

**MANCHESTER CITY COUNCIL
REPORT FOR RESOLUTION**

COMMITTEE: Standards Committee

DATE: 5 August 2008

SUBJECT: Assessment of Allegations of Breach of the Code of Conduct for Members

REPORT OF: The City Solicitor

Purpose of Report:

To seek the Standards Committee's approval of the procedure for assessment of allegations of breach of the code of conduct for members; to establish sub-committees as required by the Standards Committee (England) Regulations 2008 and approve the sub-committees terms of reference.

Recommendations:

1. To note the report.
2. To agree the procedure for assessment of allegations of breach of the code of conduct for members set out at Appendix B, together with the assessment criteria set out in Appendix 2 of the procedure, and authorise the City Solicitor to keep the procedure under review and amend as necessary.
3. To establish sub-committees to undertake (i) the assessment of allegations of breach of the code of conduct for members; (ii) to consider requests for review of assessment decisions; and (iii) to hold hearings.
4. To agree the terms of reference, attached at Appendix C, of the above sub-committees.
5. To agree that temporary appointments of independent members may be made from time to time and to authorise the City Solicitor to prepare a procedure for appointment on a temporary basis.
7. To authorise the City Solicitor to make consequential amendments to the Council's procedures for local investigation and determination of allegations of misconduct of members to reflect the implementation of the local filter.
8. To authorise the City Solicitor to prepare standard documentation based on the Standards Board for England's local assessment toolkit.

Financial Consequences for the Revenue Budget:

None at present

Financial Consequences for the Capital Budget:

None at present

Wards Affected:

All

Implications for:

Antipoverty	Equal Opportunities	Environment	Employment
No	No	No	No

Contact Officers:

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Background Documents

1. Reports to the Standards Committee on 15 January, 25 June 2007, 14 January 2008 and 10 March 2008
2. The Local Government and Public Involvement in Health Act 2007
3. The Standards Committee (England) Regulations 2008
4. The Standards Board for England's guidance "Local Assessment of Complaints"
5. The Standards Board for England's local assessment toolkit

Background

1. The locally based system for dealing with complaints about local authority members' conduct was brought into force on 8 May 2008. Local Authorities' standards committees are now responsible for assessing written allegations that a member has failed to comply with the authority's code of conduct. A flow chart setting out the new ethical framework is attached at Appendix A.
2. The Standards Committee (England) Regulations 2008 ("the Regulations") make provision for dealing with such allegations. In meeting their obligations under the Regulations standards committees are required to take account of any relevant guidance issued by the Standards Board for England.

3. The Standards Board for England's ("the SBE") new role is as a light touch regulator providing advice, support and guidance to help local standards committees with their new responsibility. The SBE has produced guidance for local authorities on the new regulatory framework, including a local assessment toolkit to help authorities when receiving and assessing complaints.

Provisions for Dealing with Complaints

4. Standards committees are required to publicise the address to which written allegations of breach of the Code of Conduct for Members should be sent, to keep published details up to date and to take reasonable steps to ensure these details are brought to the attention of the public. The Monitoring Officer has already ensured that a notice containing this information is on the Council's website. In addition, standards committees must publish details of the procedures to be followed in relation to any written allegation received. A draft procedure is set out at Appendix B for consideration by the Standards Committee. The Standards Committee is asked to:
 - (a) agree the procedure for assessment of allegations of breach of the code of conduct for members set out at Appendix B together with the assessment criteria set out in Appendix 2 of the draft procedure;
 - (b) authorise the City Solicitor to keep the procedure under review and amend as necessary; and
 - (c) authorise the City Solicitor to make consequential amendments to the Council's procedures for local investigation and determination of allegations of misconduct of members to reflect the implementation of the local filter.
5. The SBE have published on their website a toolkit which provides a wide range of template documents and forms for use in the local assessment process. Local authorities can download the documents and amend them as appropriate to suit their own requirements. The documents are not prescriptive and are based on the experience that the SBE has had in assessing complaints over the last six years. The Standards Committee is asked to authorise the City Solicitor to prepare standard documentation based on the SBE's local assessment toolkit.

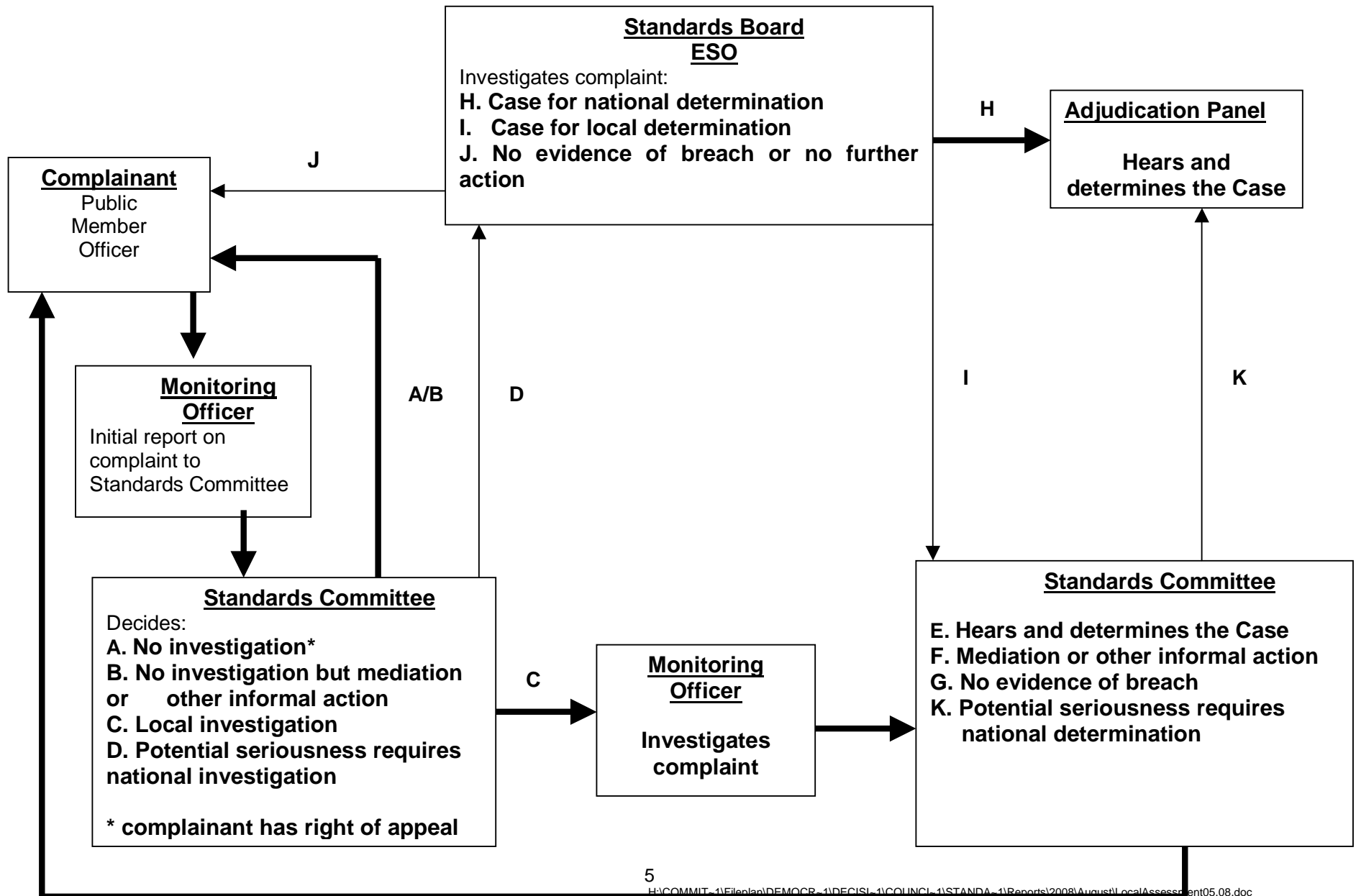
Sub-Committees

6. Standards committees are required to establish a sub-committee, chaired by an independent member, to undertake the assessment of allegations made under section 57A of the Local Government Act 2000 ("the Act"). A differently constituted sub-committee, chaired by a different independent member, must also be established to consider any request made under section 57B of the Act for a review of any decisions to take no action in respect of the assessment of an allegation. The quorum for such sub-committees is three members, including at least one elected member of the authority. Standards committees are also able to appoint a sub-committee to discharge the function of holding determination hearings. Suggested terms of reference for these sub-committees are attached at Appendix C.

7. It is proposed that the members of each sub-committee will consist of one independent member as Chair, one labour member and one liberal democrat member. The Standards Committee may wish to allocate members to each of the sub-committees by establishing three panels, A, B and C, each consisting of a named independent member, one labour member and one liberal democrat member. Panel A will form the first Standards (Assessment) Sub-Committee. The panels will then meet in consecutive order to form the next required sub-committee, whichever that may be.
8. The Standards Committee is asked to consider appointing a substitute for each of the panel members taking in account the possibility of conflicts of interest, and cover required in the event of holidays or sickness. It is suggested this could be by rotation in the case of the three independent and the three liberal democrat members. In the case of the four labour members, this could be by appointing the fourth labour member as a substitute for each of the labour panel members.
9. The Regulations provide that an independent member of one standards committee may also sit on other standards committees. Independent members may be temporarily appointed to another standards committee to consider a particular assessment, review or hearing or for a particular period of time. These appointments can be made without the requirement to advertise the position. The appointments do not need to be ratified by a majority of the members of the authority, but proper procedures should be in place to appoint independent members on a temporary basis. Independent members appointed on a temporary basis cannot have been a member or officer of the Council five years before the appointment, and cannot be a close friend or a relative of a member or officer of the Council. The Standards Committee is asked whether it agrees that temporary appointments of independent members may be made from time to time to account for the possibility of conflicts of interest, and cover required in the event of holidays or sickness and to authorise the City Solicitor to prepare a procedure for appointing independent members on a temporary basis.
10. The Standards Committee is asked to:
 - (a) establish sub-committees to undertake (i) the assessment of allegations of breach of the code of conduct for members; (ii) to consider requests for review of assessment decisions; and (iii) to hold hearings;
 - (b) agree the terms of reference of the above sub-committees attached at Appendix C; and
 - (c) agree that temporary appointments of independent members may be made from time to time and to authorise the City Solicitor to prepare a procedure for appointment on a temporary basis.

Ethical Framework

APPENDIX A





MANCHESTER
CITY COUNCIL

APPENDIX B

PROCEDURE FOR ASSESSMENT OF
ALLEGATIONS OF BREACH OF THE CODE OF
CONDUCT FOR MEMBERS

Introduction

1. This procedure governs the assessment of allegations that a member of the Council has breached the Code of Conduct for Members ('the Code').
2. The member against whom an allegation is made will be referred to in this procedure as the Member.
3. The person making the allegation of a breach of the Code will be referred to in this procedure as the Complainant.

Complaints

4. Anyone who considers a member of the Council has breached the Code may make a complaint to the Council's Standards Committee by writing to the Council's Monitoring Officer. The Complainant is advised to refer to the Council's website www.manchester.gov.uk for more information on the Standards Committee, how to make a complaint and the provisions of the Code. Complaints must be made in writing. If the complainant is unable to provide written details as a result of disability, assistance will be provided by Council officers.
5. When a written complaint is received by the Monitoring Officer and the Monitoring Officer considers it is an allegation that a Member may have breached the Code, the complaint will be referred to the Standards (Assessment) Sub Committee.
6. The Monitoring Officer will acknowledge receipt of the complaint to the Complainant and where appropriate notify the Member that a complaint has been made. In some cases notification of the Member will be withheld, in considering whether to withhold notification the Monitoring Officer will take into account whether notification would be against the public interest or would prejudice any future investigation.

The notification will include the following information:

- that a complaint has been made;
- the name of the complainant (unless the Complainant has requested confidentiality and the Standards (Assessment) Sub Committee has not yet considered whether to grant it);
- the relevant paragraphs of the Code that may have been breached;
- that a written summary of the allegation will be provided to the Member once the Standards (Assessment) Sub Committee has met to consider the complaint; and
- the date of the meeting of the Standards (Assessment) Sub Committee if known.

7. The Monitoring Officer will prepare a summary of the complaint for the Standards (Assessment) Sub Committee. The summary may include the following information:
 - a summary of the allegation;
 - the paragraphs of the Code that the complaint may relate to;
 - any further information to assist the Standards (Assessment) Sub Committee with its decision which may include:
 - o obtaining a copy of the declaration of acceptance of office and undertaking to observe the Code;
 - o minutes of meetings;
 - o a copy of the Member's register of interests;
 - o information in the public domain e.g. Companies House or the Land Registry;
 - o Standards Board guidance on any of the issues raised by the allegation.

Council officers may contact the Complainant for clarification of their complaint however, pre-assessment enquiries will not be carried out in such a way as to amount to an investigation.

Assessment

8. An assessment flow chart is set out at Appendix 1. The Standards (Assessment) Sub Committee will aim to complete its assessment of written allegations that a Member may have breached the Code within 20 working days of receipt of the complaint by the Monitoring Officer.
9. Before assessing a complaint the Standards (Assessment) Sub Committee must be satisfied that the complaint meets the following initial test:
 - it is a complaint against one or more named members of Manchester City Council;
 - the named member was in office and the Code was in force at the time of the alleged misconduct; and
 - the complaint, if proven, would be a breach of the Code under which the member was operating at the time of the alleged misconduct.
10. If the complaint does not satisfy the above test it cannot be investigated as a breach of the Code, and the complainant will be informed that no further action will be taken in respect of the complaint.
If a complaint meets the initial test the Standards (Assessment) Sub Committee will assess the complaint in accordance with the assessment criteria set out in Appendix 2.
11. Having assessed the complaint the Standards (Assessment) Sub Committee must reach one of the following decisions:

- to refer the complaint to the Monitoring Officer for investigation;
- to refer the complaint to the Monitoring Officer for other action;
- to refer the complaint to the Standards Board for England; or
- no action to be taken in respect of the complaint.

Referral to the Monitoring Officer for Investigation

12. Within five working days of the decision to refer a complaint to the Monitoring Officer for investigation, a summary of the complaint will be sent to the Complainant stating the allegation; that it has been referred to the Monitoring Officer for investigation; and where appropriate the name of the person conducting the investigation. The summary will also be sent to the member unless the Standards (Assessment) Sub Committee has decided that to do so would be against the public interest or would prejudice the investigation.

Referral to the Monitoring Officer for Other Action

13. Within five working days of the complaint being referred to the Monitoring Officer for other action, the Monitoring Officer will write to the Complainant and Member explaining the implications of the decision; outlining what action is being proposed and why; what the Sub Committee hopes to achieve; and, where appropriate, requesting that the parties confirm in writing that they will co-operate with the proposed action.

“Other action” may include requiring the Member to apologise, attend training or engage in a process of conciliation.

Referral to the Standards Board for England

14. Within five working days of the decision to refer a complaint to the Standards Board for England for investigation by an ethical standards officer, a summary of the complaint will be sent to the Complainant stating the allegation and that it has been referred to the Standards Board for England. The summary will also be sent to the member unless the Standards (Assessment) Sub Committee has decided that to do so would be against the public interest or would prejudice any future investigation.

The complaint will be referred to the Standards Board for England stating which paragraphs of the Code the allegations may relate to and reasons why it cannot be dealt with locally. The Standards Board for England will decide whether to investigate, take no action or refer the case back to the Standards Committee. If the Standards Board for England refers the complaint back, the Standards (Assessment) Sub Committee must again take an assessment decision as above.

Decision to Take No Action

15. Within five working days of the decision to take no action, written notice of the decision together with reasons for it, will be sent to the Complainant and the Member. The Complainant will be advised of their right to ask for a review of the decision and informed how to do this.

Review

16. A review flow chart is set out at Appendix 3. If the Standards (Assessment) Sub Committee's decision is to take no action the Complainant has a right to request a review of the decision. A request for review must be made within 30 working days of receipt of the decision. The request should be in writing; should include reasons for the request and be sent to the Monitoring Officer. The Monitoring Officer will acknowledge receipt of the request and notify the Member that a request for review has been made.
17. The Standards (Review) Sub Committee must carry out its review within 3 months of receiving the request but will aim to complete reviews within 20 working days of receipt of the request. The complaint will be reviewed using the Council's assessment criteria set out in Appendix 2.
18. If further information in support of a complaint is made available which changes the nature of the complaint or gives rise to a potential new complaint, the Standards (Review) Sub Committee will consider whether it is more appropriate to refer the complaint to the Standards (Assessment) Sub Committee to be assessed as a new complaint. In these circumstances the Standards (Review) Sub Committee will make a formal decision that the review request will not be granted.
19. Having reviewed the complaint the Standards (Review) Sub-Committee must reach one of the following decisions:
 - to refer the complaint to the Monitoring Officer for investigation;
 - to refer the complaint to the Monitoring Officer for other action;
 - to refer the complaint to the Standards Board for England; or
 - no action to be taken in respect of the complaint.

Where the decision is to refer the complaint to the Monitoring Officer for investigation or other action, or to refer the complaint to the Standards Board for England, the procedures set out above in relation to the assessment decision will apply following which the Council's relevant procedure (Procedure for Local Investigation of Allegations of Misconduct of Council Members; Procedure for Local Determination of Allegations of Misconduct of Council Members following an Investigation by the Monitoring Officer or Procedure for Local Determination of Allegations of Misconduct of Council Members following an Investigation by an Ethical Standards Officer) will apply.

Where the decision is that no action be taken, written notice of the decision together with reasons for it, will be sent to the Complainant and the Member within five working days of the decision being made. There is no right to request a review.

Access to Documents and Meetings of the Standards (Assessment) and Standards (Review) Sub-Committees

20. Meetings of the Standards (Assessment) and Standards (Review) Sub-Committees shall be held in private and the committee papers will not be published.

Confidentiality

21. Except in exceptional circumstances, the identity of the Complainant will be disclosed to the Member. A request from a Complainant to preserve anonymity shall be considered by the Standards (Assessment) Sub-Committee when it assesses the complaint. The sub-committee shall only consider granting anonymity to the Complainant where one of the following grounds applies:
 - the Complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed; or
 - the Complainant suffers from a serious medical condition and there are medical risks associated with the disclosure of their identity. Medical evidence will be required in respect of this ground.

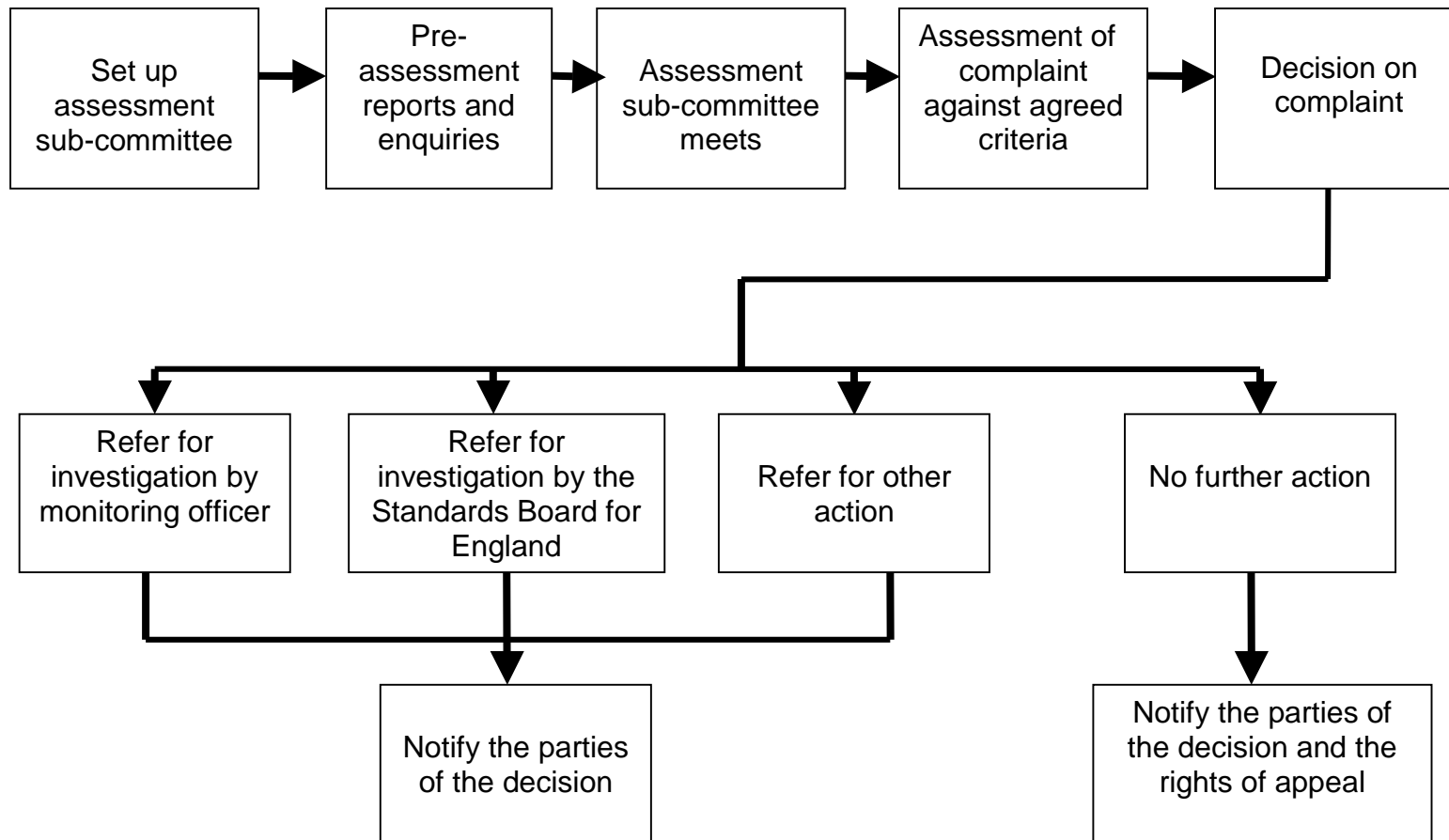
In each of the above cases the sub-committee may only grant a request if they consider that a fair investigation can still be conducted. If the sub-committee declines a request for anonymity the Complainant shall be given the option of withdrawing the complaint as an alternative to the disclosure of information.

Anonymous Complaints

22. Anonymous complaints will not be considered further unless the Complainant provides independent evidence, capable of verification, which discloses an exceptionally serious or significant matter.

APPENDIX 1

ASSESSMENT FLOWCHART



APPENDIX 2

Assessment Criteria

- How serious is the allegation, is it serious enough to merit an investigation?
- Has there been a breach of trust?
- Has there been financial impropriety?
- Is the complaint malicious, vexatious or influenced by political motivation or retaliation?
- Is the complaint relatively minor, trivial or not sufficiently serious?
- Is the complaint about someone who is no longer a member of the authority, but is a member of another authority? If so is it necessary to refer the complaint to the Monitoring Officer of that other authority?
- Is the complaint the same or substantially similar to a complaint which has already been investigated and which has been resolved and dealt with?
- Has the complaint already been the subject of an investigation or other action by other regulatory authorities?
- Have you taken into account the time that has passed since the alleged conduct occurred and the submission of the complaint? If a period of 12 months has elapsed between the incident(s) complained of and the complaint the matter will not ordinarily be considered further unless there are good reasons for the delay.
- Has the complainant expressed any view as to the outcome of the complaint?
- Is the associated expenditure of an investigation disproportionate to the benefit to the public's confidence in local democracy in any outcome of the complaint? Underpinning its consideration at every stage will be an assessment of the public interest in investigating a complaint taking into account the cost and time involved.
- Is there wider relevance of the allegation e.g. does the allegation raise issues of serious public concern?
- In the circumstances, is an alternative course of action more appropriate than an investigation e.g. training or mediation?
- It is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it, short of investigation?

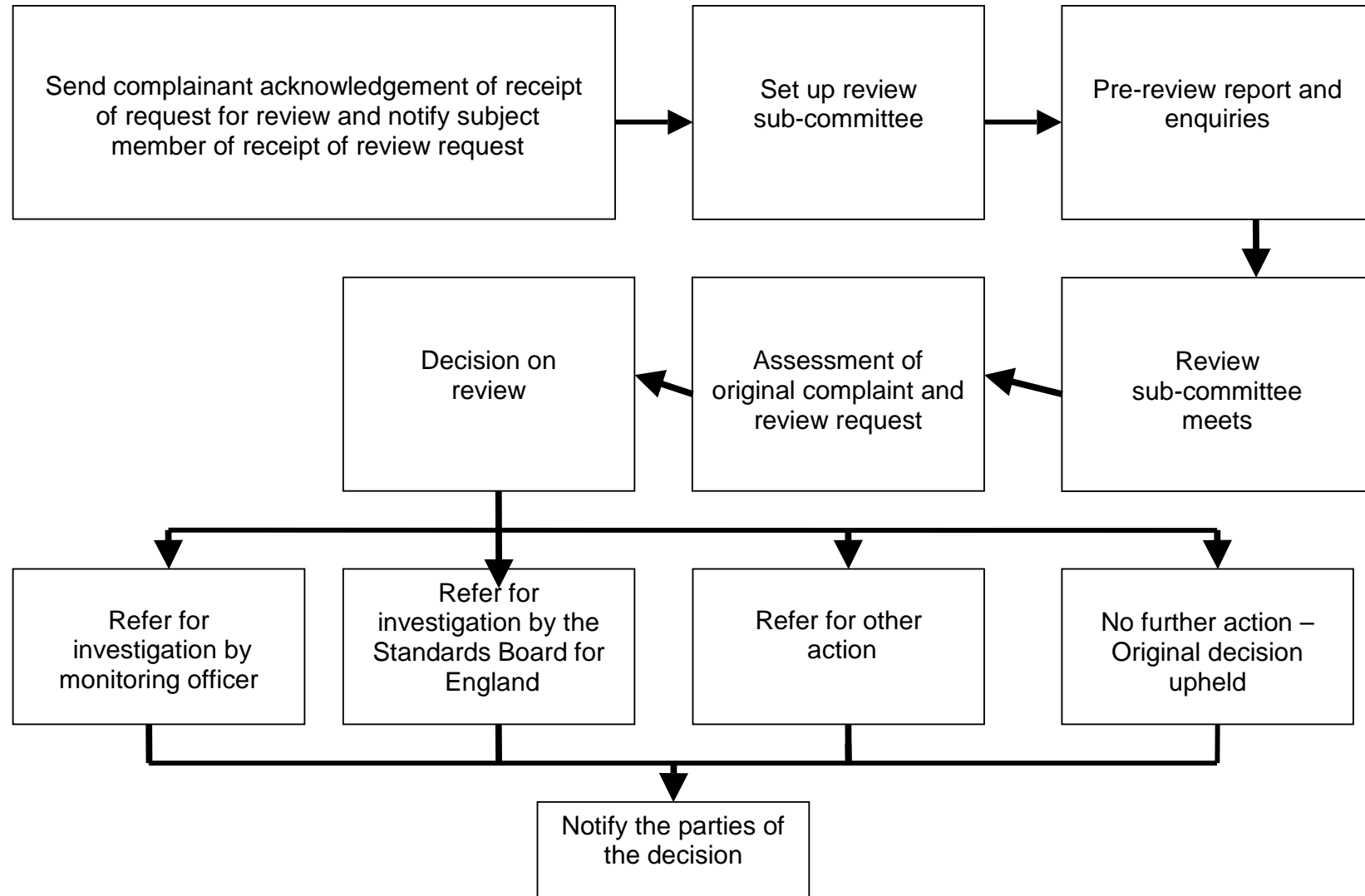
- Does the complaint concern acts carried out in the member's private life; when they are not carrying out the work of the authority; or have they misused their position as a member?
- Does it appear that the complaint is really about dissatisfaction with a Council decision?
- Is there sufficient and adequate information currently available to support a decision to refer the matter for investigation? If the complaint does not contain sufficient detail to determine whether the matter should be referred for investigation the complainant may be advised that no further action will be taken unless such additional information as is considered to be necessary is provided to the Monitoring Officer.
- Should the complaint be referred to the Standards Board for England ("SBE") to be investigated by an ethical standards officer. The SBE take into account the following matters when deciding which referrals to accept:
 - 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 them 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?

APPENDIX 3

REVIEW FLOWCHART



**Standards (Assessment) Sub-Committee
Terms of Reference**

Subject to relevant legislation and taking into account any guidance issued by the Standards Board for England with regard to assessment:

1. The sub-committee will, subject to paragraph 2 below, assess written complaints received by the 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 sub-committee will only have jurisdiction to consider written allegations that an elected or co-opted member of the Council may have failed, to comply with the Code of Conduct for Members.
3. The sub-committee is empowered to do any of the following:-
 - (a) decide that no action should be taken in respect of the allegation;
 - (b) ask for additional information from the complainant on the allegation before concluding the initial assessment;
 - (c) if the allegation is likely to be reasonably substantiated and it is in the public interest to warrant public funds being spent on a local investigation, refer the allegation to the Council's Monitoring Officer, with an instruction that s/he arranges for an investigation of the allegation or directs that s/he arranges training, conciliation or such other appropriate action as might be permitted by the relevant legislation;
 - (d) refer the allegation to the Standards Board for England for investigation having considered the matters that the Standards Board for England takes into account when deciding which referrals to accept; or
 - (e) where the allegation is in respect of a person who is no longer a member of the 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. **Composition** - the Standards (Assessment) Sub Committee shall comprise of 3 members, including an independent member of the Standards Committee (who shall

be Chair of the Sub-Committee) two elected members of the Council, one labour and one liberal democrat.

5. **Quorum** - the quorum for a meeting of the sub-committee shall be all three members.
8. **Frequency of Meetings** - the Standards (Assessment) Sub Committee will programme a meeting for each month, but will only meet if it needs to carry out an initial assessment of an allegation at that meeting.

Standards (Review) Sub-Committee

Terms of Reference

Subject to relevant legislation and taking into account any guidance issued by the Standards Board for England with regard to review:

1. Upon the written request of a person who has made an allegation that a member of the Council has failed, or may have failed, to comply with the Council's Code of Conduct, the Standards (Review) Sub Committee will convene to review a decision of the Standards (Assessment) Sub Committee that no action is taken in respect of that allegation.
2. The Standards (Review) sub-committee is empowered to take all decisions as per paragraph 3 of the terms of reference of the Standards (Assessment) Sub Committee.
3. **Composition** - the sub-committee shall comprise of 3 members of the Standards Committee who were not members of the Standards (Assessment) Sub Committee who carried out the initial assessment of the subject complaint. One of the members of the sub-committee shall be an independent member of the Standards Committee (and Chair of the sub-committee) and two shall be elected members, one labour and one liberal democrat.
4. **Quorum** - the quorum for a meeting of the Standards (Review) Sub Committee shall be all 3 members.
5. **Frequency of Meetings** - the Sub Committee shall meet as and when required to review any decision of the Standards (Assessment) Sub Committee within 3 months of the receipt of the request for such a review from the person who made the allegation.

Standards (Hearing) Sub-Committee

Terms of Reference

Subject to relevant legislation and taking into account any guidance issued by the Standards Board for England with regard to hearings:

1. In the event that a hearing of the Standards Committee is required, the Standards (Hearing) Sub-Committee shall be convened to hear and determine any allegation that a member of the Council has failed, or may have failed, to comply with the Council's Code of Conduct.
2. **Composition** - The sub-committee shall comprise of 3 members of the Standards Committee. One of the members of the Standards (Hearing) Sub-Committee shall be an independent member (and Chair of the Sub-Committee) and two shall be elected members, one labour and one liberal democrat.
3. **Quorum** - The quorum for a meeting of the Standards (Hearing) Sub-Committee shall be all 3 members.
4. **Frequency of Meetings** - The Sub-Committee shall meet as and when required to hear and determine any allegation(s) against a member of the Council.