

Leicester  
City Council

**WARDS AFFECTED**  
**All Wards**

**STANDARDS COMMITTEE**  
**CABINET**  
**COUNCIL**

**10<sup>TH</sup> SEPTEMBER, 2008**

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**LOCAL ASSESSMENT OF COMPLAINTS - MAKING THE NEW SYSTEM  
WORK**

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**REPORT OF THE MONITORING OFFICER**

**PURPOSE AND SUMMARY**

To enable members to review practical issues which have emerged since May when the Council was obliged to introduce a new system for the local assessment of complaints against elected members; to understand concerns which have been raised by members and to consider officer proposals for implementing essential legal requirements and statutory guidance in a way which ensures that the new system is both effective and fair.

**REPORT**

All political groups have been consulted to ensure that members are aware of the new system, to understand members' concerns and to find practical solutions for tackling issues which have emerged to date.

Since May the Standards Assessment Sub-Committee has considered six complaints and in each case decided not to refer allegations to the Monitoring Officer for investigation.

**Part 1** of the report is a summary of Standards Board guidance which reflects the statutory regime. Two Standards Board flowcharts are attached which illustrate the process for carrying out an assessment and the review and assessment decision.

**Part 2** of the report summarises ideas for addressing two main concerns which have emerged:

- \* To make sure that the new system is used for genuine complaints / allegations that members have acted in breach of the Code of Conduct and to filter out inappropriate complaints and procedures which should

be handled in a different way; to avoid unnecessary over-use of the system; and

- \* To make sure the system is as fair as possible, particularly to consider how to balance the need for confidentiality with the right for any subject member to know and be able to respond to allegations against them.

## **PART 1. LOCAL ASSESSMENT OF COMPLAINTS: STANDARDS BOARD GUIDANCE**

**This is a new function for standards committees, previously undertaken centrally by the Standards Board for England.**

The Council must comply with the Standards Committee (England) Regulations, 2008 and statutory guidance which has been published by the Standards Board for England.

The regulations and statutory guidance set out the framework for the operation of a locally based system for the assessment, referral, investigation and hearing of complaints of member misconduct.

Anyone who considers that a member may have breached the Code of Conduct may make a complaint to that member's local standards committee. Each complaint must then be assessed to see if it falls within the Authority's legal jurisdiction.

The standards committee must establish sub-committees to perform two separate functions:

- \* An Assessment Sub-Committee to carry out an initial assessment of a complaint received by the Standards Committee.
- \* A Review Sub-Committee to deal with a request from a complainant to review an Assessment Sub-Committee's decision to take no action in relation to a complaint.

Both the Assessment Sub-Committee and the Review Sub-Committees must consist of no less than three members of the standards committee, including an independent member who will act as chair. These sub-committees are not required to have fixed membership or a fixed chair.

Standards committee members who have been involved in decision making on the initial assessment of a complaint **must not** take part in the review of that decision.

Standards committee members involved in a complaint's initial assessment, or in a review of a standards committee's previous decision to take no further action, **can** take part in any subsequent standards committee hearing.

The purpose of the initial assessment decision or 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.

When a complaint is addressed to the Authority's Monitoring Officer, the Monitoring Officer should determine whether the complaint should be directed to the Assessment Sub-Committee or whether another course of action is appropriate. If the complaint is clearly not about member conduct, then the Monitoring Officer does not have to pass it to the Assessment Sub-Committee.

**The Monitoring Officer has the discretion** to take the administrative step of acknowledging receipt of a complaint and telling the subject member that a complaint has been made about them.

The notification can say that a complaint has been made and state the name of the complainant (unless the complainant has requested confidentiality and the standards committee has not yet considered whether or not to grant it).

But only the standards committee has the power, under Section 57C(2) of the Local Government Act, 2000, as amended, to give a written summary of the allegation to a subject member.

**The Assessment Sub-Committee should be satisfied that the complaint meets the following tests:**

- \* It is a complaint against one or more named members of the Authority or an authority covered by the standards committee.
- \* The named member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time.
- \* The complaint, **if proven**, would be a breach of the Code under which the member was operating at the time of the alleged misconduct.

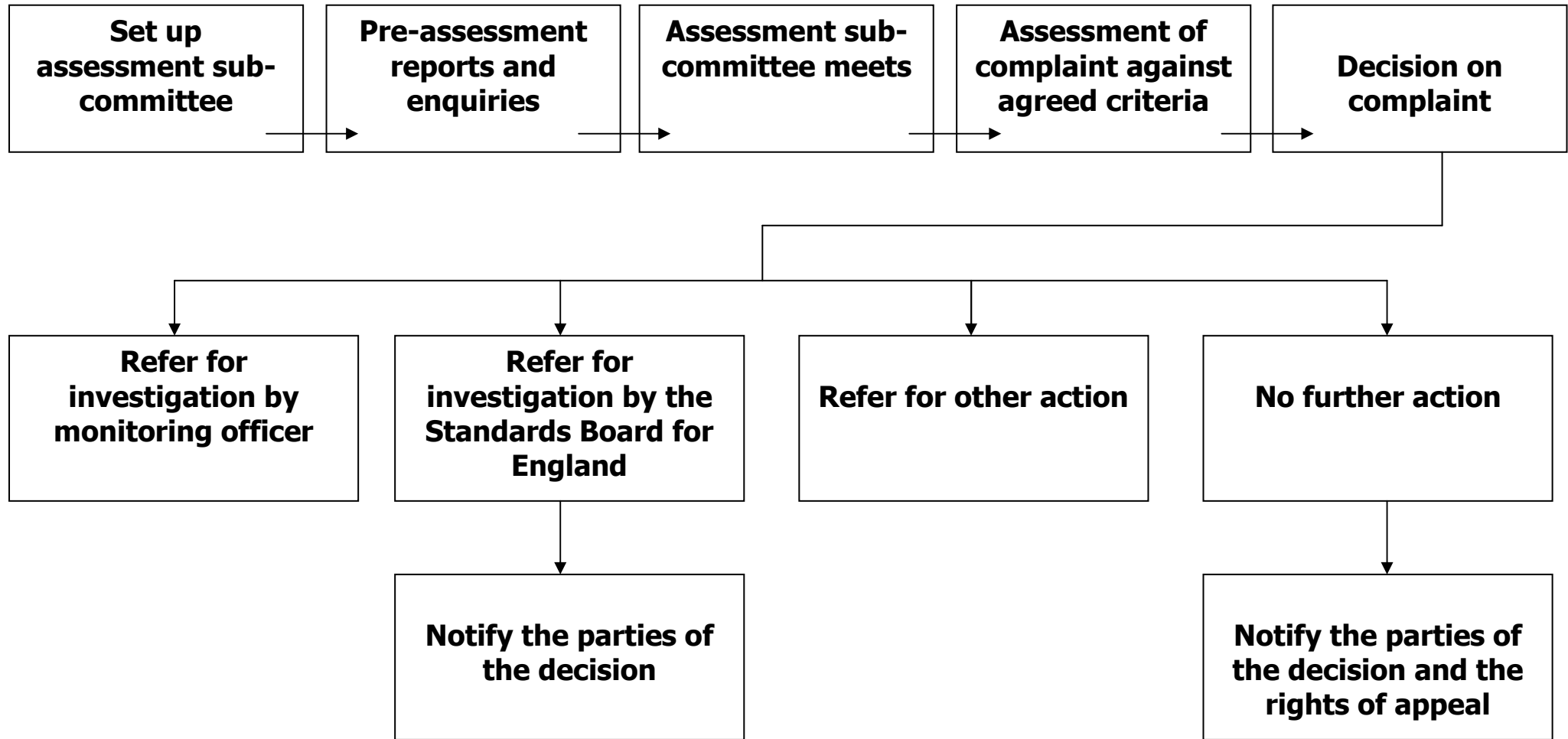
If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant must be informed that no further action will be taken in respect of the complaint.

**Confidentiality** – 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 Assessment Sub-Committee. The Assessment Sub-

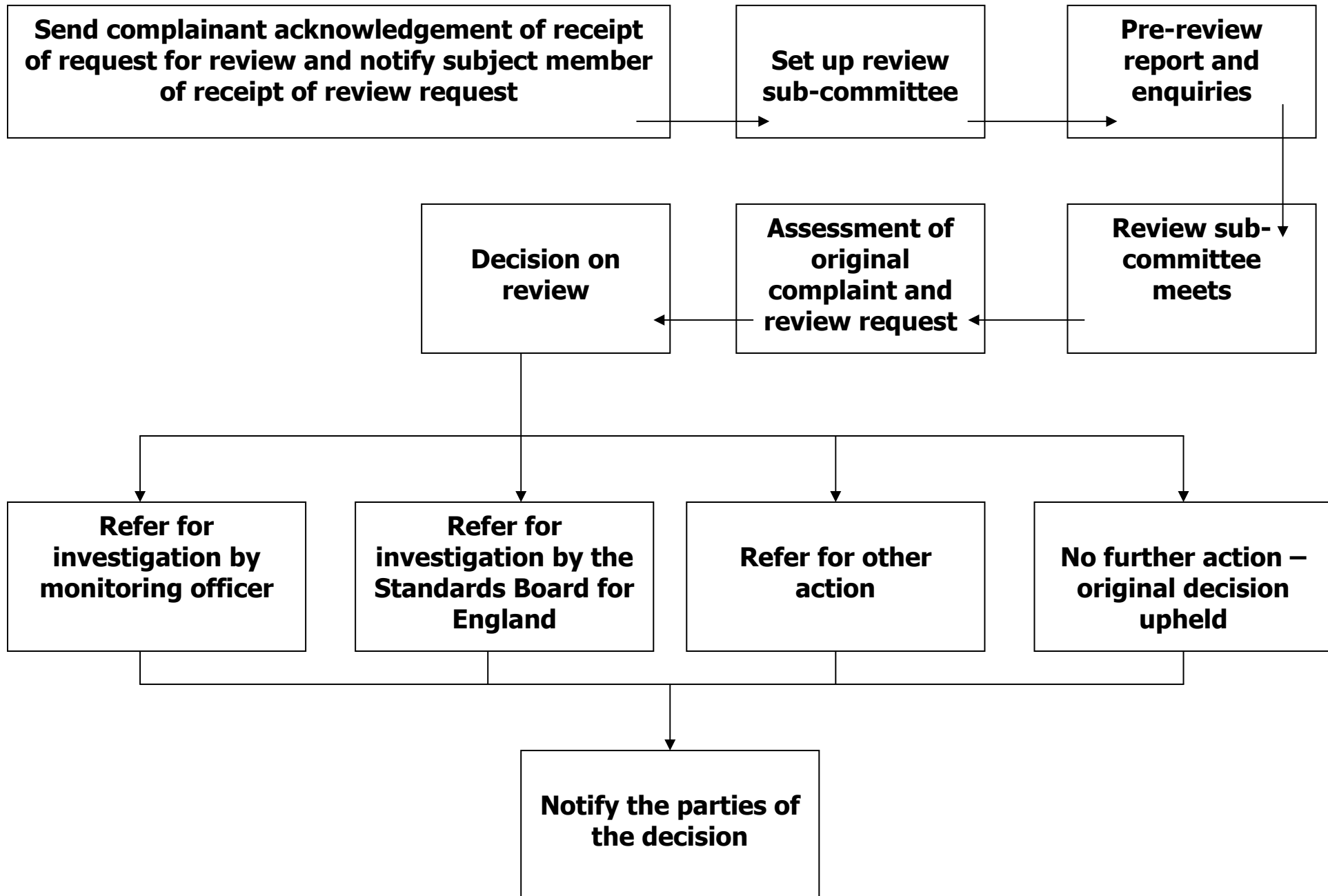
Committee should consider the request for confidentiality alongside the substance of the complaint itself.

**See attached Standards Board flowchart for completing an assessment and a review if requested.**

**STANDARDS BOARD – ASSESSMENT FLOWCHART**



# STANDARDS BOARD – REVIEW FLOWCHART



## **PART 2. HOW CAN WE ADDRESS CONCERNS AND MAKE SURE THE SYSTEM WORKS EFFECTIVELY AND FAIRLY?**

### **i. We should endeavour to resolve any complaint informally through local resolution prior to its submission to an Assessment Sub-Committee.**

This is permitted within the regulatory framework as there is no legal requirement to place the complaint before the Assessment Sub-Committee until a written complaint has been sent to the Standards Committee (Section 57C of the Local Government and Public Involvement in Health Act, 2007).

### **This can be achieved by a range of practical action:**

- a) The Council can integrate the procedure for making a complaint against an elected member into the general Corporate Complaints Procedure. In this way, we can ensure that complaints which are, for example, more about service issues rather than the conduct of any particular member are “filtered off” and dealt with under the Council’s complaints procedure rather than labelled as a complaint against a councillor.
- b) The Corporate Complaints Procedure should be reviewed to ensure that a member of the public expressing concerns for the first time would know that any complaint against a member must relate to a member’s conduct in the course of their duty as a councillor, not their private life, and relate to an alleged breach of the Code. Complaints should be supported by facts. The position should be made clear in the procedure, web site information and in forms / guidance sent out to potential complainants.
- c) A complaint may not necessarily be made in writing, for example, orally either to a member of the Democratic Services Team or direct to the Monitoring Officer. Options for informal resolution to satisfy the complainant should always be considered.
- d) Make it clear in the Corporate Complaint Procedure that any potential complainant is encouraged to first express their concerns to a named contact point e.g. an officer(s) within Democratic Services. A potential complainant may simply want to “express concerns” rather than, perhaps inadvertently, trigger a far more formal complaints procedure.
- e) Consider involving Group Whips where appropriate because they may be able to resolve issues informally.
- f) A mediation / conciliation system can be introduced – for use by a willing complainant / any member affected.

- g) If a complainant decides to use the formal procedure and completes the appropriate complaint form this will be passed to the Monitoring Officer for consideration. The Monitoring Officer can filter out complaints which do not refer to a current member of the Council or deal with issues which do not appear to amount to a breach of the Code. For example, service related concerns can be diverted to the Corporate Complaints Procedure. The Monitoring Officer can also ask a potential complainant to clarify issues.
- h) If a complaint does relate to a current member and does appear to allege a breach of the Code then it **must** be submitted to the Assessment Sub-Committee, but the Sub-Committee can take a robust approach in dealing with inappropriate complaints e.g. those which are malicious, politically motivated, vexatious or simply do not demonstrate any facts in support of allegations made.
- i) The Assessment Sub-Committee should meet as soon as practical, well within the prescribed 20 working days target e.g. within 10 working days.
- j) The Assessment Sub-Committee should undertake a regular review of its assessment criteria so as to ensure a consistent and practical approach.

Attached is a flow diagram to illustrate how we can establish a complaints / filtering system which is both accessible to the public and efficient in ensuring that, as far as possible, only genuine complaints about members' conduct reach the formal Standards Assessment Sub-Committee stage.

## **ii. Confidentiality issues**

Guidance states that 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 Assessment Sub-Committee. Further, practical steps which can be taken:

- \* Complainants are already being made aware that even if they request that their identity be withheld the Assessment Sub-Committee may decide otherwise.
- \* The "threshold" adopted by the Assessment Sub-Committee can and should be high – identity should be withheld only in exceptional cases e.g. to avoid intimidation.



### **iii. Fairness issues**

Statutory guidance provides that only the Standards Committee has the power under Section 57C(2) of the Local Government Act, 2000 to give a written summary of the allegation to a subject member.

In fact, Sections 63 of the Local Government Act, 2000, as modified by 2008 Regulations, makes it a criminal offence to disclose information other than in compliance with the section.

Disclosure of identity without consent at this stage may also be a breach of the Data Protection Act, 1998.

The current practice is, therefore, not to notify the subject member the nature of the allegation against them until after the Assessment Sub-Committee. This is in line with the practice adopted by other authorities regionally and nationally.

Monitoring Officers in some authorities have decided to use their discretion not to even notify the subject member that there has been a complaint. This was the practice adopted by the Standards Board previously when all complaints were handled at national level.

In spite of the restrictions in Section 63 it is permissible to include in a notification an explanatory reference to the relevant paragraphs in the Code of Conduct.

It may also be possible to gain a complainant's consent to an approved summary being communicated to a subject member as part of the notification prior to the Assessment Sub-Committee stage.

It is recommended that the Monitoring Officer continue to notify both the complainant and the subject member when a complaint is being submitted to the Standards Board Assessment sub-Committee and include in the notification as much information about the allegations as the law allows.

Members are also asked to endorse the action taken in ensuring that, following the Assessment Sub-Committee stage, a subject member is notified a summary of the allegations, as included in the relevant report, even if the Sub-Committee has made a decision not to investigate.

### **CONCLUSIONS**

Generally, the most practical way forward is to ensure that corporate procedures and guidance make it clear as to what can or cannot be complained about regarding an elected member. This should be supported by other informal mechanisms such as channelling complaints regarding members to identified contacts in Democratic Services / Monitoring Officer; to

encourage informal resolution; also using mediation services where appropriate.

If a complaint is formalised and submitted to the Assessment Sub-Committee it should meet as soon as practical, within 10 days where possible and a consistent but robust approach can be taken.

The legal framework is unfortunately restrictive, particularly the restrictions on notifying a subject member the nature of allegations prior to the Assessment Sub-Committee stage. Concerns have already been communicated to the Standards Board Legal Team.

### **RECOMMENDATIONS**

Members are asked to review the issues which have emerged since the implementation of local assessment of complaints, as summarised in this report and to endorse the action being taken by officers.

### **LEGAL IMPLICATIONS**

Covered in the report.

### **FINANCIAL IMPLICATIONS**

None.

### **CONSULTATIONS**

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**INFORMAL RESOLUTION OF COMPLAINTS AGAINST COUNCILLORS**

Filter out service complaints

