

Local System for Processing Code of Conduct Complaints

Report of the Clerk

For further information about this report please contact Roger Woliter, Clerk and Monitoring Officer, on 01952 383200 or Matthew Cumberbatch, Deputy Clerk and Monitoring Officer, on 01952 383255.

1 Purpose of Report

To update the Committee on developments regarding the introduction of the local system for processing Code of Conduct complaints and to ask the Committee to establish a framework to consider complaints in accordance with the new legislative requirements.

2 Recommendations

The Committee is asked to:

- a) note the contents of the report;
- b) approve the Monitoring Officer's Protocol relating to the receipt and processing of Code of Conduct Complaints as set out at Appendix 1 of the report;
- c) establish and appoint the members of a Referrals Sub-Committee comprising membership in accordance with the draft terms of reference set out at Appendix 2 of this report;
- d) establish and appoint the members of a Review Sub-Committee comprising membership in accordance with the draft terms of reference set out at Appendix 2 of this report; and
- e) establish Hearings sub-committees as and when required for particular hearings, comprising where possible, members who have not been involved in the referral or review of the particular matter.

3 Background

The new system for making and processing complaints alleging a breach of the Members Code of Conduct was introduced on 8 May 2008. Officers have undertaken work to ensure that the system was in place to receive complaints from that date. Further work is ongoing to ensure that there are appropriate procedures in place to administer the new system.

4 Overview of the new local complaints system

The new system for local processing of Members Code of Conduct complaints commenced on 8 May 2008. From that date, all complaints alleging breaches of the Members Code of Conduct by any member of the Fire Authority are to be referred in the first instance to this Committee. The Committee is then responsible for establishing a sub-committee to undertake an initial assessment of the complaint and decide what action has to be taken.

The options available to the sub-committee are to take no further action, refer the matter for a local investigation, refer the member who is subject to the complaint for training, to direct conciliation between the complainant and the member who is subject of the complaint, to refer the matter to the Standards Board for England, or to take any further action as appropriate.

If there is a decision to take no further action the complainant can, within a certain time period, ask for that decision to be reviewed. On receiving such a request, the Committee would then have to set up a further sub-committee in order to reconsider the previous assessment. The options available to that sub-committee are the same as those which are available to the sub-committee that initially considered the complaint.

5 Work undertaken to prepare for the new system

Whilst this change to a local system has been anticipated for some time, its introduction was undertaken with only a short period of notice. Accordingly, there has not previously been the opportunity to update the Committee with regard to the work that was undertaken when the regulations and guidance in respect of the new system were announced.

Set out below is the work that was undertaken since the notice of the new system was announced:-

- A notice (in the format set out in Standards Board guidance) has been displayed at Fire Authority Headquarters reception and on the Fire Authority website. A brief summary of the new provisions has been prepared and also placed on the Fire Authority website.

- A complaint form was produced, in accordance with Standards Board guidelines. Copies of the Complaints Form have been made available from the Fire Authority website and at reception at Fire Authority Headquarters.
- In accordance with the delegation given to the Monitoring Officer at the Fire Authority meeting of 1^h December 2007, amendments to the structure of the Standards Committee are being made in order to allow for the additional responsibilities brought in by the Local Government and Public Involvement in Health Act 2007.
- A further amendment is being made to incorporate new responsibilities also set out in the same legislation to consider applications 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. A report setting out this new responsibility in more detail will be provided to a future meeting of this Committee.

6 Establishing the Sub-Committees

The Standards Board for England have issued guidance in respect of the operation of the local system for considering Code of Conduct complaints. It is recommended that any complaint received is assessed in accordance with those Standards Board guidelines.

A draft protocol is attached at Appendix 1 outlining the procedure to be followed by the Monitoring Officer in respect of the process to be undertaken when a complaint is received.

The Committee will note that there is a requirement to change the structure of the Committee. The Committee must have at least 25% Independent Membership and there must be sufficient membership of the Committee to provide for up to two separate sub-committees to assess the complaint and a further sub-committee to hear any local determination. Accordingly, the structure of the Committee will now be that there will be 4 Independent Members (one Independent Member must be the Chair of the Committee) and 4 Fire Authority members.

The Committee will need to establish a system to consider the complaints in accordance with The Standards Committee (England) Regulations 2008 and associated legislation and guidance. Accordingly at Appendix 2 of this report there is a draft amendment to the terms of reference of the Committee (amendments are shown in bold italics) to set up sub-committees to undertake these new responsibilities. In terms of the sub-committee, the quorum for the committee must be three and there **must** be an Independent Chair. It is therefore recommended that there are 4 members of the sub-committee with a quorum of 3, in order to make allowance for an occasion, for example, where an elected member has a conflict of interest or a member of

the sub-committee is for some unforeseen reason not able to attend the meeting.

If the terms set out at Appendix 2 are approved it is recommended that the Committee establish the sub-committees as set out and make provision to establish Hearings Committees as and when required. Whilst the Standards Board Guidance states that members of the Committee who may have taken part in the initial determination or review of a complaint can take part in any subsequent determination hearing it is recommended that, where possible, this is only done on occasions when members of the committee who have not previously been involved in the matter are unavailable.

7 Financial Implications

There will be additional costs associated with the introduction of the local system for processing Code of Conduct complaints; however it is very difficult to quantify the financial impact as this will depend on the number and types of complaints received. If an investigation is required there may be the need to appoint an independent investigator which will lead to additional costs. These will be closely monitored during the year and any additional costs will be flagged up in financial monitoring reports.

8 Legal Comment

The Members Code of Conduct has been adopted by the Fire Authority and is compliant with the Local Authorities (Model Code of Conduct) Order 2007.

The requirement for a local system to consider complaints alleging a breach of the Members Code of Conduct is set out in the Local Government and Public Involvement in Health Act 2007. Specific details about the operation of the local complaints system are outlined in the Standards Committee (England) Regulations 2008. In operating the local complaints system the Fire Authority also has to be mindful of any guidance issued by the Standards Board for England.

9 Equality Impact Assessment

This report relates purely to the introduction of a local system for processing Code of Conduct complaints and seeks to establish a framework for considering such complaints in accordance with new legislative requirements. As the process follows closely legislative requirements and guidance, an initial equality impact assessment has not been considered necessary.

10 Appendices

Appendix 1 Draft Monitoring Officer's Protocol

Appendix 2 Draft terms of reference for Standards Committee

11 Background Papers

The Local Government and Public Involvement in Health Act 2007
 The Standards Committee (England) Regulations 2008
 The Local Authorities (Model Code of Conduct) Order 2007
 Standards Board for England Guidance – The Role and Makeup of Standards Committees, Local Assessment of Complaints Guidance, Local Assessment of Complaints Toolkit.
 Shropshire and Wrekin Fire Authority, 19 December 2007, Minutes

Implications of all of the following have been considered and, where they are significant (i.e. marked with an asterisk), the implications are detailed within the report itself.

| | | | |
|--|---|---|---|
| Balanced Score Card | | Integrated Risk Management Planning | |
| Business Continuity Planning | | Legal | * |
| Capacity | | Member Involvement | |
| Civil Contingencies Act | | National Framework | |
| Comprehensive Performance Assessment | | Operational Assurance | |
| Efficiency Savings | | Retained | |
| Environmental | | Risk and Insurance | |
| Financial | * | Staff | |
| Fire Control/Fire Link | | Strategic Planning | |
| Information Communications and Technology | | West Midlands Regional Management Board | |
| Freedom of Information / Data Protection / Environmental Information | | Equality Impact Assessment | * |

Draft Monitoring Officer Protocol

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

1 Receipt of Allegations

- 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 has or may have failed to comply with the Authority's Code of Conduct is referred to him/her immediately upon receipt by the Authority.
- 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 Referrals Sub-Committee, so the Monitoring Officer has no authority to deal with an allegation which appears to be an allegation of failure by a relevant member to observe the Code of Conduct other than by reporting it to the Referrals Sub-Committee. The Monitoring Officer shall therefore determine whether the allegation appears to be a substantive allegation of misconduct. Where it appears not to be, he/she shall ensure that the matter is dealt with under a more appropriate procedure, for example where it is really a request for service from the Authority, a statement of policy disagreement, a legal claim against the Authority or a complaint against an officer of the Authority.
- 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 Referrals 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 Referrals Sub-Committee. However, where the Monitoring Officer is of the opinion that such notification would be

contrary to the public interest or would prejudice any person's ability to investigate the allegation, he/she shall consult the Chairman of the Referrals Sub-Committee, or in his/her absence the 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 Referrals 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 Referrals Sub-Committee.

3 Local Resolution

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

4 Review of Decisions not to Investigate

- 4.1 Where the Referrals Sub-Committee has decided that no action be taken on a particular matter, the Monitoring Officer shall promptly advise the complainant of the decision, and the complainant may then within 30 days of receipt of such notification request that the Review Sub-Committee review that decision.

- 4.2 Whilst the review shall normally be a review of the reasonableness of the original decision rather than a reconsideration, the Monitoring Officer shall report to the Review Sub-Committee the information which was provided to the Referrals Sub-Committee in respect of the matter, the summary of the Referrals Sub-Committee and any additional relevant information which has become available prior to the meeting of the Review Sub-Committee.

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 Referrals Sub-Committee, to determine who to instruct to conduct a formal local investigation, and this may include another senior officer of the Authority, a senior officer of another authority or an appropriately experienced consultant.

Standards Committee

Quorum – 3

The quorum must include at least two Members of the Fire Authority and one Independent Member.

Chair

The Chair must be an Independent Member of the Committee

Members – 8

4 Members of the Fire Authority and 4 Independent Members

Fire Authority Members

Yvonne Holyoak (Cons)
Clive Mason (Lab)
Chris Mellings (Lib Dem) (Vice Chair)
Adrian Williams (Ind)

Independent Members

Paul Brereton
Michael Tebbutt (Chair)
David Turner
Ian Webb

Meeting Dates

2008

18 February 2008
16 June 2008
13 October 2008

2009

2 March 2009
29 June 2009
26 October 2009

Terms of Reference

To promote and maintain a high standard of conduct by Members, to oversee the Register of Members' Interests and to oversee the effectiveness of the Authority's procedures for investigating and responding to complains about Members.

To advise the Authority on the adoption or revision of the Members' Code of Conduct

To assist Members to observe the Members' Code of Conduct

To advise, train or arrange to train Members on matters relating to the Members' Code of Conduct

To develop, maintain and monitor the operation of such Code

To issue advice to Members on the treatment of personal interests and on conduct matters generally

To consider and grant, or otherwise, dispensations in respect of Members interests

To establish sub-committees of the Standards Committee to make initial assessments of complaints received by the Standards Committee alleging a breach of the Members' Code of Conduct.

To establish sub-committees of the Standard Committee to consider requests received by the Standards Committee to review decisions to take no action in relation to a complaint made to its sub-committee as set out above.

To consider and act on any report from the Monitoring Officer on any matter which is referred to the Monitoring Officer.

To exercise such functions as are required under the Fire Authority's procedures for local investigation of referred complaints and for the local determination of allegations of misconduct

To 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

To exercise such other functions as the Authority considers appropriate

Terms of Reference of the Referrals Sub-Committee

1 Terms of Reference

a The Referrals Sub-Committee is established to receive allegations that a member of the Authority 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 2(c) above, the Sub-Committee shall state its reasons for that decision.***

- e 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.***

- f 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 Referrals Sub-Committee

The Referrals Sub-Committee shall comprise 4 members, of whom at least 1 shall be an independent member of the Standards Committee (and one of whom shall chair the Sub-Committee), and at least 2 elected members of the Authority.

3 Quorum

The quorum for a meeting of the Sub-Committee shall be 3 members, with an Independent member as Chairman, and at least one elected member of the Authority.

Terms of Reference of the Review Sub-Committee

1 Terms of Reference

- a** *The Review Sub-Committee is established to review, upon the request of a person who has made an allegation that a member of the Authority has failed, or may have failed, to comply with the Authority's Code of Conduct, a decision of the Referrals 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 Referrals 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.*

2 Composition of the Review Sub-Committee

The Review Sub-Committee shall comprise 4 members, of whom at least 1 shall be an independent member of the Standards Committee (and one of whom shall chair the sub-committee), and at least two 2 shall be elected members of the Authority.

3 Quorum

The quorum for a meeting of the Sub-Committee shall be 3 members, with an Independent member as Chairman, and at least one elected member of the Authority.