

# CHESHIRE EAST COUNCIL

## STANDARDS COMMITTEE

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<b>Date of meeting:</b>	10 March 2009
<b>Report of:</b>	Borough Solicitor
<b>Title:</b>	Local Assessment Sub-Committees

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### **1.0 Purpose of Report**

- 1.1 To progress the establishment of the Standards Committee's local assessment and review function in relation to allegations of misconduct and complaints received in relation to the Code of Conduct.

### **2.0 Decision Required**

- 2.1 (i) To consider whether to set up a separate Hearings Sub-Committee;
- (ii) Subject to (i) above to consider and agree Terms of Reference for the Hearings Sub-Committee, Review Sub-Committee and Assessment Sub-Committee, in accordance with Appendices 2-5 of this report; and
- (iii) to agree Assessment Criteria to be used for the initial assessment of complaints, in accordance with Appendix 1 of this report.

### **3.0 Information**

- 3.1 At the last meeting Members considered how the Standards Committee should undertake local determination of misconduct allegations and agreed to the establishment of an Assessment Sub-Committee and a Review-Sub Committee with the following roles:
- Assessment Sub-Committee – to make an initial assessment of an allegation and decide whether to refer it to the Monitoring Officer for further investigation or alternative action; refer it to the Standards Board for England (if seen as too serious to be dealt with locally) or take no further action;

- Review Sub-Committee – to consider requests for a review of the decision of the Assessment Sub-Committee to take no further action on the allegation. This Sub-Committee would then consider the allegation afresh and decide whether to refer it to the Monitoring Officer for further investigation or local resolution; refer it to the Standards Board for England (as above) or decide that no further action should be taken.

The Committee is now asked to consider adopting Assessment Criteria to use to assess complaints and assist with deciding what action, if any, to take. The adoption of agreed criteria ensures fairness for the complainant and the Member subject to the complaint and will help to protect Standards Committee Members from allegations of bias. Assessment criteria should ensure that complainants can be confident that any allegations of misconduct will be taken seriously and dealt with appropriately while also ensuring the efficient use of public money and officers' and Members' time by taking into account the public benefit in investigating complaints that may be considered less serious, politically motivated, malicious or vexatious. Proposed Assessment Criteria is set out in Appendix 1. The Committee's attention is drawn to criteria 2 relating to timescales and Members are asked to consider whether it is felt appropriate to specify a timescale.

If it is decided by either the Assessment Sub-Committee or the Review Sub-Committee that the allegation deserves further investigation the Monitoring Officer may undertake this work (or nominate an officer to investigate) following which a report will be produced. It is proposed that the Assessment Sub-Committee would give initial consideration to this report and determine whether any further action is required. If the Assessment Sub-Committee considers that the complaint should be considered further it is recommended that a separate Hearings Sub-Committee is established to consider the Monitoring Officer (or nominee's) final report or to carry out a hearing to determine whether a Member has breached the Code of Conduct and determine any sanctions. This recommendation reflects the potential volume of complaints generated by the size of the principal Council and the large number of parish councils. It also takes into account the practical difficulties of covering and handling matters with a full committee of 16 Members.

The Hearings Sub-Committee would need to be chaired by an Independent Member with a suggested membership of 5 and a quorum of 3 Members. A Member who took part in either the Assessment Sub-Committee or Review Sub-Committee would be eligible to take part in the Hearings Sub-Committee. There is no requirement for any Sub-Committee of Standards Committee to have fixed membership so it is proposed that membership of the Hearings Sub-Committee be drawn from the membership of the Standards Committee taking into account the requirement for one independent member to attend along with availability of Members.

Proposed Terms of Reference for the Hearings Sub-Committee, Review Sub-Committee and Assessment Sub-Committee are attached at Appendices 2, 3 and 4 for consideration.

#### **4.0 Financial Implications for Transition Costs**

4.1 None

#### **5.0 Legal Implications**

5.1 As set out in the report.

#### **6.0 Risk Assessment**

6.1 Creating a separate sub-committee to deal with hearings will allow the separate functions involved in the handling of cases to be carried out without conflicts of interest.

#### **7.0 Overview of Day One, Year One and Term One Issues**

7.1 Any further information to be submitted to the Committee as and when required.

#### ***For further information:***

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#### ***Background Documents:***

***The Standards Committee (England) Regulations 2008***

***The Standards Board for England Guidance note 10/08/2008***

***The Standards Board for England bulletin 38***

*Documents are available for inspection at:*

*Westfields, Middlewich Road, Sandbach, Cheshire*

## APPENDIX 1

### DRAFT ASSESSMENT CRITERIA

#### Initial Tests

Before any assessment of a complaint begins, the Assessment Sub-Committee must be satisfied that the complaint meets the following tests:

- *It is a complaint against one or more named Members of Cheshire East Council or a Town or Parish Council within Cheshire East Borough;*
- *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 the complaint fails one or more of these tests 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 the above tests are met the Assessment Sub-Committee will have regard to the following criteria:

1. Adequate information – The Sub-Committee will want to be satisfied that it has sufficient information to decide whether the complaint should be referred for investigation or other action;
2. Timescale – The Sub-Committee will take into account when the events subject to the complaint took place and *will not normally investigate or pursue other action if the events occurred more than 6 months prior to the complaint being submitted* (except if it decides there are exceptional circumstances);
3. Seriousness of the complaint – The Sub-Committee will not normally refer a matter for investigation or other action if it is considered trivial, malicious, politically motivated or tit-for-tat.
4. Public Interest - If the complaint relates to an ex-Member of Cheshire East or one of its Town/Parish Councils who is now a Member of another Authority the Sub-Committee may refer the matter to the Standards Committee of that Authority for consideration. If the Member has resigned, is seriously ill or has died the Sub-Committee will only refer the matter for investigation or other action if it considers that the public interest will be served by so doing. If the complaint has already been the subject of an investigation or other action relating to the Code of Conduct or has been investigated by other regulatory

authorities it is unlikely to be referred for investigation or other action unless it is evident that public interest will be served by further action being taken.

## APPENDIX 2

### DRAFT TERMS OF REFERENCE OF THE ASSESSMENT SUB-COMMITTEE

- (a) To receive complaints that a Member of Cheshire East Council or a Town/Parish Council within Cheshire East has failed, or may have failed, to comply with the Authority's Code of Conduct;
- (b) To make an initial assessment of any complaint using the Assessment Criteria and decide one of the following courses of action:
  - (i) refer the complaint to the Monitoring Officer for investigation;
  - (ii) refer the complaint to the Monitoring Officer for other action;
  - (iii) refer the complaint to the Standards Board for investigation;
  - (iv) decide that no action should be taken.
- (c) To consider a report of the Monitoring Officer following his/her investigation of the complaint (in accordance with (b) (i) above) and decide one of the following courses of action:
  - (i) to accept the Monitoring Officer's finding that there has been no failure to observe the Code of Conduct;
  - (ii) to refer the matter for consideration at a hearing before the Hearings Sub-Committee;
  - (iii) to refer the matter to the Adjudication Panel for determination.
- (d) To publish a written summary giving the main points considered, conclusions reached and the reasons for the conclusions in relation to any actions set out in paragraphs (b) and (c) above.

## APPENDIX 3

### DRAFT TERMS OF REFERENCE FOR THE REVIEW SUB-COMMITTEE

(a) To review, upon receipt of a request from a complainant, a decision of the Assessment Sub-Committee to take no action in respect of a complaint that a Member of Cheshire East Council or a Town/Parish Council within Cheshire East has failed to comply with the Authority's Code of Conduct and determine one of the following courses of action:

- (i) Refer the complaint to the Monitoring Officer for formal investigation;
- (ii) Refer the complaint to the Monitoring Officer for other action;
- (iii) Refer the complaint to the Standards Board for England;
- (iv) Decide that no action should be taken.

(b) To publish a written summary giving the main points considered, conclusions reached and the reasons for the conclusions in relation to any actions set out in paragraph (a) above.

## APPENDIX 4

### DRAFT TERMS OF REFERENCE FOR THE HEARINGS SUB-COMMITTEE

(a) To hold hearings into complaints that a Member of Cheshire East Council or a Town/Parish Council within Cheshire East has failed, or may have failed, to comply with the Authority's Code of Conduct;

To decide that:

(i) the Member who was the subject of the hearing has not failed to comply with the Code of Conduct; or

(ii) the Member who was the subject of the hearing has failed to comply with the Code of Conduct but no action needs to be taken; or

(iii) the Member who was the subject of the hearing has failed to comply with the Code of Conduct and that a sanction should be imposed.

(b) To impose any appropriate sanctions when a finding under paragraph (a) (iii) above occurs in accordance with Regulation 19 of The Standards Committee (England) Regulations 2008.