



Leicester  
City Council

**FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:  
STANDARDS COMMITTEE**

**12 September 2001**

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**DEALING WITH COMPLAINTS AGAINST COUNCILLORS**

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**Report of the Town Clerk and  
Director of Corporate Resources**

**1. Purpose of Report**

- 1.1. To provide, for members of the Committee, the finalised procedure for dealing with complaints against Councillors and to give initial information regarding the nature of complaints which are likely to be dealt with locally or nationally.

**2. Summary**

The Committee, at its first meeting, considered and commented upon a draft procedure for dealing with complaints against Councillors. A copy of the finalised procedure is attached at Appendix A.

Whilst considering the report, the Committee also asked that guidance be provided regarding 'limits' of the types of complaints that could be determined locally, either by reference to the Whips or to the Standards Committee and those issues which would be a matter for the National Standards Board. The legislative situation, as contained within the Local Government Act, 2000, is summarised at Appendix B. Unfortunately, guidance on the implementation of these provisions is still awaited.

Whilst the procedure attached at Appendix A deals with complaints lodged with the Town Clerk i.e. at the local level, it is clear that any complaint received, in writing, by the National Standards Board must be considered initially at that level, after which it may be deemed appropriate to refer the matter to the Monitoring Officer for local investigation. The Guidance, when received, may well delineate the level/severity of the complaint which cannot be dealt with at a local level and which, if received by the Monitoring Officer, would need to be referred onwards to the National Standards Board.

**3. Financial and Legal Implications**

There are no financial implications within the report. The contents of the report relate to the legislative framework.

**4. Recommendations**

The Committee is recommended to:

- (i) note the final procedure for the dealing of complaints against Councillors; and,
- (ii) note the information (statutory or otherwise) concerning the likely framework for the handling of complaints.

**3. Report Author/Officer to contact:**

Charles Poole,  
Assistant Town Clerk (Corporate Services)  
extn. 7015

## PROCEDURE FOR DEALING WITH COMPLAINTS AGAINST COUNCILLORS

1. The Standards Committee will consider complaints referred to it in accordance with the following procedure. The procedure may be initiated locally, or by referral from the Standards Board.

### Initiating a Complaint

2. Complaints should be referred to the Town Clerk and should normally be in writing.
3. A complaint will only be accepted if it concerns the Code of Conduct, the Political Conventions or where a Council interest is involved. Political matters will not be addressed. The reality of the whole situation will be taken into account to determine this.
4. Allegation alone will not normally be enough to initiate a complaint and mere “*fishing expeditions*” will not be accepted. There could, very occasionally, be the need to address an allegation which in itself could significantly damage the Council’s interests unless resolved. Otherwise, allegations must be “*on information*”, that is, with sufficient indication of a case to be answered.
5. Where the “*information*” is a person’s direct evidence of what happened, that person must be prepared to have the evidence used for an investigation – in effect, to stand up and be counted. There may, exceptionally, be “*whistle blowing*” justification for preserving anonymity, but it must be realistic to investigate and report meaningfully on that basis.

### Determining the Level of Response

6. The emphasis will be on resolving problems and avoiding recurrence, with formal reporting of an investigation as the last resort. The response to a complaint will depend on the seriousness and consequences of the issues, whether the alleged conduct appears inadvertent or deliberate and the likelihood of recurrence.
7. The Town Clerk will be guided by a majority of the Group Whips and the Independent Members on how he should respond to a complaint:
  - (1) Reject the complaint for lack of a case to answer;
  - (2) Hold informal discussions with those concerned with a view to an agreed resolution;
  - (3) Consider the issues without a full investigation and without conclusions on the facts; the resulting report will merely clarify the proper approach and recommend action without forming a view on any transgression.
  - (4) Investigate the facts fully, leading to a report with conclusions on the facts and any transgressions, and with recommended action.

8. The Town Clerk will report periodically to the Standards Committee on the pattern of complaints received and the resultant consideration.

### **Convening the Standards Committee**

9. The Standards Committee will be convened to consider the Town Clerk's report on a complaint in the following circumstances:
  - (1) An agreed resolution after informal discussions will not be reported to the Committee.
  - (2) A report which merely considers the issues will be reported only if a majority of the Whips or one or more of the Independent Members consider that there has not been an adequate response to the recommended action.
  - (3) A full investigation will always be reported.
10. The Standards Committee will, as necessary, be convened within a period of six weeks from the issuing of the report on a complaint by the Town Clerk.
11. The complainant and the person complained about will be given notice of the meeting and a copy of the Town Clerk's report at least fifteen working days in advance.
12. Any written comments to the Standards Committee from either party must be submitted to the Town Clerk at least ten working days before the meeting.
13. At least ten working days notice must be given to the Town Clerk of any witness a party would like to give evidence to the Standards Committee. The parties will have the opportunity to present all their evidence during the Town Clerk's investigation. A witness would normally be appropriate at the meeting only with a view to demonstrating that a conclusion in the report is incorrect. New issues may not be introduced.

### **Procedure at the Meeting**

14. Both the person complained about and the complainant may be accompanied at the meeting. The Town Clerk will be the Committee's adviser.
15. The matter will normally be considered by the Standards Committee in the absence of the press and public, under the appropriate exemption to the access to information provisions. The Committee will conduct the meeting as informally as the circumstances allow.
16. The normal procedure will be:
  - (1) The Town Clerk will explain his conclusions and recommendations.
  - (2) The complainant may make a statement and (subject to paragraph 11) call witnesses. The person complained about, or person accompanying him/her may question a complainant who makes a statement and any witness.

- (3) The person complained about or person accompanying him/her, may make a statement and (subject to paragraph 11) call witnesses. The complainant may question the person complained about if a statement has been made, and any witness.
- (4) The person complained about, or person accompanying him/her, may make a final statement before the Committee considers its decision.
- (5) The Committee will indicate when and how it will announce its decision. It will then consider its decision in the absence of the parties, after which a Formal Decision Notice, with reasons, will be sent, in writing , to all parties in dispute.

### **Rights to Confidentiality**

17. Publishing or commenting on allegations prematurely could be unfair and could sometimes itself be a cause of complaint.
18. The Town Clerk will not comment publicly on complaints or investigations before their conclusion and afterwards will only respond factually to matters in the public domain.

**Local Government Act, 2000**

**Standards Board for England**

Section 57 provides for the creation of a Standards Board for England. The Standards Board is to have at least three members appointed by the Secretary of State. In exercising its functions, the Standards Board for England must have regard to the need to promote and maintain high standards of conduct by members of relevant authorities in England. The functions of the Standards Board are:-

- to appoint employees known as ethical standards officers;
- to issue guidance to relevant authorities in relation to the conduct of their members (the Board may arrange for any such guidance to be made public);
- to issue guidance to relevant authorities in England in relation to the qualifications or experience which monitoring officers should possess;
- to issue guidance on the size, composition and functions of standards committees of relevant authorities (under section 53); and,
- such other functions as may be conferred on the Standards Board by orders made by the Secretary of State.

**Written Allegations**

Section 58 provides that a person may make a written allegation to the Standards Board for England that a member or former member of a relevant authority has failed or may have failed to comply with the authority's code of conduct. If the Board considers that such an allegation should be investigated it must refer the case to one of its ethical standards officers; if the Board considers that an allegation should not be investigated, it must take reasonable steps to notify in writing the person who made the allegation.

**Functions of Ethical Standards Officers**

Section 59 specifies the functions of ethical standards officers. Their main function will be to investigate allegations that a member or former member of a relevant authority has breached its code of conduct. Ethical standards officers may also investigate any associated cases that have come to their attention as a result of undertaking an investigation into a written allegation.

This section also states that the purpose of an investigation by an ethical standards officer is to make one of the following findings.

- that there is no evidence of a failure to comply with a code of conduct; or
- that there is no need to take action on the matter investigated; or
- that the matter should be referred back to the monitoring officer of the relevant authority to deal with (in the case of a former member who is now a member of another relevant authority, the ethical standards officer must decide to which monitoring officer to refer the matter); or
- that the matters which are subject of the investigation should be referred to the president of the Adjudication Panel for England.

## **Investigations**

Section 60 provides that an ethical standards officer may cease on investigation at any stage before its completion and refer the matters which are the subject of the investigation to the monitoring officer of the relevant authority concerned. (Section 66 makes provision that directions may be attached to any such referral.)

Section 61 concerns the procedure for conducting an investigation. There is specific provision that the person being investigated must have an opportunity to comment on the allegation. Otherwise, this section allows an ethical standards officer to conduct an investigation as he sees fit. There is specific provision allowing ethical standards officers to reimburse the costs of people from whom they seek information. The section also provides that the conduct of an investigation should not affect the ability of the relevant authority to take action in respect of the matters being investigated.

Section 62 gives the ethical standards officer rights of access to the information or documents necessary for the investigation.

Section 62(1) introduces an offence of failing to provide the ethical standards officer with such information, documentation or other evidence as he requires as part of his investigation. Any person convicted would be liable to a fine not exceeding level 4 on the standard scale (currently £1,000).

## **Restrictions on the Disclosure of Information**

Section 63(1) provides that information obtained by an ethical standards officer may only be disclosed if any least one of the following conditions is met:

- the disclosure is for the purposes of any functions of the Standards Board, an ethical standards officer, the president or deputy president of the Adjudication Panel or any tribunal;
- the person to whom the information relates has consented to the disclosure;
- the information has previously been disclosed to the public with lawful authority;
- the disclosure is for the purposes of criminal proceedings in any part of the UK, although information obtained from persons who are under the obligation to comply with ethical standards officers under section 62(2) cannot be disclosed;
- the disclosure is made to the Audit Commission for the purposes of any functions of the Commission or an auditor under the Audit Commission Act 1998.

Provision is also made that the Secretary of State or a relevant authority may prevent the disclosure of information if it would be contrary to the public interest.

There is now also an offence of disclosing documents and information in contravention of subsection (1). Any person on summary conviction would be liable to a term of imprisonment of up to six months. Any person on conviction on indictment would be liable to a term of imprisonment not exceeding two years, or to a fine, or both.

## **Reports**

Section 64 provides that where an ethical standards officer concludes that there is no evidence of any failure to comply with the code of conduct of the relevant authority concerned or where no action needs to be taken in respect of the matters which are the subject of the investigation, they may produce a report and may provide a summary of the report to any newspapers circulating in the area of the relevant authority concerned. If a report is produced, a copy must be sent to the monitoring officer of the relevant authority.

If the ethical standards officer does not produce a report, they must inform the monitoring officer of the relevant authority concerned of the outcome of the investigation.

Section 64(2) and (3) places a duty on an ethical standards officer to produce a report when they conclude that the matters which are the subject of an investigation should be referred either to the monitoring officer of the relevant authority concerned or to the president of the Adjudication Panel. Copies of the reports must be sent to the monitoring officer of the relevant authority concerned, to the standards committee of the relevant authority concerned (where appropriate) or, as the case may be, to the president of the Adjudication Panel.

The ethical standards officer must on the conclusion of an investigation inform any person who is the subject of an investigation and must take reasonable steps to inform the person who made the original allegation about the outcome of the investigation.

Section 65 provides an ethical standards officer with the power to issue an interim report if, during an investigation, they consider that it would be in the public interest to do so. Such reports can recommend that the person being investigated should be immediately suspended or partially suspended from being a member of the relevant authority concerned or any of its committees or sub-committees for up to six months. The matter is then referred to the President of the Adjudication Panel for adjudication by an interim case tribunal.

### **Matters referred to Monitoring Officers**

Section 66 gives the Secretary of State the power to make regulations to determine the way in which matters referred under section 60(2) or 64(2) to a monitoring officer of a relevant authority should be dealt with.

These regulations may:

- enable a monitoring officer to conduct an investigation in respect of matters referred to him and make a report or recommendations to the standards committee of the relevant authority in respect of those matters;
- enable the standards committee to consider any report or recommendations made by the monitoring officer, taking such action as may be prescribed by the regulations;
- make provisions for the publicity to be given to any such report, recommendations or action;
- confer powers of investigation on a monitoring officer and confer rights on any member who is the subject of an investigation;



- enable a standards committee to censure or suspend a member or former member. A right of appeal would be conferred on any member subject to such action;
- enable the ethical standards officer to direct the way in which matters referred should be dealt with by the monitoring officer.

### **Consultation with Local Commissioner**

Section 67 provides that an ethical standards officer and Local Commissioner may consult if either of them believes that a matter which is the subject of investigation or complaint relates partly to a matter which could be the subject for consideration by the other. The ethical standards officer or Local Commissioner, where appropriate, may inform the person who made the allegation or complaint of the steps necessary to make a complaint or allegation to the other body.

### **Adjudication Panels**

Section 75 makes provision for the appointment of a panel of persons known as the Adjudication Panel for England.

The members of the Adjudication Panel for England are to be appointed by the Lord Chancellor with the consent of the Secretary of State; he must appoint a president and may appoint a deputy president from among those members.

### **Case Tribunals, Interim Care Tribunals and Adjudications**

Section 76 provides for adjudications on findings by an ethical standards officer following investigation, and on interim recommendations by an ethical standards officer under sections 64 and 65. These are to be conducted by case tribunals or interim case tribunals.

Section 77 enables a person who is the subject of a tribunal hearing either to appear before the tribunal in person or to be represented by a third party. This section also makes provision for the Secretary of State to make such further regulations covering the process of adjudication as is considered necessary. It also enables the president of the relevant Adjudication panel, after consultation with the Secretary of State, to give directions as to the practice and procedure to be followed by tribunals drawn from the Panel.

Regulations made under section 76 might cover:

- requiring people to attend to give evidence to the case tribunal and authorising the administration of oaths to witnesses;
- requiring them to make relevant documents relating to the investigation available to the tribunal;
- requiring persons to furnish further particulars;
- prescribing the procedures to be followed by a tribunal, including provision as to the persons entitled to appear and to be heard on behalf of persons giving evidence;
- provision enabling the president or deputy president to settle the procedure to be followed in relation to matters specified in the regulations;

- awarding or settling costs or expenses and for enabling such costs to be taxed in a county court;
- the registration and proof of decision and awards of tribunals.

Section 77 also introduces an offence of failing to comply with any requirement imposed by a tribunal in considering a case. It is similar to the offence introduced by section 62 and also has the penalty of up to a level 3 fine (£1,000 at present).

Section 78 makes provision for the decisions of interim case tribunals. It places a duty on the interim case tribunal to decide whether or not the member mentioned should be suspended on an interim basis (for a period not exceeding six months or, if shorter, the remainder of the person's term of office). The tribunal must give notice of its decision to the standards committee of the relevant authority concerned, including the details of the suspension or partial suspension and the date on which the suspension or partial suspension is to begin. The relevant authority is under a duty to comply with the notice. Section 78 also provides that the interim suspension or partial suspension shall cease to have any effect on the date that a notice is given by a case tribunal under section 79. Copies of any notice to suspend or partially suspend on an interim basis must be given to the person who is the subject of the notice and to the relevant monitoring officer. The interim case tribunal must take reasonable steps to inform the person who made the allegation of its outcome.

Section 78(5) provides that any decision made by an interim case tribunal should not prevent an ethical standards officer from continuing with the investigation. Further interim reports may also be produced and considered.

Subsection (10) provides that any person suspended under this section may appeal to the High Court, against either the suspension or partial suspension or the length of the suspension or partial suspension.

Section 79 provides for the decisions of case tribunals. It places a duty on the case tribunal to decide whether or not there has been a breach of the code of conduct in the case brought before it. Where the case tribunal decides that a person has not failed to comply with the code of conduct, it must notify the standards committee of the relevant authority concerned.

Where the case tribunal decides that a person has failed to comply with the code of conduct, this section places the case tribunal under a duty to decide whether the person should be suspended or partially suspended from being a member of the relevant authority concerned or disqualified for being, or becoming (whether by election or otherwise), a member of that or any other relevant authority.

Section 79 also requires the case tribunal to decide on the period of suspension or partial suspension (up to one year, although this must not extend beyond the person's term of office) or, where appropriate, the period of disqualification (up to five years). The case tribunal must issue a notice to the standards committee of the relevant authority concerned, stating that the person has failed to comply with the code of conduct and specifying the details of the failure and stating, where appropriate, that the person must be suspended or partially suspended or is disqualified, with the period of suspension, partial suspension or disqualification. Subsection (9) provides that the relevant authority must comply with a notice stating that the person concerned must be suspended or partially suspended.

Section 79 also provides that a copy of the notice must be given to the Standards Board and to the person who is the subject of the notice. The notice must also be published in local newspapers in the relevant authority's area. The case tribunal must also take reasonable steps to inform the person who made the initial allegation of the outcome of the tribunal's adjudication. Subsection (15) introduces a right of appeal to the High Court for a person who a case tribunal decides has failed to comply with the code of conduct.

### **Recommendation by Case Tribunal**

Section 80 makes provision that any case tribunal which has adjudicated on any matters may make recommendations about any matters relating to the exercise of the relevant authority's functions, code of conduct, or standards committee. A copy of any recommendations must be sent to the Standards Board.

The relevant authority to whom recommendations are made is under a duty to consider them within three months and it must prepare a report for the Standards Board or Local Commissioner outlining what action it has taken or proposes to take. Subsection (4) states that the relevant authority's consideration of a report may be discharged only by the authority or by the standards committee of that authority. If the Standards Board is not satisfied with the action taken or proposed, subsection (5) provides it with the power to require the relevant authority to publish a statement giving details of the recommendations made by the case tribunal and of the authority's reasons for not fully implementing them.