

## Leicester, Leicestershire and Rutland Combined Fire Authority

### **Local Assessment of Complaints Procedure Note**

(As Amended by Standards Committee 11th June 2008)

#### **1. Introduction**

- 1.1 On the 8<sup>th</sup> May 2008 the provisions of the Standards Committee (England) Regulations 2008 (“the Regulations”) came into force which set out a new regime for the determination of complaints against Members under the Code of Conduct. Complaints will now be considered by local Standards Committees rather than the Standards Board for England (“the SBE”).
- 1.2 The SBE has produced guidance to accompany the Regulations – *Local Assessments of Complaints* - and this has to be taken into account when assessing complaints.
- 1.3 The rest of this Procedure Note sets out how the CFA will deal with all complaints received under the Code of Conduct for Members. Complaints received about Members that fall outside of the remit of the Code of Conduct shall be dealt with by the Monitoring Officer under the Fire and Rescue Service’s Complaints Procedure.
- 1.4 The Monitoring Officer shall be responsible for the effective operation of this Procedure Note and shall act as the main adviser to the Standards Committee and its Sub-Committees.

#### **2. Publicising the Code of Conduct Complaints System**

- 2.1 The CFA will publish and maintain on its website a notice in the following terms:

“Code of Conduct Complaints against Members

The CFA’s Standards Committee is responsible for dealing with complaints against Members of the CFA under the Code of Conduct. If **any person** wishes to make a complaint then they should do so in writing to the Monitoring Officer at Fire Services HQ by using the attached form. If you are unable to complete the form (e.g. due to a disability) you should contact Information Management on 0116 287 2241 who will assist you further.”

The Code of Conduct Complaints Form is attached at **Appendix 1**.

- 2.2 The CFA will use its best endeavours to provide through its website the facility to complete and submit to the Monitoring Officer an on-line complaint form and if introduced the notice in 2.1 above shall be amended to include that facility.

### **3. Receiving Complaints**

- 3.1 All written complaints received concerning Members shall be considered by the Monitoring Officer and either referred to the Assessment Sub-Committee if the complaint concerns a possible breach of the Code of Conduct or dealt with under the Fire and Rescue Service's Complaints Procedure in all other cases.
- 3.2 In the rest of this Procedure Note "complaint" means a written complaint alleging a breach of the Code of Conduct for Members.
- 3.3 Upon receipt of a complaint the Monitoring Officer shall within 7 days acknowledge the complaint and advise the Member who is the subject of the complaint ("the Subject Member") of the receipt of the complaint unless the complainant has requested confidentiality (and the Standards Committee has yet to consider whether or not to grant the request) or the Monitoring Officer is satisfied that to advise the Subject Member could potentially prejudice any subsequent investigation authorised by the Assessment Sub-Committee.

### **4. Assessment Sub-Committee**

- 4.1 Within 7 days of acknowledging the complaint the Monitoring Officer shall make arrangements for the Assessment Sub-Committee to meet in closed session to consider the complaint and wherever possible this should be within 28 days of receiving the complaint.
- 4.2 The Sub-Committee shall be drawn from the Standards Committee and shall comprise of one Independent Member (who shall be the Chair) and two elected Members provided they have had no previous involvement with the complaint.
- 4.3 Where there are no Independent Members available to sit on the Sub-Committee due to conflicts of interest, lack of availability or for any other reason the Monitoring Officer shall have authority to appoint an existing Independent Member of another Standards Committee to sit on the Sub-Committee under regulation 5 (3) of the Regulations on such terms and conditions including remuneration as they feel appropriate provided any remuneration shall be no greater than the Local Government Association (LGA) daily rate in force at the time.

- 4.4 Where there are no or insufficient elected Members available to sit on the Sub-Committee due to conflicts of interest, lack of availability or for any other reason the Monitoring Officer shall have authority, in consultation with the relevant Group Leader(s) where appropriate and feasible, to appoint additional elected members to sit on the Sub-Committee.
- 4.5 The Monitoring Officer shall allow 5 clear days before the meeting of the Sub-Committee provide a report to the Sub-Committee setting out:
- a) Whether the complaint is within jurisdiction.
  - b) The relevant paragraphs of the Code of Conduct to which the allegation refers.
  - c) A summary of key aspects of the complaint if it is lengthy and complex.
  - d) Any other relevant factual information e.g. a medical condition or disability disclosed by the Subject Member.**
  - e) The complaint as an Appendix.
- 4.6 When considering a complaint the Sub-committee shall first establish that the complaint meets the following tests:
- a) It is a complaint against one or more named members of the CFA.
  - b) The Subject 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 of Conduct under which the Subject Member was operating at the time of the alleged misconduct.
- 4.7 If the Sub-Committee are satisfied that all the tests set out in 4.6 above are met they shall then go on to consider the complaint against the following criteria:
- a) Sufficiency - the complainant has submitted enough information to satisfy the Sub-Committee that the complaint should be referred for investigation or other action.
  - b) Seriousness – the complaint is sufficiently serious to warrant further action.
  - c) Good faith - the complaint is made in good faith and is not simply malicious, politically motivated or tit-for-tat.

- d) Previous action – the complaint has not been the subject of a previous investigation or other action relating to the Code of Conduct.
  - e) Time limit – the complaint **will usually** concern a matter which has arisen in the last 12 months **except in exceptional circumstances which justify dealing with a complaint outside of this time limit.**
  - f) Previous Member of the CFA – the Subject Member is no longer a member of the CFA but is still a member of one of the CFA's Constituent Authorities which appointed them and it would be appropriate to refer the complaint to the Standards Committee of that other authority.
  - g) Liaison with the Subject Member's Constituent Authority – the Subject Member will also be a member of one of the CFA's Constituent Authorities to which the Code of Conduct applies and it would be appropriate to advise the Standards Committee of that other authority about this complaint and agree with them how the complaint should be dealt with.
- 4.8 Having applied the tests and criteria set out in 4.6 and 4.7 above the Sub-Committee shall make one of the following decisions on the complaint:
- a) Referral to the Monitoring Officer or to the Monitoring Officer of another Authority.
  - b) Referral to the SBE.
  - c) No further action to be taken.
- 4.9 Following the decision made in 4.8 above the Sub-Committee must then go on to decide whether to place any restriction on the contents or disclosure of the Written Summary of their decision.
- 4.10 Where the complaint requests that their identity be withheld the Sub-Committee will consider the request and shall only grant it in exceptional circumstances and usually only where one of following applies:
- a) Risk of physical harm to the complainant
  - b) Risk to the employment of the complainant as an officer or service provider
  - c) Risk from a serious medical condition relating to the complainant.

- 4.11 Where the complainant asks to withdraw their complaint prior to the Sub-Committee having made a decision the Sub-Committee will need to consider the request and in doing so will take into consideration:
- a) Whether the public interest in taking some action outweighs the complainant's wish to withdraw it.
  - b) Whether such action can be taken without the complainant's participation.
  - c) The reason for the request.
- 4.12 Subject to any decision made under 4.9 above, following the decision made in 4.8 above and any decisions made under 4.10 or 4.11 above the Sub-Committee must give to the complainant and the Subject Member notice in writing both of the decision and the reasons for the decision within 7 days.

## **5. Review Sub-Committee**

- 5.1 The complainant may request a review of the Assessment Sub-Committee's decision if they decide to take no further action and must do so in writing which has to be received by the Monitoring Officer within 30 days of receipt of the notification of the decision.
- 5.2 Upon receipt of a request the Monitoring Officer shall within 7 days acknowledge the request and advise the member the subject of the complaint ("the Subject Member") of its receipt.
- 5.3 Within 7 days of acknowledging the request the Monitoring Officer shall make arrangements for the Review Sub-Committee to meet in closed session to consider the request and wherever possible this should be within 28 days of receiving the request.
- 5.4 The Sub-Committee shall be drawn from the Standards Committee and shall comprise one Independent Member (who shall be the Chair) and two elected Members provided they have had no previous involvement with the complaint in particular they shall not have been members of the Assessment Sub-Committee.
- 5.5 Where there are no Independent Members available to sit on the Sub-Committee due to conflicts of interest, lack of availability or for any other reason the Monitoring Officer shall have authority to appoint an existing Independent Member of another Standards Committee to sit on the Sub-Committee under regulation 5 (3) of the Regulations on such terms and conditions including remuneration as they feel appropriate provided any

- remuneration shall be no greater than the LGA daily rate in force at the time.
- 5.6 Where there are no or insufficient elected Members available to sit on the Sub-Committee due to conflicts of interest, lack of availability or for any other reason the Monitoring Officer shall have authority, in consultation with the relevant Group Leader(s) where appropriate and feasible, to appoint additional elected members to sit on the Sub-Committee.
- 5.7 The Monitoring Officer shall 5 clear days before the meeting of the Sub-Committee provide a report to the Sub-Committee setting out:
- a) Whether the complaint is within jurisdiction.
  - b) The relevant paragraphs of the Code to which the allegation refers.
  - c) A summary of key aspects of the complaint if it is lengthy and complex.
  - d) Any other relevant factual information e.g. a medical condition or disability disclosed by the Subject Member.**
  - e) The complaint as an Appendix.
- 5.8 When reviewing the request the Sub-Committee shall first establish that the complaint meets the following tests:
- a) It is a complaint against one or more named members of the CFA.
  - b) The Subject Member was in office at the time of the alleged conduct and 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.
- 5.9 If the Sub-Committee are satisfied that all the tests set out in 5.8 above are met they shall then go on to consider the complaint against the following criteria:
- a) Sufficiency - the complainant has submitted enough information to satisfy the Sub-Committee that the complaint should be referred for investigation or other action; or where there is an anonymous complaint that documentary or photographic evidence indicating an exceptionally serious or significant matter has been submitted with that complaint.

- b) Seriousness – the complaint is sufficiently serious to warrant further action.
  - c) Good faith - the complaint is made in good faith and is not simply malicious, politically motivated or tit-for-tat.
  - d) Previous action – the complaint has not been the subject of a previous investigation or other action relating to the Code of Conduct.
  - e) Time limit – **the complaint will usually concern a matter which has arisen in the last 12 months except in exceptional circumstances which justify dealing with a complaint outside of this time limit.**
  - f) Previous Member of the CFA – the Subject Member is no longer a member of the CFA but is still a member of the CFA’s Constituent Authority which appointed them and it would be appropriate to refer the complaint to the Standards Committee of that other authority.
  - g) Liaison with the Subject Member’s Constituent Authority – the Subject Member will also be a member of one of the CFA’s Constituent Authorities to which the Code of Conduct applies and it would be appropriate to advise the Standards Committee of that other authority about this complaint and agree with them how the complaint should be dealt with.
- 5.10 Having applied the tests and criteria set out in 5.8 and 5.9 above the Sub-Committee shall make one of the following decisions on the complaint:
- a) Referral to the Monitoring Officer of the CFA or to another authority.
  - b) Referral to the SBE.
  - c) No further action to be taken.
- 5.11 Following the decision made in 5.10 above the Sub-Committee must give to the complainant and the Subject Member notice in writing both of the decision and the reasons for the decision within 7 days.

## **6. Referral for Local Investigation**

- 6.1 Where the Assessment Sub-Committee or the Review Sub-Committee refers the complaint to the Monitoring Officer for investigation the Monitoring Officer will appoint a suitably qualified investigator (“the Investigator”) and delegate to the Investigator their investigatory powers under the Regulations.

- 6.2 The Monitoring Officer shall appoint the investigator on whatever terms and conditions (including remuneration), if any, they feel appropriate.
- 6.3 The Investigator shall conduct the investigation in accordance with the Regulations and SBE Guidance and deliver to the Monitoring Officer a report ("the Report") prepared for presentation to the Hearing Sub-Committee within 3 months of the date of their appointment.

## **7. Hearing Sub-Committee**

- 7.1 Within 7 days of receiving the Report the Monitoring Officer shall make arrangements for the Hearing Sub-Committee to meet in closed session to consider the Report and wherever possible this should be within 14 days of receiving the complaint.
- 7.2 The Sub-Committee shall be drawn from the Standards Committee and shall comprise one Independent Member (who shall be the Chair) and two elected Members provided they have had no previous involvement with the complaint except as members of the Assessment or Review Sub-Committees.
- 7.3 Where there are no Independent Members available to sit on the Sub-Committee due to conflicts of interest, lack of availability or for any other reason the Monitoring Officer shall have authority to appoint an existing Independent Member of another Standards Committee to sit on the Sub-Committee under regulation 5 (3) of the Regulations on such terms and conditions including remuneration as they feel appropriate provided any remuneration shall be no greater than the LGA daily rate in force at the time.
- 7.4 Where there are no or insufficient elected Members available to sit on the Sub-Committee due to conflicts of interest, lack of availability or for any other reason the Monitoring Officer shall have authority, in consultation with the relevant Group Leader(s) where appropriate and feasible, to appoint additional elected members to sit on the Sub-Committee.
- 7.5 The Monitoring Officer shall 5 clear days before the meeting of the Sub-Committee provide a copy of the Report to the Sub-Committee.
- 7.6 The Sub-Committee shall consider the Report and make one of the following findings:
- a) Accept the Investigator's finding of no failure.
  - b) Refer the matter for consideration at a hearing.

- c) Refer the matter to the Adjudication Panel for determination.
- 7.7 Where the Sub-Committee makes a finding of no failure they shall:
- a) give written notice of that finding to the Subject Member, the complainant and any other person prescribed in the Regulations within 7 days; and,
  - b) if the Subject Member does not object, publish a notice of the finding as set out in the Regulations.
- 7.8 Where the Sub-Committee refer the matter for consideration at a hearing such a hearing shall be held before the Sub-Committee (which may be differently constituted from the one which made the decision to refer) within 3 months of the Report being delivered to the Monitoring Officer and only after the expiry of 14 days from the date the Monitoring Officer sent the Report to the Subject Member.
- 7.9 The Subject Member will be given the opportunity to present evidence and make representations at the hearing either orally or in writing and either personally, or by counsel, or by a solicitor or with the Sub-Committee's consent by any other representatives.
- 7.10 The Monitoring Officer is authorised, after inviting representations from the Interviewing Officer and the Subject Member (or a representative acting on his behalf) either orally or in writing, to determine (or re-determine as the case may be) a procedural timetable in preparation for the hearing including but not limited to the delivery of documents for use at the hearing and the identity of witnesses to be called.
- 7.11 Unless the Sub-Committee determines otherwise, the procedure to be followed at the hearing shall be as follows:
- a) The Investigator may make an opening statement in support of the findings of the Report and the Subject Member (or their representative) and then the Sub-Committee may ask any questions they wish of the Investigator.
  - b) The Investigator may call any witnesses in support of the Report, and the Subject Member (or their representative) and then the Sub-Committee may ask any questions they wish. The Investigator will be entitled to ask a witness further questions to clarify any responses given to questions by the Subject Member and/or the Sub-Committee.
  - c) Where the Subject Member is represented the representative may make an opening statement in support of the Subject Member's case.

If the Subject Member is to give evidence to the Sub-Committee they shall do so after their representative's opening statement in accordance with sub-paragraph e) below.

- d) Where the Subject Member is not represented, the Subject Member may, if they so choose, make an opening statement in support of their case and the Investigator and then the Sub-Committee may ask any questions they wish of the Subject Member.
  - e) The Subject Member (or their representative) may call any witnesses in support of their case, and the Investigator and then the Sub-Committee may ask any questions they wish. The Subject Member (or their representative) will be entitled to ask a witness further questions to clarify any responses given to questions by the Investigator or the Sub-Committee.
  - f) The Investigator may have 10 minutes in which to make any final comments to the Sub-Committee.
  - g) The Subject Member may have 10 minutes in which to make any final comments to the Sub-Committee.
  - h) The Sub-Committee will retire to consider its decision in private advised by the Monitoring Officer on matters of evidence, procedure and sanctions.
- 7.12 Following the hearing the Sub-Committee shall make one of the following findings:
- a) No failure to comply with the Code of Conduct.
  - b) Failure to comply but no further action is required.
  - c) Failure to comply and a sanction is to be imposed.
- 7.13 The Sub-Committee has the power to impose any of, or any combination of, the following sanctions to be effective either immediately or on a date to be specified to commence within 6 months of the making of a finding:
- a) Censure
  - b) Restriction on access to premises or resources for up to 6 months
  - c) Partial suspension for up to 6 months
  - d) Suspension for up to 6 months

- e) Written apology
- f) Undertaking training
- g) Participation in conciliation
- h) Partial suspension up to 6 months or until the submission of a written apology
- i) Partial suspension up to 6 months or until undertaken training or conciliation
- j) Suspension up to 6 months or until the submission of a written apology
- k) Suspension up to 6 months or until undertaken training or conciliation.

7.14 The Sub-Committee shall with 7 days after the making of a finding:

- a) Give written notice of the finding and the reasons for it to the Subject Member, the complainant and any other person specified in the Regulations.
- b) Arrange for a summary of the finding to be published in accordance with the Regulations but only in respect of a finding of no failure to comply where the Subject Member so requests.

## **8. Referral for Other Action**

8.1 Where the Assessment Sub-Committee or the Review Sub-Committee is minded to refer the matter to the Monitoring Officer with a direction to take steps other than carrying out an investigation they must consult the Monitoring Officer before doing so.

8.2 The steps referred to in 8.1 above are:

- a) Attendance at a training course
- b) Arranging for the Subject Member and the complainant to engage in conciliation
- c) Such other steps, other than an investigation, as appear to be appropriate.

8.3 Where a Sub-Committee is minded to make a direction it shall request the Monitoring Officer to seek from the Subject Member and the complainant

their views on steps to be taken and, where appropriate, whether they feel able to co-operate with them.

- 8.4 Where a direction is made the Monitoring Officer shall deal with the matter as directed; give notice of the direction to the Subject Member, the complainant and any other person prescribed in the Regulations; and within 3 months of the direction or the next scheduled meeting of the Standards Committee submit a written report to the Standards Committee giving details of the action taken or proposed to comply with the direction.
- 8.5 Where the Standards Committee is not satisfied with the action specified in the report submitted at 8.3 above it shall give a further direction to the Monitoring Officer and notice of that direction to the Subject Member, the complainant and any other person prescribed in the Regulations within 7 days.
- 8.6 Where the Standards Committee is satisfied with the action specified in the report submitted at 8.3 above it shall give notice to that effect to the Subject Member, the complainant and any other person prescribed in the Regulations within 7 days.

## **9. Summary**

- 9.1 A summary of the Local Assessment processes can be found in the flow chart at **Appendix 2**.

**Guy Goodman**  
**Solicitor and Monitoring Officer**  
**11<sup>th</sup> June 2008**