409 6609 or by email at whistle@pcaw.co.uk

8. Questions regarding this policy

- 8.1 Any questions should, in the first instance, be referred to the Monitoring Officer.

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