

CARLISLE CITY COUNCIL

Report to:- **Standards Committee**

Date of Meeting:- **5 June 2008**

Agenda Item No:-

Public

Title:- **LOCAL ASSESSMENT OF COMPLAINTS**

Report of:- **DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES
AND MONITORING OFFICER**

Report reference:- **LDS.39/08**

Summary:-

To advise the Committee of Regulations that have been made to deal with the local assessment of complaints under the Local Government Act 2000 as amended by the Local Government and Public Involvement in Health Act 2007, and guidance issued by the Standards Board for England, and to enable the Committee to consider its procedures and criteria for the local assessment of complaints, including the establishment of appropriate sub-committees.

Recommendation:-

- (1) That the Guidance from the Standards Board for England previously circulated to Members be noted and adopted.
- (2) That the Committee note and approve the arrangements for publicising the new arrangements set out in paragraph 2 of this report.
- (3) That the Committee authorise the Monitoring Officer to finalise the format of the complaints form set out in Appendix 1 and to make any changes which he believes are necessary to the Committee's existing procedures for conducting local investigations and hearings to incorporate both the new legislative requirements and best practice.

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None

- (4) That the Committee's Assessment Procedure and Assessment Criteria set out in Appendix 2 be approved, including the establishment of the Assessment and Review Sub-Committees and the Hearings Sub Committee to exercise the functions and with the terms of reference therein described, and that the Committee consider whether it wishes the Monitoring Officer to notify a subject member of a complaint prior to the meeting of the Assessment Sub-Committee.
- (5) That the Head of Democratic Services or his representative be authorised to convene ad hoc Assessment and Review Sub-Committees, each of three members, on the principles as set out in the Procedure in Appendix 2, to deal with the initial assessment of allegations and subsequent requests for review and any of the other functions allocated to the Sub-Committees under the Procedure.
- (6) That the Head of Democratic Services or his representative be authorised to convene ad hoc Hearings Sub-Committees of five Members on the principles set out in the Procedure in Appendix 2 and in paragraph 2.14 of this report to hear and determine complaints and undertake the functions set out in Regulations 17 to 20 of the Standards Committee (England) Regulations 2008.
- (7) That the Council be requested to authorise the Director of Legal and Democratic Services to make any necessary alterations to the Council's Constitution to incorporate the new legislative requirements and Standards Board for England Guidance in respect of the role and functions of the Standards Committee.
- (8) That the Monitoring Officer be given delegated authority (in consultation with the Chairman, where practicable) to make any changes to the operating procedures of the various Sub-Committees set out in the Procedure in Appendix 2, in order to incorporate any additional statutory requirements or Guidance from the Standards Board which may be produced or which he believes are required to reflect best practice.

Contact Officer: John Egan

Ext: 7004

13 May 2008

1. INTRODUCTION

- 1.1 This report is a follow up to Report LDS.08/08 considered by the Committee on 12 February last, which alerted Members to proposed changes in the procedures for dealing with complaints regarding breaches of the Code of Conduct and as a result of which the Council agreed to change the composition of the Standards Committee in anticipation of these new legislative requirements.
- 1.2 The Local Government and Public Involvement in Health Act 2007 made amendments to the provisions of the Local Government Act 2000 relating to the conduct of local authority members and, in particular, the arrangements for dealing with allegations of breach of the Code of Conduct. Under the 2007 Act, a written allegation of failure to comply with the Code of Conduct is now to be made to the Standards Committee, rather than to the Standards Board for England as previously. The Standards Committee must decide whether to refer the allegation to the Monitoring Officer or to the Standards Board, or decide that no action should be taken in respect of the allegation. Where there is a decision to take no action, the complainant has a right to request a review of this decision.
- 1.3 Whilst the 2007 Act sets out the general framework of the new arrangements, the detail is set out in the Standards Committee (England) Regulations 2008, which were laid before Parliament on the 17th April 2008, and came into force on the 8th May 2008. The Regulations implemented the new regime with effect from the 8th May 2008. The Regulations themselves require local authorities to have regard, in a number of areas, to guidance issued by the Standards Board. Such guidance is set out in the Board's publications entitled "Local Assessment of Complaints" and "The Role and Make Up of Standards Committees", both of which have been circulated to Members and which they are asked to consider and bring with them to the meeting when this report is being considered. The recommendations in this report and the procedures attached for approval have been formulated having regard to the guidance issued by the Standards Board which the Committee are obliged to do.
- 1.4 There are a number of issues arising from the Regulations and guidance on which the Committee is required to make decisions or establish procedures, and these are set out below.

2. PROPOSAL DETAILS

Publicity

- 2.1 The Standards Committee is required to publish details of the address to which allegations of failure to comply with the Code of Conduct are to be sent. This is to ensure that members of the public are aware of the change of responsibility for handling Code complaints. The Standards Board has issued a template notice, and their guidance provides that the complaints system may be published through an authority's website, advertising in one or more local newspapers or an authority's own newspaper or circular, or notices in public areas such as local libraries or authority reception areas. It is important that the public notice reaches as many people as possible so that members of the public know how to complain if necessary. In view of the fact that the new regime was implemented on the 8th May, the Monitoring Officer has arranged for the template notice to be placed on the Council's website. The address given for complaints was The Standards Committee, c/o John Egan, Monitoring Officer, Civic Centre, Carlisle, CA3 8QG.

- 2.2 The notice will remain on the website, and notices can be placed in Council reception areas and in the public libraries. Unfortunately the timing of the Regulations and guidance meant that it was not possible to publish a notice in the June edition of the Council's newspaper "Carlisle Focus", but it will be published in the next edition and it is intended to publish an appropriate notice in the local press as well.

Complaints Forms and Procedures

- 2.3 The guidance suggests that there are two main ways in which authorities can set up procedures for the submission of complaints that a member may have breached the Code of Conduct. Authorities may choose to integrate the making of Code complaints into the existing general complaints framework, so that when a complaint is received it can be analysed to decide which of the complaints processes is most appropriate, and the authority can then advise the complainant accordingly. Alternatively, authorities may choose to develop a separate process for Code complaints so that the process is distinct from other complaints.
- 2.4 The Monitoring Officer's preference would be to develop a separate process. The Standards Board has developed a template complaints form, which can be completed online, and the Monitoring Officer considers that it would be preferable to use this customised form which is for Conduct complaints only. This means that the Monitoring Officer will receive such complaints promptly and be able to ensure that the prescribed timescales are met. As the Council may be receiving complaints about parish councillors, it would not be appropriate for these to be received as part of the Council's general complaints procedure in any event. That is not to say that the two procedures will not be integrated. Relevant officers throughout the Council have already been alerted to the need to advise the Monitoring Officer if they receive a complaint which appears to include a Conduct complaint. Some complaints may inevitably need to be considered through more than one of the Council's complaints processes.
- 2.5 A copy of the proposed complaints form, based on the Standards Board's template, is appended to this report as Appendix 1 for the Committee's approval. The Committee is requested to authorise the Monitoring Officer to finalise the form.

Assessment Procedures and Criteria

- 2.6 The Committee is also required to publish details of the procedures it will follow in relation to any written allegation received. In complying with these requirements, the Committee must take account of the guidance issued by the Standards Board which has been circulated to Members. The Monitoring Officer has prepared for the Committee's consideration the draft Assessment Procedure which is appended to this report as Appendix 2. This follows the Standards Board guidance, and the Committee is asked to approve the document. It is anticipated that the Procedure, together with the Assessment Criteria, will then be published on the Council's website, and that copies will be kept at the Customer Service Reception and provided on request. Copies will also be provided whenever a complaint form is requested.
- 2.7 There are a number of issues contained in the draft procedure which require the Committee's specific consideration, and these are set out below.
- 2.8 The Regulations require the Committee to appoint separate sub-committees to deal with the initial assessment of allegations of breach of the Code of Conduct, and with any subsequent request for review of the initial assessment. Such Assessment and Review sub-committees must be chaired by an independent member, and no member who has

taken part in the initial assessment of an allegation may participate in a review in respect of that allegation. A sub-committee shall not be quorate unless at least three members are present. One member of the City Council must always be present and, if the allegation relates to a parish councillor, a parish representative must also be present. Whilst the Regulations do not prescribe the size of the sub-committees, emerging best practice suggests that three is the appropriate size and, indeed, it seems that the Standards Board in their guidance envisages that that would be the case. However, if any Member did not attend, the meeting would be inquorate and unable to proceed. Therefore, rather than establishing fixed sub-committees with named members, it is recommended that the Committee authorise the Head of Democratic Services or his representative, in consultation with the Chairman where practicable, to convene ad hoc sub-committees of three, to include an independent member as chairman and at least one city councillor, and, where the complaint relates to a parish council, one parish representative. This is consistent with the Standards Board Guidance which makes it clear that for these purposes there is no requirement for the sub-committees to have either a fixed membership or a fixed chair.

- 2.9 An Assessment or Review Sub-committee meeting is not required to be open to the public, and the normal rules about publication of agendas and minutes do not apply. However, the sub-committee must produce a summary of its consideration, which must be prepared having regard to guidance issued by the Standards Board. The summary will be open to public inspection for a period of six years.
- 2.10 The issue of whether or not a subject member should be notified of a complaint before the Assessment Sub-Committee meets is a difficult one. The Regulations are far from clear on this. The guidance states that the Monitoring Officer has the discretion to take the administrative step of acknowledging receipt of a complaint and telling the subject member that a complaint has been made about them. The notification could say that a complaint has been made, and state the name of the complainant (unless the complainant has requested confidentiality – a request that would be considered by the Assessment Sub-Committee), the relevant paragraphs of the Code that may have been breached and the date of the Assessment Sub-Committee meeting. However, a written summary of the allegation can only be provided to a subject member once the Assessment Sub-Committee has met. Because of this, and the fact that the Assessment Sub-Committee meeting is held in private, there may be little to be gained from telling the subject member about the existence of the complaint at that stage, and indeed it seems that this would only cause anxiety to the subject member. However, the Committee's views on this are sought, and will be incorporated in the Procedure document if it takes a different view.
- 2.11 When an Assessment Sub-Committee considers an allegation, it may refer the allegation to the Monitoring Officer, refer the allegation to the Standards Board, or decide that no action should be taken in respect of the allegation. In referring an allegation to the Monitoring Officer, this may be for investigation, or with a direction to take other steps. These other steps are arranging for the member who is the subject of the allegation to attend a training course, arranging for the member and the complainant to engage in a process of conciliation or such other steps (apart from investigation) as appear appropriate to the sub-committee. The Standards Board has advised that Standards Committees should establish criteria for the assessment process, and a draft for the Committee's consideration is included in the draft Assessment Procedure at Appendix 2.
- 2.12 When an Assessment Sub-Committee decides that no action should be taken in respect of an allegation, the person who made the complaint may make a request for that decision to be reviewed, and this request must be considered by a differently constituted sub-committee. The legislation does not indicate whether the review should be by way of reconsideration, with the sub-committee considering the allegation afresh and substituting its

own decision for that of the Assessment Sub-Committee, or whether it should only change the previous decision if it was unreasonable in law or the correct procedures were not followed or if the complainant has provided compelling new information in their review request. The guidance from the Standards Board states that the Review Sub-Committee should apply the same criteria used for initial assessment. This suggests that the Sub-Committee is in effect considering the matter afresh, and the Monitoring Officer has reflected this approach in the Assessment Procedure document at Appendix 2.

Investigations and Hearings Procedures and Hearings Sub-Committee

- 2.13 As Members will be aware, the Committee already has in place approved procedures in respect of investigations and hearings. If a complaint is referred by the Assessment Sub-Committee for investigation, the procedure for the investigation and hearing is largely unchanged by the new Regulations, but it is recommended that the Monitoring Officer should review the existing procedures against the new requirements and be given delegated authority to make any changes which he believes are necessary to incorporate the new legislative requirements and current best practice.
- 2.14 Members will be aware that, in respect of conducting a formal hearing into allegations regarding breaches of the Code, current Committee procedures provide for such hearings to be undertaken by the full Standards Committee. However, this procedure was agreed when the Committee comprised of eight members only. It is not considered to be practicable for the full Committee, which now comprises of twelve members, to conduct hearings into alleged breaches because it is too large a number. Further emerging best practice from other Authorities points to the need to set up a smaller Hearings Sub-Committee as well to hear and determine complaints. It is therefore recommended that a Hearings Sub-Committee of five members is established to hear and determine complaints and undertake the functions set out in Regulations 17 to 20 of the Standards Committee (England) Regulations 2008. As with the other proposed sub-committees, it is suggested that this be convened on an ad hoc basis, and that members be appointed by the Head of Democratic Services or his representative in consultation (where practicable) with the Chairman of the Standards Committee. The Hearings Sub-Committee will comprise of five members of the Standards Committee and, to comply with the statutory requirements, must include an Independent Member who will act as Chairman and at least one City Councillor and, where a Parish matter is being considered, at least one Parish member. The functions of the Hearings Sub-Committee are set out in more detail as part of the Procedure Note at Appendix 2. This should enable any hearings to be dealt with efficiently and ensure that a sufficient number of members are available from the general pool as required from time to time.

Other Additional Functions for the Assessment Sub-Committee

- 2.15 The new Regulations say that, if a matter is referred to the Monitoring Officer for investigation, once he/she has finished the report it must be referred to the Standards Committee for them to decide what to do with it. They can decide either to agree with the Monitoring Officer's conclusions that there has been no breach, if that is what he/she finds, or, if they disagree, refer it for a formal hearing. If the report concludes that there has been a breach, then the Committee must (they have no choice) similarly refer it for a formal hearing. They also have the option of referring it to an external Adjudication Panel for hearing but in very limited circumstances only.

- 2.16 It seems to make sense and be operationally more efficient if the Assessment Sub-Committee is given this additional referral role as well, rather than setting up even more administrative processes to deal with the function. The role of the Assessment Sub-Committee, as set out in the Procedure in Appendix 2, has therefore been written to take on this further function.
- 2.17 Members may recall from earlier reports that the 2007 Act also transfers to the Standards Committee responsibility for dealing with applications from Officers for exemptions from the political restrictions on posts set out in the Local Government and Housing Act 1989. This function lends itself to be delegated to a smaller group of Members than the full Committee and so it has been allocated to the Assessment Sub-Committee in the attached Procedure. A response is awaited from the Standards Board that this approach is acceptable.

3. DETAILS OF CONSULTATION

- 3.1 The report has been prepared by the Monitoring Officer on the basis of the Standards Board guidance. Advice has also been sought from the Standards Board on specific issues and discussion has taken place with other authorities in Cumbria in an endeavour to achieve consistency of approach.

4. FINANCIAL IMPLICATIONS

- 4.1 The only specific expenditure arising from this report would occur if the Committee was minded to publish a notice in the local newspapers. The Standards Committee has no budget for this, but the cost could be met from the Council's existing advertising budget.
- 4.2 The new arrangements are a statutory requirement, and it remains to be seen what the resource implications will be. Since the implementation of the Local Government Act 2000, there have been very few complaints made to the Standards Board about the conduct of our city and parish councillors. If this continues, then there should be no financial implications. However, if more complaints are received, there will be resource implications for the Monitoring Officer, Legal Services, and Democratic Services, in terms of servicing meetings and carrying out investigations or training and conciliation, and additional demands on Member time. If the Sub-Committees are required to meet on a regular basis, the Independent Remuneration Panel may need to consider in due course whether any additional special responsibility allowances are required. At this stage, however, the implications cannot be quantified.

5. RECOMMENDATIONS

- (1) That the Guidance from the Standards Board for England, previously circulated to Members, be noted and adopted.
- (2) That the Committee note and approve the arrangements for publicising the new arrangements set out in paragraph 2 of this report.
- (3) That the Committee authorise the Monitoring Officer to finalise the format of the complaints form set out in Appendix 1 and to make any changes which he believes are necessary to the Committee's existing procedures for conducting local investigations and hearings to incorporate both the new legislative requirements and best practice.

- (4) That the Committee's Assessment Procedure and Assessment Criteria as set out in Appendix 2 be approved, including the establishment of the Assessment and Review Sub-Committees and the Hearings Sub-Committee to exercise the functions and with the Terms of Reference therein described, and that the Committee consider whether it wishes the Monitoring Officer to notify a subject member of a complaint prior to the meeting of the Assessment Sub-Committee.
- (5) That the Head of Democratic Services or his representative be authorised to convene ad hoc Assessment and Review Sub-Committees, each of three members, on the principles as set out in the Procedure in Appendix 2 to deal with the initial assessment of allegations and subsequent requests for review and any of the other functions allocated to the Sub-Committees under the Procedure.
- (6) That the Head of Democratic Services or his representative be authorised to convene ad hoc Hearings Sub-Committees of five Members on the principles set out in the Procedure in Appendix 2 and in paragraph 2.14 of this report, to hear and determine complaints and undertake the functions set out in Regulations 17 to 20 of the Standards Committee (England) Regulations 2008.
- (7) That the Council be requested to authorise the Director of Legal and Democratic Services to make any necessary alterations to the Council's Constitution to incorporate the new legislative requirements and Standards Board for England Guidance in respect of the role and functions of the Standards Committee.
- (8) That the Monitoring Officer be given delegated authority (in consultation with the Chairman, where practicable) to make any changes to the operating procedures of the various Sub-Committees set out in the Procedure in Appendix 2, in order to incorporate any additional statutory requirements or Guidance from the Standards Board which may be produced or which he believes are required to reflect best practice.

John Egan

Director of Legal and Democratic Services and Monitoring Officer

CARLISLE CITY COUNCIL STANDARDS COMMITTEE

PART 1

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

Introduction

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

Assessment Sub-Committee

5. Upon receipt of a complaint that a City Councillor, Co-opted Member or Parish Councillor has or may have failed to comply with the Code of Conduct, the Monitoring officer will liaise with the Head of Democratic Services or his representative to convene as soon as possible and in any event within 20 working days a meeting of an Assessment Sub-Committee.
6. The Assessment Sub-Committee will comprise three members of the Standards Committee, including an Independent Member who will act as Chairman and at least one City Council Member. Where the complaint relates to a Parish Councillor, the Assessment Sub-Committee will also include a parish member of the Standards Committee. The Sub-Committee will be convened on an ad hoc basis, and members will be appointed by the Head of Democratic Services or his representative in consultation (where practicable) with the Chairman of the Standards Committee.
7. The Assessment Sub-Committee will be advised by the Monitoring Officer, the Deputy Monitoring Officer or another legal officer.
8. The purpose of the Assessment Sub-Committee will be to decide whether any action should be taken on the complaint – either as an investigation or some other action. The Assessment Sub-Committee will not make any findings of fact.
9. The Assessment Sub-Committee will receive in advance of the meeting a copy of the complaint, together with a report prepared by the Monitoring Officer or his representative which will set out the following details:

- Whether the complaint is within the jurisdiction of the Standards Committee
- The paragraphs of the Code of Conduct the complaint might refer to, or the paragraphs the complainant has identified
- A summary of key aspects of the complaint if it is lengthy or complex
- Any further information that the officer has obtained to assist the Assessment Sub-Committee with its decision. This may include a copy of a declaration of acceptance of office form and an undertaking to observe the Code, minutes of meetings, a copy of a member's entry in the register of interests, information from Companies House or the Land Registry, or other easily obtainable documents
- Any clarification obtained by the officer from the complainant if the complaint was unclear

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

The Assessment Process

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

- The complaint is against one or more named members of the City Council or a parish council within its district
- The subject member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time
- The complaint, if proven, would be a breach of the Code under which the subject member was operating at the time of the alleged misconduct

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

11. If the complaint meets the above tests, then the Assessment Sub-Committee will proceed to consider whether to refer it to the Monitoring Officer, to refer it to the Standards Board for England, or whether no action should be taken. In making its decision, the Sub-Committee will take account of the Assessment Criteria at Appendix 1, which have been approved by the Standards Committee, and which will from time to time be reviewed by the Committee.

12. The Assessment Sub-Committee will, unless there are exceptional circumstances, reach a decision within 20 working days of receipt of the complaint.

13. If the Assessment Sub-Committee decides to take no action over a complaint, then it will arrange for notice of that decision, including the reasons for it, to be given to the complainant, the subject member, and, if the subject member is a parish councillor, to the clerk to the relevant parish council. This will be done within 5 working days after the date of the meeting.

14. If the Assessment Sub-Committee decides to refer the complaint to the Monitoring Officer or to the Standards Board for England, it will arrange for a summary of the complaint to be sent to the complainant and the subject member stating what the allegation is, and the type of referral that has been made. This will be done within 5 working days after the date of the meeting.
15. However, the Assessment Sub-Committee may decide not to give the subject member a summary of the complaint if it considers that doing so would be against the public interest or would prejudice any future investigation. In considering this, the Sub-Committee will take advice from the Monitoring Officer, and will consider in particular whether it is likely that the subject member may intimidate the complainant or any witnesses involved or whether early disclosure of the complaint may lead to evidence being compromised or destroyed. The Sub-Committee will balance whether the risk of the case being prejudiced by the subject member being informed of the details of the complaint at that stage may outweigh the fairness of notifying the subject member.

The Review Process

16. If the Assessment Sub-Committee decides not to take any action on a complaint, then the Complainant has a right to request a review of that decision, and will be so advised when notified of the decision.
17. When a request for review is received, the Monitoring officer will liaise with the Head of Democratic Services or his representative to convene as soon as possible, usually within 20 working days but in any event within 3 months a meeting of a Review Sub-Committee.
18. The Review Sub-Committee will comprise three members of the Standards Committee, including an Independent Member who will act as Chairman, and at least one City Council Member. Where the complaint relates to a Parish Councillor, the Review Sub-Committee will include a parish member of the Standards Committee. None of these Members will have been members of the Assessment Sub-Committee that considered the original complaint. The Sub-Committee will be convened on an ad hoc basis, and members will be appointed by the Head of Democratic Services or his representative in consultation (where practicable) with the Chairman of the Standards Committee.
19. In addition to the documents referred to in paragraph 9 above, the Review Sub-Committee will have a copy of the Assessment Sub-Committee's decision notice, but will consider the complaint afresh, using the Assessment Criteria at Appendix 1. The Review Sub-Committee has the same decisions available to it as the Assessment Sub-Committee and will follow the procedure outlined above in paragraphs 10-15.
20. Where on a request for review further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint, the Review Sub-Committee will consider if it is more appropriate to pass this to an Assessment Sub-Committee as a new complaint. In this instance, the Review Sub-Committee will make a formal decision that the review request will not be granted.

Withdrawing Complaints

21. If a complainant asks to withdraw the complaint prior to the Assessment Sub-Committee having made a decision on it, the Assessment Sub-Committee will decide whether or not to grant the request. In making its decision, the Sub-Committee will consider:

- Whether the public interest in taking some action on the complaint outweighs the Complainant's wish to withdraw it
- Whether the complaint is such that action can be taken on it without the complainant's participation
- Whether there is an identifiable underlying reason for the request to withdraw the complaint, and in particular whether there is any evidence that the Complainant may have been pressured by the subject member or other person to withdraw the complaint

Confidentiality

22. If a Complainant has asked for their identity to be withheld, this request will be considered by the Assessment Sub-Committee at the same time as it considers the complaint.

23. As a matter of fairness and natural justice, the subject member should usually be told who has complained about them. However, in exceptional circumstances, the Assessment Sub-Committee may grant confidentiality if it is satisfied that the Complainant has reasonable grounds for believing that they will be at risk of physical harm, or their employment will be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.

24. The Assessment Sub-Committee will also take into account whether it would be possible to refer the complaint without making the Complainant's identity known, and in particular whether the Complainant's participation would be required if the complaint were referred.

25. If the Assessment Sub-Committee decides to refuse a request from a Complainant for confidentiality, it may offer the Complainant the option to withdraw, rather than proceed with their identity being disclosed. The Assessment Sub-Committee will balance whether the public interest in taking action on a complaint may outweigh the complainant's wish to have their identity withheld from the subject member

Complaints about Members of more than one Authority

26. Where a complaint is received about a city or parish councillor who is known to be a member of another authority, for example the County Council or Police Authority, the Monitoring Officer will before the meeting of the Assessment

Sub-Committee establish whether a similar allegation has been made to the other authority. In the light of information from and in co-operation with the other authority, the Assessment Sub-Committee will consider which authority should deal with the complaint.

APPENDIX 1

CARLISLE CITY COUNCIL STANDARDS COMMITTEE – ASSESSMENT CRITERIA

A. Circumstances where the Assessment Sub-Committee may decide that no action should be taken in respect of the allegation:

A1 Where the complaint is about someone who is no longer a member of the city council or a parish council.

A2 Where the information provided by the complainant is not sufficient to enable the Sub-Committee to make a decision as to whether the complaint should be referred for investigation or other action.

A3 Where a substantially similar allegation has previously been made by the complainant to the Standards Board or the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority, (except where a Review Sub-Committee considers that a request for review contains new information and should be considered by an Assessment Sub-Committee rather than the Review Sub-Committee).

A4 Where the complaint is about something that happened so long ago that there would be little benefit in taking action now.

A5 Where the allegation is anonymous, unless it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

A6 Where the allegation discloses a potential breach of the Code of Conduct, but the Committee considers that the complaint is too trivial to merit further action.

A7 Where the complaint appears to be malicious, politically motivated or tit-for-tat.

B. Circumstances where the Assessment Sub-Committee may decide to refer the allegation to the Monitoring Officer for investigation

B1 Where the allegation discloses a potential breach of the Code of Conduct that the Committee considers sufficiently serious to justify the cost of an investigation.

C. Circumstances where the Assessment Sub-Committee may decide to refer the allegation to the Monitoring Officer for training, conciliation or other steps as appear appropriate to the Sub-Committee

***Note** This approach may be appropriate where the Sub-Committee believes that the conduct, if proven, may amount to a failure to comply with the Code, and that some action should be taken in response to the complaint. The Sub-Committee will consult its Monitoring Officer before reaching a decision to take this approach. If this approach is taken, the purpose of the action is NOT to find out whether the subject member breached the Code, and no conclusion will have been reached on whether the subject member failed to comply with the Code.*

C1 Where the complaint suggests that there is a wider problem throughout the authority and it is appropriate to extend the action to other members who are not the subject of the complaint.

C2 Where it is apparent that the subject of the allegation has admitted making an error and the matter would not warrant a more serious sanction.

C3 Where it appears that even if the allegation were fully investigated, and a breach of the Code of Conduct upheld, training or conciliation would be the appropriate remedy.

D. Circumstances where the Assessment Sub-Committee may decide to refer an allegation to the Standards Board

D1 Where the Assessment Sub-Committee believes that the status of the member or members, or the number of members about whom the complaint is made, would make it difficult for the Standards Committee to deal with the complaint. For example if the complaint is about the Leader of the Council or a Group Leader, or a member of the Cabinet or Standards Committee.

D2 Where the Assessment Sub-Committee believes that the status of the complainant(s) would make it difficult for the Standards Committee to deal with the complaint. For example if the complainant is a group leader, member of cabinet or the Standards Committee, or the Chief Executive or a statutory officer.

D3 Where the Assessment Sub-Committee considers that there is a potential conflict of interest of so many members of the Standards Committee that it could not properly deal with the matter itself.

D4 Where the Assessment Sub-Committee believes that that there is a potential conflict of interest of the Monitoring Officer or other officers, and that suitable alternative arrangements cannot be put in place to address the conflict.

D5 Where the case is so serious or complex that it cannot be handled locally.

D6 Where the complaint will require substantial amounts of evidence beyond that available from the authority's documents, its members or officers.

D7 Where the complaint relates to long-term or systematic member/officer bullying which could be more effectively investigated by someone outside the Council.

D8 Where the allegation raises significant or unresolved legal issues on which a national ruling would be helpful.

D9 Where the public might perceive the Council to have an interest in the outcome of a case. For example if the authority could be liable to be judicially reviewed if the complaint were upheld.

D10 Where there is substantial governance dysfunction in the authority or its Standards Committee.

D11 Where there are exceptional circumstances which would prevent the Standards Committee investigating the complaint competently, fairly and in a reasonable time, or where it would be unreasonable for local provision to be made for an investigation.

PART 2

TERMS OF REFERENCE OF STANDARDS SUB COMMITTEES

A. Terms of Reference of the Assessment Sub-Committee

Being mindful of the relevant legislation and any guidance issued by the Standards Board for England with regard to initial assessment:-

1. The Assessment Sub-Committee will, subject to paragraph 2 below, initially assess all written complaints received by the City Council's Monitoring Officer on the appropriate Complaints Form for such purposes or such written complaints submitted by a letter/e-mail/fax setting out all the relevant information required on such Complaints Form.
2. The Assessment Sub-Committee will only have jurisdiction to consider written allegations that an elected or co-opted Member of the City Council or a Member of a Parish Council for which the City Council is the responsible authority has failed, or may have failed, to comply with the City or the relevant Parish Council's Code of Conduct for Members.
3. The Assessment Sub-Committee is empowered to do one of the following:-
 - i). decide that no action should be taken in respect of the allegation;
 - ii) ask for additional information from the complainant on the allegation before concluding the initial assessment;
 - iii). if the allegation is likely to be reasonably substantiated and it is in the public interest to warrant Council funds being spent on a local investigation, refer the allegation to the Council's Monitoring Officer, with an instruction that he arranges for an investigation of the allegation or directs that he arranges training, conciliation or such other appropriate action as might be permitted by the relevant legislation;
 - iv). if the matter is of a serious nature (for example, there is a potential conflict of interest with the Standards Committee or the potential sanction(s) available to the Standards Committee might not be sufficient for the Standards Committee to deal with the complaint) refer the allegation to the Standards Board for England for investigation; or
 - v). where the allegation is in respect of a person who is no longer a member of the City or the relevant Parish Council, 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 authority,

and shall authorise the Monitoring Officer to take all reasonable steps to implement its decision(s), with reasons, and to notify the person making the allegation and the member concerned of that decision.

4. In the event of there being a local investigation under paragraph 3(iii), the Assessment Sub-Committee shall determine, with reasons, 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 a hearing of the Hearings Sub-Committee; or
 - iii). the matter should be referred to the Adjudication Panel for determination.

5. The Assessment Sub-Committee shall also consider under Sections 1 and 2 of the Local Government and Housing Act 1989: -
 - (a) any application received from any officer of the Council for exemption from political restriction in respect of the post held by that officer and may direct the Council 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 Council under Section 2(2) of that Act; and
 - b) upon the application of any person or otherwise, consider whether a post should be included in the list maintained by the Council under Section 2(2) of the 1989 Act, and may direct the Council to include a post in that list.
6. **Composition** - The Assessment Sub-Committee shall comprise of 3 members of the Standards Committee, including an Independent Member who will act as Chairman, and at least one City Council Member. Where the complaint relates to a Parish Councillor, the Assessment Sub-Committee will also include a Parish Member of the Standards Committee.
7. **Quorum** - The quorum for a meeting of the Assessment Sub-Committee shall be 3 members (with an Independent Member as Chairman) and at least one elected member of the City Council and one Parish Councillor (when considering a matter relating to the conduct of a Parish Councillor).
8. **Frequency of Meetings** - The Assessment Sub-Committee will meet as and when required and will be convened on an ad hoc basis and members will be appointed by the Head of Democratic Services, or his representative, in consultation (where practicable) with the Chairman of the Standards Committee.

B. Terms of Reference of the Review Sub-Committee

Being mindful of the relevant legislation and any guidance issued by the Standards Board for England with regard to initial assessment:-

1. Upon the request of a person who has made an allegation that an elected or co-opted member of the City Council or any Parish Council for which the City Council is the responsible authority has failed, or may have failed, to comply with the City or relevant Parish Council's Code of Conduct, the Review Sub-Committee will convene to review a decision of the Assessment Sub-Committee that no action is taken in respect of that allegation.
2. The Review Sub-Committee is empowered to take all decisions as per paragraph 3 of the terms of reference of the Assessment Sub-Committee.
3. **Composition** - The Review Sub-Committee shall comprise of 3 members of the Standards Committee who were not members of the Assessment Sub-Committee. One of the members of the Review Sub-Committee shall be an Independent Member of the Standards Committee (and Chairman of the Sub-Committee), at least one an elected member of the City Council and, where the complaint relates to a Parish Councillor, will include a Parish Member of the Standards Committee. .
4. **Quorum** - The quorum for a meeting of the Review Sub-Committee shall be all 3 members.

5. **Frequency of Meetings** - The Review Sub-Committee shall meet as and when required to review any decision of the Assessment Sub-Committee usually within 20 working days but, in any event, within 3 months of the receipt of the request for such a review from the person who made the allegation. The Sub-Committee will be convened on an ad hoc basis by the Head of Democratic Services, or his representative, in consultation (where practicable) with the Chairman of the Standards Committee.

C. Terms of Reference of the Hearings Sub-Committee

Being mindful of the relevant legislation and any guidance issued by the Standards Board for England with regard to initial assessment:-

1. In the event that a hearing of the Standards Committee is required, the Hearings Sub-Committee shall be convened to hear and determine any allegation that an elected or co-opted member of the City Council or a Parish Council for which the City Council is the responsible authority has failed, or may have failed, to comply with the City or relevant Parish Council's Code of Conduct.
2. **Composition** - The Hearings Sub-Committee shall comprise of 5 members of the Standards Committee and must include at least one Independent Member, who will act as Chairman, and at least one City Councillor. Where a Parish matter is being considered, the Hearings Sub-Committee will also include at least one Parish Member.
4. **Quorum** - The quorum for a meeting of the Hearings Sub-Committee shall be at least 3 members (with an Independent Member as Chairman of the Sub-Committee), and at least one elected member of the City Council and at least one Parish Councillor (when considering a matter relating to the conduct of a Parish Councillor), all present for the duration of the meeting.
5. **Frequency of Meetings** - The Hearings Sub-Committee shall meet as and when required to hear and determine any allegation(s) against an elected or co-opted member of the City Council or a Parish Council for which the City Council is the responsible authority. The Sub-Committee will be convened by the Head of Democratic Services, or his representative, in consultation (where practicable) with the Chairman of the Standards Committee.

INFORMATION FOR POTENTIAL COMPLAINANTS

The points listed below will help you decide whether this is the correct form to use when making your complaint. You should speak to John Egan, Monitoring Officer, on Carlisle 817004 or Ian Dixon, Head of Democratic Services on Carlisle 817033 if you are not clear if the Assessment Sub-Committee can consider your complaint. The Assessment Sub-Committee of the Standards Committee will make the decision about what action, if any, to take on your complaint.

- Your complaint must be about conduct that occurred while the member(s) complained about were in office. Conduct of an individual before they were elected, co-opted or appointed to the authority, or after they have resigned or otherwise ceased to be a member, cannot be considered by the Assessment Sub-committee.
- The Code of Conduct came into effect on 5 May 2002, although some authorities adopted the Code of Conduct earlier. If your complaint concerns matters that occurred before 5 May 2002 you should contact either of the Officers mentioned above before making your complaint to check whether it is within the jurisdiction of the Assessment Sub-Committee to consider.
- Your complaint must be about one or more named members of the following authorities :

Carlisle City Council

Parish Councils -

Arthuret Parish Council
Beaumont Parish Council
Bewcastle Parish Council
Brampton Parish Council
Burgh-by-Sands Parish Council
Burtholme Parish Council
Carlatton and Cumrew Parish Council
Castle Carrock Parish Council
Cummersdale Parish Council
Cumwhitton Parish Council
Dalston Parish Council
Farlam Parish Council
Hayton Parish Council
Hethersgill Parish Council
Irthington Parish Council
Kingmoor Parish Council
Kingwater Parish Council
Kirkandrews Parish Council
Kirklington Middle Parish Council

Midgeholme Parish Council
Nether Denton Parish Council
Nicholforest Parish Council
Orton Parish Council
Rockcliffe Parish Council
Scaleby Parish Council
Solport and Stapleton Parish Council
St. Cuthbert Without Parish Council
Stanwix Rural Parish Council
Upper Denton Parish Council
Walton Parish Council
Waterhead Parish Council
Westlinton Parish Council
Wetheral Parish Council

- Your complaint must be that the member(s) has, or may have, breached the Code of Conduct. A copy of the Code of Conduct and frequently asked questions about the Code of Conduct are available at www.standardsboard.gov.uk. You may also contact the Officers named above if you require further information.
- Complaints about dissatisfaction with a decision or action of the authority or one of its committees, a service provided by the authority or the authority's procedures do not fall within the jurisdiction of the Standards Committee. Complaints about the actions of people employed by the authority also do not fall within the jurisdiction of the standards committee.
- Your complaint must be in writing. If a disability prevents you from making your complaint in writing you may contact Ian Dixon, Head of Democratic Services, on Carlisle 817033 for assistance.

It is important to note that not every complaint that falls within the jurisdiction of the standards committee will be referred for investigation or other action. The Assessment Sub-Committee of the Standards Committee must decide whether this is appropriate. It will make this decision using referral criteria which can be obtained from the Monitoring Officer or accessed on the Council's website www.carlisle.gov.uk. If the Assessment Sub-Committee decides not to refer your complaint for investigation or other action it will give you the reasons for this decision. It will also explain any right that you may have to ask for the decision to be reviewed.

What happens once you submit your complaint?

When you submit your complaint we will write to let you know we have received it.

The Assessment Sub-Committee will then meet to consider your complaint and decide whether it should be referred for investigation or other action. This will happen within an average of 20 working days of the date we receive your

complaint. Meetings of the Assessment Sub-Committee are 'closed', which means that you will not be able to attend. It is therefore very important that you set your complaint out clearly and provide at the outset all the information you wish the Assessment Sub-Committee to consider.

The criteria that will be used to assess your complaint and decide whether it should be investigated can be accessed at www.carlisle.gov.uk.

When the Assessment Sub-Committee has reached its decision we will notify you in writing whether your complaint has been referred for investigation or other action. At the same time we write to you, we will also write to the member(s) you have complained about [and the parish or town clerk (if applicable)]. We will send these letters within five working days of the Assessment Sub-Committee reaching its decision. The decision of the Assessment Sub-Committee is made available for public inspection once the member the complaint is about has been given a summary of the complaint. In very limited situations the member may not be given this summary immediately and if so any public inspection will not happen until the member does get the summary.

What is meant by 'other action'?

The Assessment Sub-Committee may decide to refer your complaint for 'other action' instead of referring it for investigation. Other action is a deliberately broad term that may include options such as requiring the person you have complained about to apologise or undergo training or mediation. The Assessment Sub-Committee will carefully consider the circumstances surrounding your complaint when deciding whether other action is appropriate. If the assessment sub-committee decides to refer your complaint for other action we will explain what this involves.

How should I set out my complaint?

It is very important that you set your complaint out fully and clearly, and provide all the information at the outset. You should also provide any documents or other material that you wish the Assessment Sub-Committee to consider, where possible. Unless the authority advises you otherwise, you will not be able to attend the meeting of the Assessment Sub-Committee.

We recommend that you use our complaint form or provide a covering note summarising what you are complaining about, especially if your complaint includes a lot of supporting documentation. In the summary you should tell us exactly what each person you are complaining about said or did that has caused you to complain. If you are sending supporting documentation please cross-reference it against the summary of your complaint.

You should be as detailed as possible and substantiate your complaint where you can. Although you are not required to prove your complaint at this stage of proceedings, you do have to demonstrate that you have reasonable

grounds for believing that the member(s) complained about has breached the Code of Conduct.

Sanctions available to Standards Committees

Extract from 2008 Regulations - Findings of Standards Committees

19.—(1) Following a hearing held under regulation 18, a standards committee shall make one of the following findings—

- (a) that the member who was the subject of the hearing had not failed to comply with the code of conduct of any authority concerned;
- (b) that the member who was the subject of the hearing had failed to comply with the code of conduct of an authority concerned but that no action needs to be taken in respect of the matters which were considered at the hearing; or
- (c) that the member who was the subject of the hearing had failed to comply with the code of conduct of an authority concerned and that a sanction under paragraph (2) or (3) should be imposed.

(2) If a standards committee makes a finding under paragraph (1)(c) in respect of a person who is no longer a member of any authority in respect of which it exercises any function under Part 3 of the Act, it shall censure that person.

(3) If a standards committee makes a finding under paragraph (1)(c) in respect of a person who is a member of an authority in respect of which it exercises any functions under Part 3 of the Act, it shall impose any one of, or any combination of, the following sanctions—

- (a) censure of that member;
- (b) restriction for a period not exceeding six months of that member's access to the premises of the authority or that member's use of the resources of the authority, provided that those restrictions—
 - (i) are reasonable and proportionate to the nature of the breach; and
 - (ii) do not unduly restrict the person's ability to perform the functions of a member;
- (c) partial suspension(a) of that member for a period not exceeding six months;
- (d) suspension of that member for a period not exceeding six months;
- (e) that the member submits a written apology in a form specified by the standards committee;
- (f) that the member undertakes such training as the standards committee specifies;
- (g) that the member participate in such conciliation as the standards committee specifies;

- (h) partial suspension of the member for a period not exceeding six months or until such time as the member submits a written apology in a form specified by the standards committee;
- (i) partial suspension of the member for a period not exceeding six months or until such time as the member has undertaken such training or has participated in such conciliation as the standards committee specifies;
- (j) suspension of the member for a period not exceeding six months or until such time as the member has submitted a written apology in a form specified by the standards committee;
- (k) suspension of the member for a period not exceeding six months or until such time as that member has undertaken such training or has participated in such conciliation as the standards committee specifies.

(4) Subject to paragraph (5) and regulation 21 any sanction imposed under this regulation shall commence immediately following its imposition by the standards committee.

(5) A standards committee may direct that the sanction imposed under any of subparagraphs (b) to (k) of paragraph (3) or, where a combination of such sanctions is imposed, such one or more of them as the committee specifies, shall commence on such date, within a period of six months after the imposition of that sanction, as the committee specifies.

Sanctions available to Adjudication Panel for England

Pursuant to section 79(4) of the Local Government Act 2000, as amended, a person found to have breached the Code of Conduct for Members may be:-

- (a) suspended or partially suspended from being a member or co-opted member of the relevant authority concerned, or
- (b) disqualified for being, or becoming (whether by election or otherwise), a member of that or any other relevant authority for a period of up to 5 years.