

## Standards Committee

6 May 2016



## Assessment of Code of Conduct Complaints

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### Report of Colette Longbottom, Head of Legal and Democratic Services

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#### Purpose of the Report

1. To provide Members with an overview of the possible options for the future assessment of Code of Conduct complaints.
2. To compare the way in which Code of Conduct complaints are assessed at Durham County Council to the practices of other Local Authorities in the region and other unitary authorities nationally.

#### Background

3. Under the Localism Act 2011 an Authority must have arrangements in place to determine whether or not a Member (including a Co-opted Member) or a Member of a Parish Council in its area has failed to follow the relevant Code of Conduct. However, the Act does not specify how that needs to be done.
4. At the Standards Committee held on 9 September 2015 it was agreed that a report would be produced by Officers detailing the possible options for assessment of Code of Conduct complaints.

#### Durham County Council Assessment of Code of Conduct Complaints

5. Written complaints of alleged Code of Conduct breaches by Members are currently assessed by the Monitoring Officer (MO) or other legal officers delegated to assess complaints on her behalf. The MO, taking into account the views of the Independent Person (IP) where appropriate, will consider the complaint within 20 days and decide what action should be taken.
6. If the MO finds that there has been a breach of the relevant Code of Conduct, they may either seek local resolution or refer the complaint to an Investigating Officer who will be appointed to investigate the complaint and complete a report. Alternatively, the MO could decide to refer the complaint to the Standards Committee at this stage if they feel that is more appropriate. If no breach of the Code is found, no further action will be taken.

7. If the Investigating Officer's report concludes that there has been a breach of the Code, then the MO will decide whether to seek local resolution or to refer the complaint to the sub-committee of the Standards Committee, known as the Hearing Panel, for local determination.

### **Assessment of Code of Conduct Complaints by Other Local Authorities**

8. As it is open to Local Authorities to decide how to deal with Code of Conduct Complaints, the practices vary between them. However, the numbers of Code of Conduct complaints received by Local Authorities in our region are vastly different.
9. Durham County Council receives significantly more complaints than other Local Authorities in the region, and this must be taken into account when making any decisions regarding the assessment of these complaints. Please see **Appendix 2** for a comparison table of the number of Standards Complaints for each regional Local Authority.
10. The table below summarises how code of conduct complaints are assessed by other Local Authorities:

<b>Local Authority</b>	<b>Assessment by sub-committee</b>	<b>Assessment by Monitoring Officer (or delegated officer)</b>	<b>Role of Council's Independent Person(s)</b>	<b>Assessment by Standards Committee</b>
Durham County Council	x	✓	Consulted where necessary	Can be referred if more appropriate
Northumberland County Council	x	✓	Decisions made in conjunction with IP	Can be referred if more appropriate
Gateshead Council	x	✓	Must be consulted	Can be referred if more appropriate
Stockton-on-Tees Borough Council	x	✓	Consulted where necessary	Can be referred if more appropriate
Newcastle upon Tyne City Council	x	✓	Consulted where necessary	Can be referred if more appropriate
Hartlepool Borough Council	x	✓	Must be consulted	x

Sunderland City Council	x	✓	Must be consulted	Can be referred if more appropriate
Middlesbrough Borough Council	x	✓ If the conduct complained of was more than 6 months ago it will be considered out of time and no action will be taken	Must be consulted	x
North Tyneside Metropolitan Borough Council	x	✓	Must be consulted	x
South Tyneside Metropolitan Borough Council	x	✓	Must be consulted	Can be referred if more appropriate
Darlington Borough Council	x	✓	Must be consulted	x
Cornwall Council	x	✓	Must be consulted	x
Cheshire East Council	x	✓	Must be consulted	x
Rutland County Council	x	✓	Consulted where necessary	x

### Summary of findings

11. In all of the Local Authorities considered above, the MO assesses initial written complaints against Members and makes an assessment as to whether an investigation is necessary. Most of the MOs must consult the Independent Person when assessing complaints, but some Local Authorities, like Durham, reserve the discretion to consult them only where necessary. None of the Local Authorities delegate to the Standards Committee, or a sub-committee, the initial assessment.
12. Six of the 14 Local Authorities reviewed have the option of the MO exercising their discretion to defer the decision as to whether there will be an investigation to the Standards Committee, or its equivalent, where they feel it is more appropriate for the decision to be made by them. This is the current practice at Durham County Council.

## Creating an Assessment Sub-Committee

13. Officers have considered in more detail the advantages and disadvantages of creating an assessment sub-committee for assessing complaints rather than the MO, which are set out in the table below.

<b>Advantages</b>	<b>Disadvantages</b>
Decisions lie with the Members	Lengthens the process
May deter breaches if Members know their peers will examine the complaints received	An Officer can more easily obtain further information if necessary without unduly delaying the process
Enhanced scrutiny	Could become political
	Wastes time when dealing with simpler complaints as they could be dealt with more efficiently by an Officer
	Increased chance of actual or perceived conflicts of interest
	Increased expense
	Fewer breaches may be resolved by Local Resolution
	Greater bureaucracy

14. As can be seen from the table above, there are significantly more disadvantages to an assessment sub-committee considering complaints, than there are advantages.
15. The main disadvantage in establishing an assessment sub-committee is that it will significantly lengthen the assessment of complaints given the number that Durham County Council currently deals with and require additional staff resource to administer at a time when such resources are scarce and at a premium. This does not necessarily add anything to the process apart from delaying the simpler complaints. It is also a valid concern that the decisions could become politically motivated, thus creating conflicts of interest.
16. The advantages of establishing an assessment sub-committee are limited, but primarily there could be increased scrutiny, and it ensures the decision lies with the Members instead of officers.

## Conclusion

17. Having considered the arrangements for assessing Code of Conduct complaints across Local Authorities, in the region and nationally, it is clear that all of the Council's considered operate without an assessment sub-committee. Given the number of complaints that Durham County Council currently receives it would not be practical to have each complaint assessed by a sub-committee. The creation of an

assessment sub-committee does not necessarily add anything to the process apart from delaying the simpler complaints.

### **Recommendations and Reasons**

18. Standards Committee resolves to maintain the existing arrangements for assessment of code of conduct complaints

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## **Appendix 1: Implications**

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**Finance** – None

**Staffing** – None

**Risk** - None

**Equality and Diversity** - None

**Accommodation** - None

**Crime and Disorder** - None

**Human Rights** - None

**Consultation** – See report

**Procurement** - None

**Disability Discrimination Act** - None

**Legal Implications** – None

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**Appendix 2: Table showing number of Standards Complaints by Local Authority**


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Local Authority	Complaints	Complaints leading to investigation
Durham County Council	12/13 – 52 13/14 - 42 14/15 – 28 15/16 - 52	12/13 – 9 13/14 – 8 14/15 – 4 15/16 - 2
Northumberland County Council	12/13 – 17 13/14 – 29 14/15 – 19	12/13 – 0 13/14 – 1 14/15 – 4 (three of these were the subject of a Joint Investigation carried out by Durham County Council)
Gateshead Council	13/14 – 0 14/15 – 0	13/14 – 0 14/15 – 0
Stockton-on-Tees Borough Council	13/14 – 18 14/15 – 19	13/14 – 1 14/15 – 0
Newcastle upon Tyne City Council	13/14 – 15 14/15 – 18	13/14 – 4 14/15 – 8
Hartlepool Borough Council	2012 – 12 2013 – 13 2014 – 14	Information not provided
Sunderland City Council	2013 – 6 2014 – 4 2015 – 12	2013 – 1 2014 – 1 2015 – 0
Middlesbrough Borough Council	Information not provided	Information not provided
North Tyneside Metropolitan Borough Council	2015 – 1	2015 – 1
South Tyneside Metropolitan Borough Council	Information not provided	Information not provided
Darlington Borough Council	12/13 – 6 13/14 – 8 14/15 – 8	12/13 – 1 13/14 – 1 14/15 – 0