

APPENDIX A

HASTINGS BOROUGH COUNCIL

LOCAL ASSESSMENT OF COMPLAINTS ALLEGING BREACH OF THE MEMBER CODE OF CONDUCT

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1. Introduction

1. The following administrative procedures in Parts 2 to 6 have been agreed with the Standards Committee as part of the processes and procedures for dealing with complaints about member conduct. They are based on the requirements of the Local Government Act 2000 (as amended) and relevant Regulations and Guidance. The Monitoring Officer has been given delegated authority by the Standards Committee, in consultation with the Chair, to make amendments to these procedures and will exercise this discretion within any limitations imposed by the legislation and having regard to Standards Board Guidance.

2. In all sections of these procedures:-

“Code” means the Council’s Code of Conduct for members as adopted by Hastings Borough Council from time to time.

“Council” means Hastings Borough Council.

"independent person" means a person who is not a member or officer of the Council who has been appointed to the Standards Committee of the Council.

“member” means any member of the Council, which includes co-optees with voting rights

“Monitoring Officer” means the Borough Solicitor or any other person acting on her/his behalf.

"the Regulations" means the Standards Committee (England) Regulations 2008 and any other regulations applicable to these procedures.

“MO” means the Monitoring Officer and is deemed to include all officers authorised by the Monitoring Officer to act for her/him.

“SBE” means the Standards Board for England.

“subject member” means a member who is the subject of a complaint.

2. Pre-assessment

Publicity for complaints procedure

1. In accordance with the Regulations and the guidance from the SBE, the arrangements set out in this section indicate the address to which written allegations of breaches of the Code should be sent and the steps which the Council considers are reasonable to bring details of the address and the complaints procedure to members of the public.

2. The address for these purpose will be:-

The Standards Committee, c/o the Borough Solicitor and Monitoring Officer, Town Hall, Queens Road, Hastings, East Sussex TN34 1QR.

3. The Council will publish a notice (see item 5(b) below) detailing where Code complaints should be sent.

4. The guidance suggests various ways that the Council should publicise the new arrangements so that members of the public know how to make a complaint and points out that the Council must also update this information and continue to publicise the complaints procedure regularly.

5. The MO has made the following publicity arrangements in accordance with the guidance:-

(a) Details of how complaints about members should be made have been posted on the Council's website and it is also currently a featured item on the front page of the website.

(b) Arrangements have been made for a notice to be included in the next issue of the Council's About Magazine.

(c) A message has been circulated to council staff about the new arrangements, via @bit staff bulletin.

(d) Written notification has been sent to the Citizens Advice Bureau with interim details of the new arrangements.

(e) Publicity and information is available at the Hastings Information Centre (HIC).

6. Further publicity action to be carried out as soon as possible by the MO:-

(a) New leaflets and posters will be produced to publicise the complaint procedure.

(b) These will be circulated to all council reception areas, libraries, Citizens Advice Bureaux and community groups.

(c) Other periodic, general awareness initiatives will be carried out by the MO satisfy the requirement for updating / regular publicity about the Code complaints process.

Procedures for receiving & processing of complaints of member misconduct

1.This section should be read in conjunction with sections 4 and 5 in particular.

2.Complaints about member conduct will be administered by the MO and her staff who will act as points of contact for the Standards Committee, Assessment Sub-committee and the Review Sub-committee. This procedure will operate as a distinct complaint process, independently of other corporate complaints procedures

3.Complaints must be received in writing but where that would place an unreasonable barrier for a person wishing to make a complaint the MO will arrange for a verbal complaint to be transcribed for approval by the complainant or their representative.

4.Support will be provided for people who wish to make a complaint where English is not their first language.

5.Complaints received anonymously will be presented to the Assessment Sub-committee only if they contain documentary or photographic evidence to support a serious or significant allegation.

6.A complaint may not necessarily be made in writing. For example, it may be a concern raised in conversation with the MO. In such cases the complainant should be asked whether they want formally to put the matter in writing to the Standards Committee. If the complainant does not, then the MO should consider options for informal resolution to satisfy the complainant.

7.Complaints received will be analysed by a MO to decide whether another corporate complaint process is more appropriate.

8.Some complaints may need to be processed through more than one of the Council's complaint processes, for example as corporate complaints, statutory complaints, complaints in relation to freedom of information rules etc. However, as far as possible the MO will endeavour to process or direct the complaint only through or o the most appropriate procedure.

9.If the MO identifies that the complaint is in relation to the Code it will be referred to the Assessment Sub-committee.

10.The MO will notify the Committee Administrator who will arrange for the Assessment Sub-Committee to sit normally within 20 working days of the Council receiving the complaint. The MO will supply any necessary papers to the Committee Administrator so that they can be forwarded to Sub-Committee members papers to be sent out as the usual access to information rules do not apply but the Committee Administrator will aim to send out the papers at least 2 working days in advance of the meeting.

11.The MO will present a summarised report of the complaint to the Assessment Sub-Committee.

12.Where a number of complaints are received about the same matter the MO will present one report to the Assessment Sub-Committee, drawing together all the relevant information and highlighting any substantively different or contradictory information. The Assessment Sub-Committee will, however, make separate decisions in relation to each complaint.

13.When a formal complaint has been received the MO has discretion to:-

- Acknowledge receipt of the complaint in writing, normally within 5 working days;
- Inform the subject member that a complaint has been made about him/her by sending notification to the subject member stating:-
 - a complaint has been made;
 - the name of the complainant (unless confidentiality has been requested by the complainant and the Assessment Sub-Committee has not yet considered whether or not to grant it);
 - the relevant paragraphs of the Code that may have been breached;
 - that a written summary of the complaint will be provided to the subject member only if and when the Assessment Sub-Committee has met to consider the complaint as only the Sub-Committee has power, under Section 57C(2) of the Local Government Act 2000 to give a written summary of the allegation to the subject member;
 - the date of that meeting if known.

14.The discretion set out at paragraph 13 above will usually be exercised shortly before the hearing date. However, the discretion will not be exercised if the MO considers that the Panel may decide to withhold from the subject member the summary which it otherwise needs to give after making its decision, on the ground that it would be against the public interest to do so or it would prejudice any future investigation. (See below “Criteria for withholding from subject member a summary of the complaint”.)

15. The MO will not normally supply any further information at this stage to the subject member. If the MO considers that further information might be disclosed, he/she will need to be satisfied he/she has legal power to do so bearing in mind the restrictions on disclosure in:-

- Section 63 of the Local Government Act 2000 as modified by Regulation 12
- Data Protection Act 1998
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3. Assessment

Pre- assessment reports and enquiries

1.The MO will prepare a short summary of the complaint for the Assessment Sub-Committee stating:-

- Whether the complaint is within the Sub-Committee’s jurisdiction;
- The paragraphs of the Code the complaint may relate to, or which have been identified by the complainant;
- A summary of key aspects of the complaint;
- Any further information obtained by the MO to assist the Assessment Sub-Committee with its decision, e.g.
 - A declaration of office form and undertaking to observe the Code;
 - Minutes of meetings;
 - Member’s entry in register of interests
 - Information from Companies House or Land Registry;
 - Other easily obtainable documents

and the MO may also contact the complainant for clarification if unable to understand the document submitted. However, pre-assessment enquiries will not be carried out in such a way as to amount to an investigation. For example they will not extend to interviewing potential witnesses, the complainant or the subject member.

Decisions of the Assessment Sub-Committee

2.The Assessment Sub-Committee is required to reach one of the three following decisions on a complaint about a member’s actions in relation to the Code of Conduct:-

- referral of the complaint to the monitoring officer of the authority concerned, which under section 57A(3) of the Local Government Act 2000 referral, as amended, may be another authority;
- referral of the complaint to the SBE;
- no action should be taken in respect of the complaint

and will base its decisions on the criteria that have been agreed for making assessments (see below).

3.However, the Assessment Sub-Committee is permitted to consider intermediate options beyond no action but not as far as investigation. These are referred to as “other action” and criteria are set out below under “Circumstances in which decisions may be to take action short of investigation (“other action”)”.

Referral for Investigation

4.If the Assessment Sub-Committee decides that a complaint it has considered should be forwarded to the Monitoring Officer for investigation all relevant parties will be informed by the MO of the decision, if appropriate advising who will be responsible for conducting the investigation. However, the Assessment Sub-Committee does not have to supply the subject member with a summary of the complaint if it decides doing so would be against the public interest or would prejudice any further investigation. (See below for “Criteria for withholding from subject member a summary of the complaint”.)

5.If the Assessment Sub-committee believes a complaint should be investigated by the SBE the matter will be referred to them as quickly as possible via the MO.

Whether the decision is to refer to the MO or to the SBE for investigation, the decision notice must explain why a particular referral decision has been made.

6.If the SBE decline to investigate they will return it to the Assessment Sub-Committee, who will then assess the complaint.

No Action

7.As soon as possible, and normally within 5 working days, after making the decision to take no action over the complaint the Assessment Sub-Committee will give all parties notice of its decision and the reasons for that decision.

8.All relevant parties will be informed of that decision by the MO on behalf of the Assessment Sub-Committee.

9.Where no potential breach of the Code is disclosed by the complaint the complainant will be advised by the MO of their right to ask for a review. The MO will inform the complainant they should submit their reason for requesting the review in writing and that should be received within 30 working days from the date the initial assessment is received.

Review of the assessment

10.If a request for a review is received by the MO all parties will be notified.

11.The MO will notify the Committee Administrator who will arrange for the Review Sub-Committee to sit normally within 20 working days of the Council receiving the complaint. It must in any case carry out the review within 3 months of receiving the request. The MO will present a summarised report of the complaint to the Review Sub-Committee.

12.There may be cases where further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint. In such cases, the Review Sub-Committee will consider carefully if it is more appropriate to pass this to an Assessment Sub-Committee to be handled as a new complaint. In this instance, the Review Sub-Committee will still need to make a formal decision that the review request will not be granted. For example, a review may be more appropriate if a complainant wishes to challenge that:-

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

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

Decision of the Review Sub-Committee

13.The Review Sub-Committee will base its decisions on the criteria that have been agreed for making assessments (see below). As soon as possible after reaching its decision the Review Sub-Committee will notify all parties of its decision and the reasons for its decision.

14.If the decision is to refer to SBE or the Monitoring Officer for investigation all parties will be informed and will be provided with a summary of the complaint normally within 5 working days unless the Review Sub-Committee decides that doing so would be against the public interest or would prejudice any further investigation. The decision notice must explain why that particular referral decision has been made. (See below for “Criteria for withholding from subject member a summary of the complaint”.)

15.If the Review Sub-Committee decides that a complaint they have considered should be forwarded to the Monitoring Officer for investigation the MO will if appropriate also advise who will be responsible for conducting the investigation.

16.If the Review Sub-Committee believes a complaint should be investigated by the SBE the matter will be referred to them as quickly as possible via the MO.

In case of referral to the MO or to the SBE for investigation of the complaint, the decision notice must explain why the that particular referral decision has been made.

17.If the SBE decline to investigate they will return it to the Review Sub-Committee, who will then assess the complaint.

18.If the Review Sub-Committee decides to take no action over a complaint they will give notice to the MO who will advise the relevant parties of the decision normally within 5 working days.

19.Where no potential breach of the Code is disclosed by the complaint the complainant will be advised by the MO on behalf of the Review Sub-Committee.

Additional items

20. Where a person or persons make repetitive or vexatious complaints The MO will respond in the way outlined by the Council’s corporate procedure for dealing with such matters. Issues that have previously been dealt with will not be responded to but any new allegations will be considered. The Sub-Committee procedures for such complaints are dealt with further below under the heading “Multiple and vexatious complaints”.

21.All complaints will be recorded by the MO. This will include all details of persons involved, relevant dates, issues of complaint, relevant paragraphs of the Code and outcomes. Any such information, which is required by the

legislation to remain confidential, will only be disclosed to the extent that the law permits.

22. Documents relating to complaints that the Assessment Sub-Committee or the Review Sub-Committee have decided not to investigate will be kept by MO for a minimum of twelve months. The summary required to be kept by the Sub-Committee will be kept for a minimum of 6 years (see below "Access to meetings and decision making")

23. Documents relating to complaints that have resulted in further action will be kept for by the MO for a minimum of 6 years. The summary required to be kept by the Sub-Committee will be kept for a minimum of 6 years (see below "Access to meetings and decision making")

24. The MO or a member of her/his staff will not take part in the complaint process if there is a potential conflict of interest.

25. If a Sub-Committee decides to refer a matter to the MO for investigation, the officer who has taken part in the assessment/assessment review process will not be appointed to investigate the matter.

4. The Decision

Criteria for decisions by the Assessment Sub-Committee and the Review Sub-Committee

Initial tests

1. Before assessment of a complaint begins, the Assessment Sub-Committee or Review Sub-Committee should be satisfied that the complaint meets the following tests:-
 - (a) it is a complaint against one or more named members of the Council ;
 - (b) the named member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
 - (c) the complaint, if proven, would be a breach of the Code under which the member was operating at the time of the alleged misconduct.
2. If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant must be informed that no further action will be taken in respect of the complaint.
3. If the complaint passes these tests, the Sub-Committee will go on to consider whether to take no action, whether to refer the complaint for investigation, or whether refer it to the Monitoring Officer for other action.

Assessment criteria

4. The Standards Committee has developed criteria against which the Assessment Sub-Committee and the Review Sub-Committee assess new complaints and decide what action, if any, to take. The aim of these criteria is to reflect local circumstances and priorities, to be simple, clear and open, to ensure fairness for both the complainant and the subject member, and to protect the Sub-Committee members from accusations of bias. These criteria can be reviewed and amended as necessary but this will not be done during consideration of a matter.
5. In drawing up the assessment criteria, the Standards Committee has borne in mind
 - (a) the importance of ensuring that complainants are confident that complaints about member conduct are taken seriously and dealt with appropriately and
 - (b) that deciding to investigate a complaint or to take other action will cost both public money and the officers' and elected members' time. This is an important consideration as it is appropriate to take into account the public benefit in investigating complaints which are less serious, politically motivated, malicious or vexatious.

Circumstances in which decisions may be to take no action or refer the complaint to another authority's Monitoring Officer

6. In reaching their decisions on the action to be taken in relation to complaints, the Assessment Sub-Committee and the Review Sub-Committee will ask themselves the following questions and consider the following response statements:

Q: Has the complainant submitted enough information to satisfy the 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 Council, but is a member of another authority? If so, does the 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 Council 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 or is the complainant in some other way to be regarded as a vexatious complainant (see below)?

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

Q: Is there any other good reason why no action should be taken in relation to the complaint?

If the answer is **yes**: "The matter is not considered to warrant further action because [and state the reason]."

Circumstances in which decisions may be to take action short of investigation ("other action")

7. When the Sub-Committee considers a new complaint, it can decide that action than an investigation should be taken and it can refer the matter to the Monitoring Officer to carry this out. It may not always be in the interests of good governance to undertake or complete an investigation into an allegation of misconduct. The Sub-Committee must consult its Monitoring Officer before reaching a decision to take other action.

8. The suitability of other action is dependent on the nature of the complaint. Certain complaints that a member has breached the Code will lend themselves to being resolved in this way. They can also indicate a wider problem at the Council. Deciding to deal pro-actively with a matter in a positive way that does not involve an investigation can be a good way to resolve matters that are less serious. Other action can be the simplest and most cost effective way of getting the matter resolved, helping the Council to work more effectively, and of avoiding similar complaints in the future.

9. The Sub-Committee can choose this option in response to an individual complaint or a series of complaints. The action decided upon does not have to be limited to the subject member or members. In some cases, it may be less costly to choose to deal with a matter in this way rather than through an investigation, and it may produce a more effective result.

10. It is not possible to set out all the circumstances where other action may be appropriate, but an example could be where the Council appeared to have a poor understanding of the Code and related procedures. Evidence for this may include:

- (a) a number of members failing to comply with the same paragraph of the Code;
- (b) officers giving incorrect advice;
- (c) failure to adopt the Code;
- (d) inadequate or incomplete protocols for use of authority resources.

11. Other action may also be appropriate where a breakdown in relationships within the Council was apparent, evidence of which could include:

- a) a pattern of allegations of disrespect, bullying or harassment;
- b) factionalised groupings within the Council;
- c) a series of 'tit-for-tat' allegations;
- d) ongoing employment issues, which may include resolved or ongoing employment tribunals, or grievance procedures.

12. The Sub-Committee is encouraged to consider other action on a practical basis, taking into account the needs of the Council. 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. If the Monitoring Officer embarks on a course of

other action, s/he should emphasise to the parties concerned that no conclusion has been reached on whether the subject member failed to comply with the Code.

13. Complaints that have been referred to the Monitoring Officer for other action should not then be referred back to the Sub-Committee if the other action is perceived to have failed. This is unfair to the subject member, and a case may be jeopardised if it has been discussed as part of a mediation process. There is also a difficulty with defining 'failure' in terms of the other action undertaken. The decision to take other action closes the opportunity to investigate and the Sub-Committee should communicate this clearly to all parties.

14. Accordingly the normal practice of the Sub-Committee will be to require the parties involved to confirm in writing that they will co-operate with the process of other action proposed before making the final decision to proceed. If it adopts this approach, the Sub-Committee will write to the relevant parties outlining:

- (a) what is being proposed;
- (b) why it is being proposed;
- (c) why they should co-operate;
- (d) what the sub-committee hopes to achieve.

15. Whatever approach to other action that the Sub-Committee adopts, it will ensure that all parties are clear about what is, and what is not, going to happen in response to the complaint.

16. The following are some examples of alternatives to investigation:

- (a) arranging for the subject member to attend a training course;
- (b) arranging for that member and the complainant to engage in a process of conciliation;
- (c) instituting changes to the procedures of the Council if they have given rise to the complaint.

Circumstances in which decisions may be to refer the complaint to the Monitoring Officer for investigation

17. If the Sub-committee concludes that none of the above circumstances apply, it will refer the complaint to the Monitoring Officer for investigation, unless it considers that the circumstances warrant the referral of the complaint to the SBE, taking account of the criteria set out below.

Circumstances in which decisions may be to refer the matter to the SBE

18. There will sometimes be issues in a case, or public interest considerations, which make it difficult for the Sub-committee to deal with the case fairly and speedily. In such cases, the Sub-Committee may wish to refer a complaint to the SBE to be investigated by an ethical standards officer.

19. The Sub-Committee will take the following matters into account in deciding which cases to refer to the SBE in the public interest and the SBE in deciding whether to accept referrals:-

- (a) Does the Sub-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 Sub-Committee to deal with the complaint? For example, is the member a group leader, elected mayor or a member of the Council's cabinet or standards committee?
- (b) Does the Sub-Committee believe that the status of the complainant or complainants would make it difficult for the Sub-Committee to deal with the complaint? For example, is the complainant a group leader, elected mayor or a member of the Council's cabinet or standards committee, the chief executive, the monitoring officer or other senior officer?
- (c) Does the Panel believe that there is a potential conflict of interest of so many members of the Sub-committee and the Standards Committee that it could not properly monitor the investigation?
- (d) Does the Sub-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?
- (e) Is the case so serious or complex, or involving so many members, that it cannot be handled locally?
- (f) Will the complaint require substantial amounts of evidence beyond that available from the Council's documents, its members or officers?
- (g) Is there substantial governance dysfunction in the Council or its Standards Committee?
- (h) Does the complaint relate to long-term or systemic member/officer bullying which could be more effectively investigated by someone outside the Council?
- (i) Does the complaint raise significant or unresolved legal issues on which a national ruling would be helpful?
- (j) Might the public perceive the Council to have an interest in the outcome of a case? For example if the Council could be liable to be judicially reviewed if the complaint is upheld.
- (k) Are there exceptional circumstances which would prevent the Council or its Standards Committee and Sub-Committees investigating the complaint competently, fairly and in a reasonable period of time, or would lead to a conclusion that it would be unreasonable for local provision to be made for an investigation?

Circumstances in which complaints may be withdrawn

20. There may be occasions when complainants ask to withdraw their complaints prior to the Sub-Committee having made decisions on them. In these circumstances, the Sub-Committee will decide whether to grant such requests.

21. The Sub-Committee will take into account any reasons put forward by the complainant in connection with a request to withdraw and, without limiting its discretion, the Sub-Committee will have regard to following considerations in particular:-

- (a) Does the public interest in taking some action on a complaint outweigh the complainant's desire to withdraw it?

- (b) Is a complaint such that action can be taken on it, for example an investigation, without the complainant's participation?
- (c) Is there an identifiable underlying reason for the request to withdraw a complaint? For example, is there information to suggest that the complainant may have been pressured by the subject member, or an associate of theirs, to withdraw the complaint?

22. If these questions are answered in the affirmative, the Sub-Committee is less likely to allow a complaint to be withdrawn.

Multiple and vexatious complaints

23. Unfortunately, a small number of people abuse the complaints process. Vexatious or persistent complaints or complainants can usually be identified through the following patterns of behaviour, which may become apparent in the complaints process:-

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

24. The Standards Committee's general policy is that people who make repetitive or vexatious complaints will be responded to in the ways set out in the Council's Corporate Complaints procedures. However, even where restrictions are placed on an individual's contact with the authority, the individual cannot be prevented from submitting a complaint. New allegations must still be considered as they may contain a complaint that requires some action to be taken.

25. Nevertheless, if the Sub-Committee has already dealt with substantially the same complaint by the same person and the Monitoring Officer does not believe that there is any new evidence, then any subsequent complaint will not be considered. The guiding principle is that the Sub-Committee will consider every new complaint that it receives in relation to the Code but it will not carry out more than one assessment and assessment review into a complaint from the same person, which amounts to the same complaint.

Complaints about members of more than one authority

26. This section deals with the issue relating to what should happen if a complaint is made against an individual who is a member of more than one authority – often known as a dual-hatted member.

27. In such cases, the member may have failed to comply with more than one authority's Code. For example, an individual who is a member of the Council and of the County Council could be the subject of complaints that they have breached the Codes of both authorities. As such, it would be possible for the

Assessment Sub-Committees of both authorities to receive complaints against the member.

28. Where a complaint is received about a dual-hatted member, the MO should check if a similar allegation has been made to the other authority, or authorities, on which the member serves.

29. Decisions on which Assessment Sub-Committee should deal with a particular complaint must then be taken by the Assessment Sub-Committees themselves, following discussion with each other. They may take advice as necessary from the SBE.

30. This will allow for a cooperative approach, including sharing knowledge and information about local circumstances, and cooperation in carrying out investigations to ensure resources are used effectively.

Criteria for withholding from subject member a summary of the complaint

31. If the Assessment Sub-Committee decides to take no action over a complaint, then as soon as possible after making the decision it must give notice in writing of the decision and set out clearly the reasons for that decision. Where no potential breach of the Code is disclosed, the Assessment Sub-Committee must explain in the decision notice what the allegation was and why they believe this to be the case. This notice must be given to the relevant parties, i.e. the complainant and the subject member.

32. If the Assessment Sub-Committee decides that the complaint should be referred to the Monitoring Officer or to the SBE, 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, for example whether it referred the complaint to the Monitoring Officer or to the SBE for investigation. The decision notice must not explain why a particular referral decision has been made. However, after it has made its 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 or would prejudice any future investigation.

33. This could happen where it is considered likely that the subject member may intimidate the complainant or the witnesses involved. It could also happen where early disclosure of the complaint may lead to evidence being compromised or destroyed.

34. 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 made against them. It should also take advice from the Monitoring Officer in deciding whether informing the subject member of the details of the complaint would prejudice a person's ability to investigate it.

35. The Monitoring Officer will need to help the Assessment sub-Committee to consider the potential risks to the investigation. This is to determine 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.

36. The Assessment Sub-Committee can use its discretion to give limited information to the subject member if it decides this would not be against the public interest or prejudice any investigation. Any decision to withhold the summary must be kept under review as circumstances change.

5. Other issues for consideration

Composition of Sub-Committees and conflicts of interest

1. As required by the relevant Regulations, the Standards Committee has established two sub-committees:-
 - the Assessment Sub-Committee to carry out the initial assessment of complaints received by the Standards Committee and
 - the Review Sub-Committee to deal with any request the Standards Committee receives from a complainant to review its decision to take no action in relation to a complaint.
2. The Assessment Sub-Committee and the Review Sub-Committee will each consist of three members of the Standards Committee (the minimum number for Sub-committees). This will include at least one independent person.
3. The Assessment Sub-Committee and the Review Sub-Committee will be chaired by an independent person.
5. As neither of the Sub-Committees is required to have fixed membership or a fixed chair, the Committee Administrator, consulting the Chair of the Standards Committee as appropriate, will arrange attendance in accordance with the availability of members of the Standards Committee and any other relevant factors such as actual or potential conflicts of interest.
6. In certain situations, a Sub-Committee member might initially be involved with the assessment or assessment review of a case that is then referred to the SBE or to the Monitoring Officer. The case might then be referred back to the Sub-Committee to consider again. In such circumstances, the member may continue their participation in the assessment/assessment review process.
7. However, Sub-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. This is to minimise the risk of conflicts of interest and ensure fairness for all parties.
8. Standards Committee members involved in a complaint's initial assessment, or in a review can take part in any subsequent determination hearing. The purpose of the initial assessment decision or assessment review is simply to decide whether any action should be taken on the complaint – either as an investigation or some other action. The Assessment and Review Sub-Committees make no findings of fact. Therefore, a member involved at the initial stage or the review stage may participate in a subsequent hearing, because a conflict of interest does not automatically arise.
9. The assessment/assessment review processes must be conducted with impartiality and fairness. In some cases a member of the Standards Committee may be disqualified by law from being involved in a case, for example because of a personal and prejudicial interest under the Code. There will also be cases where it would not be appropriate for a member of the Standards Committee to be involved in the processes, even if not disqualified

from doing so by law. A member of the Standards Committee should not participate in the processes on either Sub-Committee if he/she is

- (a) a complainant;
- (b) closely associated with someone who is a complainant;
- (c) a potential witness or victim relating to a complaint; or
- (d) otherwise directly or indirectly connected with a complaint.

10. Regulations give authorities new power to appoint anyone who is an independent person serving on the Standards Committee of another authority to their own Standards Committees. The Monitoring Officer has been given authority by the Council to exercise this power in order to appoint additional independent persons to serve on the Council's Assessment Sub-Committee and Review Sub-Committee. The power will be exercised to make temporary appointments to deal with particular complaints, for example if the independent persons on the Council's Standards Committee were unavailable or conflicted out of a particular case.

Access to meetings and decision making

11. Initial assessment decisions, and any subsequent review of decisions to take no further action on a complaint must be conducted in closed meetings. These are not subject to the notice and publicity requirements under the Local Government Act 1972.

12. Such meetings may have to consider unfounded and potentially damaging complaints about members, which it would not be appropriate to make public. As such, Assessment and Assessment Review Panels are not subject to the following rules:-

- (a) rules regarding notices of meetings;
- (b) rules on the circulation of agendas and documents;
- (c) rules over public access to meetings;
- (d) rules on the validity of proceedings.

13. Instead, the Sub-Committees will comply with Regulation 8 of the Regulations, which sets out what must be done after a Sub-Committee has considered a complaint. The Regulations require a written summary to be produced which must include:-

- (a) the main points considered
- (b) the conclusions on the complaint
- (c) the reasons for the conclusion

14. The summary must be written having regard to the SBE's guidance and may give the name of the subject member unless doing so is not in the public interest or would prejudice any subsequent investigation.

15. The written summary must be made available for the public to inspect at the Council's offices for six years. The summary does not have to be available for inspection until the subject member has been sent the summary and usually the summary will be sent to the subject member before such action is taken.

16. In limited situations, a Sub-Committee can decide not to give the written summary to the subject member when a referral decision has been made. If this is the case, public inspection will usually occur when the written summary is eventually given to the subject member during the investigation process.

Confidentiality of the complainant

17. As a matter of fairness and natural justice, a member should usually be told who has complained about them. However, there may be instances where the complainant asks for their identity to be withheld. Such requests should only be granted in exceptional circumstances and at the discretion of the Sub-Committees. The Sub-Committees should consider the request for confidentiality alongside the substance of the complaint itself.

18. The criteria by which the Sub-Committees will consider requests for confidentiality will include the following:-

- (a) The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed;
- (b) 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 (this should be covered by the authority's whistle-blowing policy);
- (c) The complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed. In such circumstances, the Sub-Committees may wish to request medical evidence of the complainant's condition.

19. In certain cases, such as allegations of bullying, revealing the identity of the complainant may be necessary for investigation of the complaint. In such cases the complainant may also be given the option of requesting a withdrawal of their complaint.

20. When considering requests for confidentiality, the Sub-Committees will also consider whether it is possible to investigate the complaint without making the complainant's identity known.

21. If a Sub-Committee decides to refuse a request by a complainant for confidentiality, it may wish to offer the complainant the option to withdraw, rather than proceed with their identity being disclosed. In certain circumstances, the public interest in proceeding with an investigation may outweigh the complainant's wish to have their identity withheld from the subject member. The Sub-Committee will decide where the balance lies in the particular circumstances of each complaint.