

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

Standards Committee

21st July 2008

1. LOCAL ASSESSMENT OF COMPLAINTS

Report of the Monitoring Officer.

RECOMMENDED that

- 1.1 Members note the revisions made by the Authority to the Standards Committee's terms of reference.
- 1.2 Members note and consider the changes to the initial assessment of allegations of misconduct by members and with particular reference to the Standards Board guidance "Local Assessment of Complaints" determine what further actions should be taken to facilitate the changes for the Authority.
- 1.3 The Standards Committee establish Assessment Sub-Committees with membership and terms of reference as set out at Appendix 3.
- 1.4 The Standards Committee establish Review Sub-Committees with membership and terms of reference as set out at Appendix 4.
- 1.5 Members consider and determine how the complaints system should be further publicised.
- 1.6 Members agree that a separate process be developed for Code complaints (based on the Toolkit published by the Standards Board) rather than the process being integrated into the existing authority complaints framework.
- 1.7 The Monitoring Officer exercise her discretion whether to acknowledge receipt of a complaint and tell the subject member that a complaint has been made about them (including the relevant paragraphs of the Conduct they may have breached) and members note that this discretion does not extend to providing a written summary of the allegation to a subject member.
- 1.8 The Assessment Sub-Committee receive a short summary from the Monitoring Officer of any complaint and this should not seek to

influence improperly the Assessment Sub-Committee's decision.

- 1.9 The assessment criteria suggested in the Standards Board guidance "Local Assessment of Complaints" be adopted and be made publicly available to potential complainants and others.
- 1.10 The Standards Committee, at a future meeting, give due consideration to further developing the assessment criteria in the context of local knowledge and experience.
- 1.11 The Standards Committee specify that the Assessment Sub-Committee be scheduled to meet monthly and assessment decisions be taken within 20 working days.
- 1.12 When the Assessment Sub-Committee refer a new complaint to the Monitoring Officer for investigation the Monitoring Officer must write to the relevant parties informing them of the decision and if appropriate who will be responsible for conducting the investigation.
- 1.13 When the Assessment Sub-Committee decides to refer a complaint to the Standards Board for investigation it must so refer immediately specifying the relevant paragraphs of the Code of Conduct that it believes the allegation refers to and the reasons why the complaint cannot be dealt with locally.
- 1.14 The Standards Committee note the type of factors (set out in the guidance) the Standards Board will consider when deciding whether to accept a case for investigation by an ethical standards officer, take no action, or refer back to the Standards Committee or relevant sub-committee.
- 1.15 Standards Committee, or relevant Sub-Committees, send out its decision notice within five working days of the decision being made.
- 1.16 The Assessment Sub-Committee should take advice from the Monitoring Officer in deciding whether it is against the public interest to inform the subject member of the details of the complaint against them and/or whether informing the subject member would prejudice the investigation.
- 1.17 The Review Sub-Committee aim to undertake the review within an average of 20 working days.
- 1.18 All relevant parties are notified when a review request is received.

- 1.19 The Review Sub-Committee sends out its decision notice within five working days of the decision being made.
- 1.20 Standards Committee agree that Assessment and Review meetings and decisions be conducted in closed meetings.
- 1.21 The written summary produced after the Assessment or Review Sub-Committee has considered a complaint to be available for public inspection at the authority's offices for six years.
- 1.22 Where the complainant requests to withdraw their complaint prior to the Assessment Sub-Committee making a decision on it the Assessment Sub-Committee consider whether the public interest in taking action outweighs the complainant's desire to withdraw it and whether the investigation can proceed without the complainant's participation.
- 1.23 That the Standards Committee consider, at a future meeting, its policy in relation to vexatious or persistent complaints.
- 1.24 That the Monitoring Officer be requested to develop a complaints management system that complies with law and takes into account the Standards Board guidance on this aspect.
- 1.25 That the Standards Committee consider and develop, at a future meeting, criteria by which the Assessment Sub-Committee will consider requests for confidentiality.
- 1.26 That the Monitoring Officer act as the main adviser to the Standards Committee unless her independence has been compromised on a particular matter.
- 1.27 That the Standards Committee consider, at a future meeting, whether the authority needs to establish a data sharing protocol with other authorities to facilitate the consideration of complaints against individuals who are a member of more than one authority.
- 1.28 That the Monitoring Officer further develop and consolidate specific guidance and processes required to facilitate the assessment, review and determination of complaints in accordance with the law, the guidance and toolkit issued by the Standards Board and bring relevant reports to future meetings of the Standards Committee as appropriate.

2. **PURPOSE OF REPORT**

- 2.1 The Local Government and Public Involvement in Health Act 2007 enabled the transfer of initial assessment of allegations of member misconduct from the Standards Board for England to local authority standards committees (or sub-committees) which will have to decide whether each allegation appears to disclose a breach of the Code of Conduct for Members, and then whether it should be investigated.
- 2.2 The Standards Committee (England) Regulations 2008 contain the detail of how the new framework will operate and these were laid before Parliament on 17th April 2008 and came into force on 8th May 2008.
- 2.3 The Standards Board has very recently issued guidance on the role and make-up of Standards Committees and on local assessment of complaints. The Standards Board has also published a local assessment toolkit.
- 2.4 Given that the responsibility for initial assessment transferred to the authority from 8th May 2008 it has been necessary to make some changes to the Constitution and associated procedures.
- 2.5 At the Annual Meeting of the authority on 23rd June 2008 the terms of reference of the Standards Committee were revised to include the additional responsibilities of assessment, review and hearing. The revised terms of reference are set out at Appendix 1.
- 2.6 The Authority has therefore put in place the overarching framework and much of the detail and practicalities is the responsibility of the Standards Committee and Monitoring Officer.
- 2.7 Accordingly measures need to be taken:
- to establish assessment/referral and review sub-committees and settle their membership, quorum and terms of reference;
 - to consider whether there should be separate sub-committee(s) or hearings that do not include members previously engaged in assessment or review;
 - to set up processes for notification of members who are complained about;
 - to set up processes for local resolution;

- to consider whether anonymous complaints should be investigated;
- to consider in what circumstances the identity of complainants should be kept confidential;
- to diarise monthly meetings of the assessment/referral and review sub-committee(s);
- to consider whether assessment/referral and review sub-committees should be advised to hold their meetings in private;
- to set up processes for “pre-investigation” in respect of available information;
- to authorise the Monitoring Officer to arrange appropriate publicity after consultation with the Chairman of the Standards Committee.

2.8 This report brings the Standards Board guidance “Local Assessment of Complaints” before the Standards Committee for consideration. This guidance is set out at Appendix 2.

3. **BACKGROUND**

3.1 The Standards Board guidance “Local Assessment of Complaints” is set out at Appendix 2 and the salient points summarised below. The Standards Committee (England) Regulations 2008 require that the Standards Committee take this guidance into account.

3.2 Standards Committee must establish sub-committees for dealing with initial assessment of complaints and any requests to review decisions to take no action in relation to complaints.

3.3 The assessment and review sub-committees are not required to have fixed membership or a fixed chair. Each sub-committee needs to consist of no less than three members of the Standards Committee, including an independent member. The sub-committees must be chaired by an independent member. Standards Committee members who have been involved in decision making on the initial assessment of a complaint must not take part in the review of that decision to minimise risk of conflicts of interest and ensure fairness for all parties. A member involved at the initial assessment stage or the review stage may take part in

a subsequent hearing, because a conflict of interest does not automatically arise. The suggested membership and terms of reference for the Assessment and Review Sub-Committees are set out in Appendices 3 and 4 respectively.

- 3.4 The authority is required to publish a notice detailing where Code of Conduct complaints should be sent to. The complaints system may also be given wider publicity.
- 3.5 The authority can choose to integrate the making of Code complaints into the existing complaints framework or develop a separate process for Code complaints. It is considered that a separate process should be adopted to ensure that sufficient focus and appropriate level resources can be allocated to the revised framework. This could be reviewed in due course if considered appropriate.
- 3.6 Complaints must be submitted in writing (including fax and electronic submissions). The Disability Discrimination Act 2000 may require reasonable adjustments to be made.
- 3.7 The Monitoring Officer has the discretion to take the administrative step of acknowledging receipt of a complaint and telling the subject matter that a complaint has been made about them and indicate the relevant paragraph(s) of the Code of Conduct they may have breached. However only the Standards Committee has the power to give a written summary of the allegation to a subject matter.
- 3.8 It might be helpful for the Assessment Sub-Committee to receive a short summary of a complaint from the Monitoring Officer including details such as:-
 - whether the complaint is within jurisdiction;
 - the paragraphs of the Code of Conduct the complaint might relate 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) obtaining a copy of a declaration of acceptance of office form and an undertaking to observe the Code;
 - b) minutes of meetings;

- c) a copy of a member's entry in the Register of Interests;
- d) information from Companies House or the Land Registry;
- e) other easily obtainable documents.

3.9 Complainants may be contacted to clarify their complaint as submitted in the documents. Any pre-assessment enquiries should not amount to an investigation.

3.10 The report to the Assessment Sub-Committee should not influence improperly the Assessment Sub-Committee's decision or purport to make the decision for it.

3.11 The Assessment Sub-Committee must first satisfy itself that the complaint meets all of the following tests:-

- it is a complaint against one or more named members of the authority or an authority covered by the Standards Committee;
- the named 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 member was operating at the time of the alleged misconduct.

If any of the tests is failed then the complainant must be informed that no further action will be taken in respect of the complaint.

3.12 The Standards Committee or its Assessment Sub-Committee will need to develop criteria against which it assesses new complaints and decides what action, if any, to take. These criteria should reflect local circumstances and priorities and be simple, clear and open. They should ensure fairness for both the complainant and the subject matter. Assessment criteria can be reviewed and amended as necessary over time. Assessment criteria should be made publicly available.

3.13 The Standards Board guidance states that the following will provide a good foundation for developing assessment criteria in the context of local knowledge and experience:

Q: Has the complainant submitted enough information to satisfy the assessment sub-committee that the complaint should be referred for investigation or other action?

If the answer is **no**: “The information provided was insufficient to make a decision as to whether the complaint should be referred for investigation or other action. So unless, or until, further information is received, the assessment sub-committee is taking no further action on this complaint.”

Q: Is the complaint about someone who is no longer a member of the authority, but is a member of another authority? If so, does the assessment sub-committee wish to refer the complaint to the monitoring officer of that other authority?

If the answer is **yes**: “Where the member is no longer a member of our authority but is a member of another authority, the complaint will be referred to the standards committee of that authority to consider.”

Q: Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?

If the answer is **yes**: “The matter of complaint has already been subject to a previous investigation or other action and there is nothing more to be gained by further action being taken.”

Q: Is the complaint about something that happened so long ago that there would be little benefit in taking action now?

If the answer is **yes**: “The period of time that has passed since the alleged conduct occurred was taken into account when deciding whether this matter should be referred for investigation or further action. It was decided under the circumstances that further action was not warranted.”

Q: Is the complaint too trivial to warrant further action?

If the answer is **yes**: “The matter is not considered to be sufficiently serious to warrant further action.”

Q: Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?

If the answer is **yes**: “The matter appears to be simply malicious, politically motivated or tit-for-tat, and not sufficiently serious, and it was decided that further action was not warranted”.

Reference to this criteria is to be included in the proposed form and accompanying information to be sent to anyone who wishes to make a complaint.

- 3.14 The Assessment Sub-Committee should complete its initial assessment of an allegation within an average of 20 working days, to reach a decision on what should happen with the complaint. To facilitate this monthly meetings of the Assessment Sub-Committee are proposed. These can be cancelled if there is no business to process.
- 3.15 The Assessment Sub-Committee can refer the complaint to the Monitoring Officer, refer the complaint to the Standards Board for England or decide that no action should be taken in respect of the complaint.
- 3.16 When the Assessment Sub-Committee considers that a new complaint should be referred to the Monitoring Officer for investigation the Monitoring Officer must write to the relevant parties informing them of the decision and, if appropriate, advising who will be responsible for conducting the investigation.
- 3.17 If the Assessment Sub-Committee believes that a complaint should be investigated by the Standards Board, it must take immediate steps to refer the matter. The referral should specify the paragraph or paragraphs of the Code of Conduct that it believes the allegation refers to and the reasons why it cannot be dealt with locally.
- 3.18 The Standards Board may accept cases for investigation by an ethical standards officer, take no action, or refer cases back to the Standards Committee or Sub-Committee which referred them.
- 3.19 The Standards Board will take the following matters into account in deciding which cases it should accept in the public interest:
 - Does the Standards Committee believe 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 or Sub-Committee to deal with the complaint? For example, is the member a group leader, elected mayor or a member of the authority's cabinet or standards committee?
 - Does the Standards Committee believe that the status of the complainant or complainants would make it difficult for the

Standards Committee to deal with the complaint? For example, is the complainant a group leader, elected mayor or a member of the authority's cabinet or standards committee, the chief executive, the monitoring officer or other senior officer?

- Does the Standards Committee believe that there is a potential conflict of interest of so many members of the Standards Committee that it could not properly monitor the investigation?
- Does the Standards Committee believe 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?
- Is the case so serious or complex, or involving so many members, that it cannot be handled locally?
- Will the complaint require substantial amounts of evidence beyond that available from the authority's documents, its members or officers?
- Is there substantial governance dysfunction in the authority or its Standards Committee?
- Does the complaint relate to long-term or systemic member/officer bullying which could be more effectively investigated by someone outside the authority?
- Does the complaint raise significant or unresolved legal issues on which a national ruling would be helpful?
- Might the public perceive the authority 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 is upheld.
- Are there exceptional circumstances which would prevent the authority or its Standards Committee investigating the complaint competently, fairly and in a reasonable period of time, or meaning that it would be unreasonable for local provision to be made for an investigation?

3.20 The Monitoring Officer will be informed within ten working days whether the Standards Board accepts a case or whether it is referring it back to the Standards Committee with reasons for doing so. There is no appeal mechanism against this decision.

3.21 If a complaint is referred back by the Standards Board the Standards Committee must then decide what action should be taken next. The Assessment Sub-Committee must take an assessment decision and should complete this within an average of 20 working days. This decision will again need to be communicated to the relevant parties in the same way as the original decision was.

- 3.22 If the Standards Board decline to investigate a case referred to them, they may offer guidance or give a direction to the Standards Committee which may assist with the Standards Committee's decision.
- 3.23 When the Assessment Sub-Committee considers a new complaint, it can, following consultation with the Monitoring Officer, decide that other action to an investigation should be taken and it can refer the matter to the Monitoring Officer to carry this out. The action decided upon does not have to be limited to the subject member or members. This may be a less costly way to deal with a matter rather than through an investigation and it may produce a more effective result.
- 3.24 Other action may be appropriate for example where the authority appears to have a poor understanding of the Code and authority procedures. Evidence for this may include:
- a number of members failing to comply with the same paragraph of the Code;
 - officers giving incorrect advice;
 - failure to adopt the Code;
 - inadequate or incomplete protocols for use of authority resources.
- 3.25 Other action may also be appropriate where a break down in relationships within the authority is apparent. Evidence of this may include:
- a) a pattern of allegations of disrespect, bullying or harassment;
 - b) factionalised groups within the authority;
 - c) a series of "tit-for-tat" allegations;
 - d) ongoing employment issues, which may include resolved or ongoing employment tribunals, or grievance procedures.
- 3.26 Everyone involved in the process will need to understand that the purpose of other action is not to find out whether the member breached the Code, the decision is made as an alternative to investigation. Complaints that have been referred to the Monitoring Officer for other action should not then be referred back to the Standards Committee if the other action is perceived to have failed. The decision to take other action closes the opportunity to investigate and the Assessment Sub-Committee should communicate this clearly to all parties.

3.27 Standards Committees would find it helpful to introduce a requirement for the parties involved to confirm in writing that they will co-operate with the process of other action proposed. An example of this would be writing to the relevant parties outlining:

- what is being proposed;
- why it is being proposed;
- why they should co-operate;
- what the Standards Committee hopes to achieve.

3.28 The following are some examples of alternatives to investigation:

- arranging for the subject member to attend a training course;
- arranging for that member and the complainant to engage in a process of conciliation;
- instituting changes to the procedures of the authority if they give rise to the complaint.

3.29 The Assessment Sub-Committee can decide that no action is required in respect of a complaint. This could be, for example, because the Assessment Sub-Committee does not consider the complaint to be sufficiently serious to warrant any action or, for example, because of the length of time that has elapsed since the alleged conduct took place and the complaint was made. The assessment criteria adopted by the Standards Committee should be consistently applied. Where there is no potential breach of the Code of Conduct no action can be taken by the Standards Committee in respect of it. The matter of referral for investigation or other action therefore does not arise.

3.30 The complainant should be advised of their right to ask for a review of the decision to take no action. They should be told that they can exercise this right by writing to the Standards Committee with their reasons for requesting the review. The complainant should also be advised of the date by which the review request should be received by the Standards Committee. That date is 30 working days after the initial assessment decision is received.

3.31 If the Assessment Sub-Committee decides to take no action over a complaint or that there is no potential breach of the Code then the Assessment Sub-Committee must explain its decision and the reasons why they believe this to be the case. Notice must be given to the relevant parties who are the complainant and the subject member. The Standards Board guidance suggests that the Standards Committee sends out a decision notice within five

working days of the decision being made.

- 3.32 If the Assessment Sub-Committee decides that a complaint should be referred to the Monitoring Officer or the Standards Board it must send a summary of the complaint to the relevant parties. It should state what the allegation was and what type of referral it made. The decision notice must explain why a particular referral decision has been made. After it has made a decision the Assessment Sub-Committee does not have to give the subject member a summary of the complaint if it decides that doing so would be against the public interest and/or would prejudice any future investigation. Where it is considered that the subject matter may intimidate the complainant or the witness involved or that disclosure of the complaint may lead to evidence being compromised or destroyed, the Assessment Sub-Committee may wish for the subject member not to be informed of the summary of the complaint. The Assessment Sub-Committee can use its discretion to give only limited information to the subject matter if it decides that this would not be against public interest or prejudice an investigation. However, any decision to withhold a summary must be kept under review as circumstances change.
- 3.33 If the Assessment Sub-Committee has decided not to take any action on a complaint then the complainant has a right of review over that decision. The Review Sub-Committee has to carry out its review within a maximum of three months of receiving a request. However the Standards Board guidance recommends that the Review Sub-Committee adopts a policy of undertaking the review within the same timescales that the initial assessment decision is taken, aiming to complete the review within an average of 20 working days.
- 3.34 The review must be independent of the original decision. Members of the Assessment Sub-Committee who made the original decision must not take part in the review of that decision. A separate Review Sub-Committee made up of members of the Standards Committee must consider the review.
- 3.35 The Review Sub-Committee should apply the same criteria used for initial assessment and has the same decisions available to it as the Assessment Sub-Committee.
- 3.36 Further information provided to support a complaint may change the nature of the complaint and give rise to a potential new complaint. In such cases the Review Sub-Committee may consider it appropriate to pass this to the Assessment Sub-

Committee to be handled as a new complaint rather than for it to be dealt with as a review. In such cases the Review Sub-Committee will need to make a formal decision that the review request will not be granted.

3.37 A review may be more appropriate if a complainant wishes to challenge that:

- not enough emphasis has been given to a particular aspect of the complaint;
- there has been a failure to follow any published criteria;
- there has been an error in procedures;

However, if more information or new information of significance is provided and this information is not merely a repeat complaint then a new complaint rather than a request for review may be more suitable.

3.38 If the Standards Committee receives a review request from a complainant it must notify the subject member that it has received the request. The Standards Board guidance recommends that all relevant parties are notified when a review request is received.

3.39 The Review Sub-Committee could decide that no action should be taken on the complaint or it could decide that the matter should be referred to the Monitoring Officer or to the Standards Board for England. The decision notice must explain why a particular referral decision has been made with reasons why it has been decided that no action should be taken. The guidance suggests that the Review Sub-Committee sends out its decision notice within five working days of the decision being made.

3.40 The guidance states that initial assessment decisions and any subsequent review of decisions to take no further action must be conducted in closed meetings. This is because such meetings may have to consider unfounded and potentially damaging complaints about members which it would not be appropriate to make public. However, after the Assessment or Review Sub-Committee has considered a complaint a written summary has to be produced which must include:

- the main points considered;
- the conclusions on the complaint;
- the reasons for the conclusion.

The summary must be written having regard to the Standards Board guidance and may give the name of the subject member unless doing so would not be in the public interest or prejudice any subsequent investigation. This written summary must be made available for the public to inspect at the authority's offices for six years. In limited situations the Standards Committee may decide not to give the written summary to the subject member when the referral decision has been made and in such cases public inspection would occur and the written summary is eventually put into the subject matter during the investigation process. However it must be noted that authorities do have to have regard to the freedom of information and data protection legislation which regulate disclosure.

- 3.41 Where a complainant asks to withdraw the complaint prior to the Assessment Sub-Committee having made a decision the Assessment Sub-Committee will need to decide whether to grant the request. The Assessment Sub-Committee may apply the following considerations:
- does the public interest in taking some action on the complaint outweigh the complainants desire to withdraw it?
 - is the complaint such that action can be taken on it, for example an investigation, without the complainants participation?
 - is there an identifiable underlying reason for the request to withdraw the complaint?
- 3.42 The authority may receive a number of complaints from different complainants about the same matter these may be considered by the Assessment Sub-Committee at the same meeting with the complaints being presented in one report with a recommendation that draws together all the relevant information and highlights any substantially different or contradictory information. The Assessment Sub-Committee must still reach a decision on each individual complaint and follow the notification procedure for each complaint.
- 3.43 The authority may want to consider developing a policy to deal with abuse of the complaints process where, for example, there are vexatious or persistent complaints. Standards Committees must consider every new complaint that they receive in relation to the Code of Conduct. Vexatious or persistent complaints can usually be identified through the following patterns of behaviour which may become apparent in the complaints process:

- repeated complainants making the same, or broadly similar, complaints against the same member or members about the same alleged incident;
- use of aggressive or repetitive language of an obsessive nature;
- repeated complaints that disclose no potential breach of the Code;
- where it seems clear that there is an ulterior motive for a complaint or complaints;
- where a complainant refuses to let the matter rest once the complaints process (including the review stage) has been exhausted.

The authority may find ways of dealing with vexatious complainants, for example, by allowing them to deal with only one named officer or to refuse email communication.

3.44 The Standards Board guidance states that authorities should consider development of a complaints management system. It is stated that records of all complaints and outcomes should be retained in line with the authority's records management policy. It is recommended that documents that relate to complaints that the Assessment Sub-Committee decided not to investigate should be kept for a minimum of 12 months after the outcome of any review that has been concluded. Authorities are required to set a time limit for records retention after the outcome of any hearing or result of further action in respect of a complaint is known. The authority's own file retention policy and the principles of data protection will be relevant.

3.45 Members should usually be told who has complained about them. However there may be instances where the complainant asks for their identity to be withheld and such requests should only be granted in exceptional circumstances at the discretion of the Assessment Sub-Committee.

3.46 Authorities should develop criteria by which the Assessment Sub-Committee will consider requests for confidentiality and may consider the following:

- the complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed;
- the complainant is an officer who works closely with the subject member and they are afraid of the consequences to their employment or of losing their job if their identity is

disclosed;

- the complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed.

However there may be cases where such allegations are made, for example bullying, where revealing the identity of the complainant may be necessary for investigation of the complaint. When considering requests for confidentiality the Assessment Sub-Committee should also consider whether it is possible to investigate the complaint without making the complainant's identity known. If the Assessment Sub-Committee decides to refuse the request by the complainant for confidentiality it may wish to offer the complainant the option to withdraw rather than proceed with their identity being disclosed.

3.47 The guidance suggests that authorities should publish a statement setting out how the complaints received anonymously will be dealt with. This aspect is dealt with in the proposed complaints form.

3.48 A member of the Standards Committee who was involved in the initial assessment decision, a referral back for another assessment decision, or a review of an assessment decision, can be a member of the committee that hears and determines the complaint at the conclusion of an investigation. This is because the assessment decision relates only to whether the complainant discloses something that needs to be investigated or referred for other action and it does not determine whether the conduct took place or whether it was a breach of the Code. However any member who is a complainant or one of the following should not participate in the assessment process:

- anyone closely associated with someone who is a complainant;
- a potential witness or victim relating to a complaint.

A Standards Committee member might initially be involved at the initial assessment of a case that is then referred to the Standards Board for England or to the authority's Monitoring Officer. If this case is referred back to the Standards Committee to consider again, the member may continue their participation in the assessment process. However, a member involved at the initial assessment stages of the process must not participate in the review of such decisions.

3.49 Officers who have previously advised a subject member or who

have advised a complainant about the issue giving rise to a complaint should consider whether they can properly take part in the assessment process. A conflict of interest could mean that the officer concerned will not be able to:

- draft letters;
- prepare reports;
- contact complainants;
- attend the final hearing of that complaint.

Officers should also consider whether they should stand aside due to the prior involvement which may be perceived as making them biased. If officers have taken part in supporting the assessment or hearing process then they should not be involved in the investigation of that matter. This will then minimise the risk of conflicts of interest that may arise and ensure fairness to all parties.

3.50 The guidance suggests that the Monitoring Officer should act as the main adviser to the Standards Committee unless the Monitoring Officer has an interest in the matter that would prevent them from performing the role independently.

3.51 Members and officers are required to take care to avoid any personal conflicts of interest arising when participating in consideration of a complaint that a member may have breached the Code of Conduct. That revisions of the authority's Code relating to personal prejudicial interests apply to Standards Committee members in meetings and hearings. Therefore anyone who has a prejudicial interest or is involved with a complaint in any way should not take part in the Assessment or Review Sub-Committees. Decisions made in an Assessment or Review Sub-Committees should not be influenced by anything outside the papers and advice put before the members in that Committee. Standards Committee members should not discuss complaints with others who are not members of the Committee which deals with the assessment or reviews. Discussions between members should only take place at official meetings.

3.52 Authorities should have clear guidelines in place and when a member or officer should not take part in the assessment of a complaint because of personal interests. Such personal interests may include consideration of the following:-

- the complaint is likely to affect the wellbeing or financial position of that member or officer or the wellbeing or financial

position of a friend, family member or person with whom they have a close association;

- the member or officer is directly or indirectly involved in the case in any way;
- a family member, friend or close associate of the member or officer is involved in the case;
- the member or officer has an interest in any matter relating to the case.

3.53 An issue may arise relating to what should happen if a complaint is made against an individual who is a member of more than one authority ie a dual-hatted member. More than one authority may have received complaints against such a member. Decisions on which Standards Committee should deal with a particular complaint must be taken by the Standards Committees themselves, following discussions with each other. The authority should consider whether it needs to establish a data sharing protocol with other relevant authorities.

4. **EQUALITY IMPACT ASSESSMENT**

In preparing this report an initial Equality Impact Assessment is not required and has not been carried out.

5. **LEGAL IMPLICATIONS**

5.1 The Local Government and Public Involvement in Health Act 2007 and the Standards Committee (England) Regulations 2008 have brought in legislative changes to the ethical framework as initially established by the Local Government Act 2000 and the associated regulations.

5.2 The Standards Board is given power by the legislation to issue guidance which the local authorities have to take into account.

5.3 The Standards Board is also given a monitoring and regulatory role by the legislation and it is important to implement the changes with due regard to the legislation and guidance. If the Standards Board is not happy with performance at the local level it does have power to take away the additional responsibilities now being given to the authority.

6. **FINANCIAL IMPLICATIONS**

- 6.1 The changes may mean more meetings of the Standards Committee and its Sub-Committees. this may require the Monitoring Officer, her staff and Governance Services to undertake additional work in receiving any allegations of misconduct and reporting them to the relevant Sub-Committees. There is a significant cost to conducting any investigations and hearings.
- 6.2 The actual additional costs will depend upon whether any (and if so how many and of what nature) complaints of misconduct are received. The Government has not provided additional funding for these changes. In due course extra resources may have to be allocated for these additional responsibilities although to date the members of the authority have not been the subject of misconduct allegations.

N SHARMA
MONITORING OFFICER