

MEMORANDUM OF UNDERSTANDING

between

COMMISSION FOR LOCAL ADMINISTRATION IN ENGLAND AND THE STANDARDS BOARD FOR ENGLAND

FEBRUARY 2009

1. INTRODUCTION

The work and areas of responsibility of the Commission for Local Administration in England (the Commission) and the Standards Board for England (the Standards Board) are related. So they need to cooperate in order to ensure that their respective roles can be fulfilled effectively and efficiently. This memorandum of understanding has been agreed by the Commission and the Standards Board to lay the foundation for such cooperation.

In particular, this memorandum sets out the respective roles and responsibilities of the parties in order to:

- provide guidance to staff about the nature of complaints which will be of interest to each party, how such complaints should be handled and the advice that should be given to complainants;
- assist members of the public to identify the appropriate body to which to make a complaint;
- assist advice agencies to direct complainants to the appropriate body; and,
- be available for local authorities and members of those authorities for their information

2. DEFINITIONS and ROLES

A potential complainant may be unsure where to direct his/her complaint. The respective websites at lgo.org.uk and standardsboard.gov.uk will provide more information but the key points are as follows:

The Commission for Local Administration in England (the Commission) was established under the Local Government Act 1974 and consists of three Local Government Ombudsmen and the Parliamentary and Health Service Ombudsman (ex officio). The Local Government Ombudsmen:

- can investigate complaints from members of the public claiming personal injustice as a result of maladministration by or on behalf of a local authority or other body
- can investigate actions of members and officers
- can recommend that an authority provide a remedy (often financial) for the complainant.
- can issue reports and guidance

- cannot normally investigate a complaint until the authority has had an opportunity to consider it first
- cannot determine whether a member has breached the Code of Conduct.

The Standards Board for England (the Standards Board) was established under the Local Government Act 2000 (amended by the Local Government and Public Involvement in Health Act 2007) to promote high standards of conduct by local authority members, and to investigate complaints of breaches by members and co-opted members of their authority's code of conduct (the Code of Conduct).

On 8 May 2008, the role of the Standards Board changed. The Standards Board no longer receives complaints centrally nor decides whether to refer them for investigation. For complaints received on or after 8 May 2008 **the Standards Committee** of a council will now receive and assess new allegations which must be made in writing. The Standards Committee is appointed to maintain and promote high ethical standards. It will decide whether complaints appear to reveal a breach of the Code and if so whether they merit investigation, other constructive action or no action. Standards Committees must have a review mechanism for complainants if they wish to appeal a decision not to investigate.

Complaints about Standards Committees

Standards Committees are within the jurisdiction of the Ombudsmen. It is possible therefore to make a complaint of maladministration causing injustice as a result of some action or inaction by a Standards Committee or council monitoring officer about the handling of a complaint (e.g. delay or bias).

Parish Councils are outside the Ombudsman's jurisdiction. But there is no jurisdictional bar to investigating the actions of a standards committee of a District Council in respect of the committee's actions in respect of a complaint about a parish council.

But in respect of other Councils within jurisdiction, the Ombudsmen have a discretion and will consider each complaint on its merits. In doing so the Ombudsmen recognise that the Standards Board is the body established by statute to oversee member conduct. But in some circumstances they may wish to consider allegations of administrative fault where the complainant can claim to have suffered an injustice from the fault alleged.

All complaints to the Ombudsman about Standards Committees should be drawn to the attention of the Ombudsman him/herself, or someone authorised by the Ombudsman to consider such complaints, as soon as possible after receipt.

The new role of the Standards Board is to be the strategic regulator of members' conduct, monitoring local arrangements and ensuring they are effective. Ethical Standards officers, who are employees of the Board but are independent in their investigating role, can now:

- investigate complaints referred to them by the Standards Board only when the relevant local standards committee has asked the Board to undertake investigation; and, if appropriate,
- refer a matter to the standards committee of the authority concerned or to the Adjudication Panel for England. These bodies can impose sanctions, including up to a five year disqualification from office, for members who are found to have breached the Code of Conduct. However, none of them can provide or recommend a remedy for a complainant.

3. WHO CAN MAKE A COMPLAINT

Anyone can make a **complaint to the standards committee** of an authority regulated by the Standards Board. Except for some criminal offences (when the relevant legislation is brought into force), complaints must concern the conduct of a member which occurred when he or she was a member of the authority and had undertaken to abide by the Code of Conduct.

A complaint to the Ombudsman may only be made by, or on behalf of, a member of the public or a body of persons other than a local authority or other public service body. A complainant must be able to claim a personal injustice. An elected member may only complain to the Ombudsman about something which affects him/her personally as a member of the public. This includes actions of the authority's standards committee and officers carrying out functions in relation to the standards committee.

Throughout this memorandum those persons and bodies able to make complaints are defined as 'complainants'.

4. COVERAGE OF AGREEMENT

This Memorandum concerns all dealings between the parties in respect of the following English authorities:

county councils,

unitary authorities (from 1 April 2009)

city and district councils,

London borough councils,

the Greater London Authority,

the Metropolitan Police Authority,

the London Fire and Emergency Planning Authority,

the Common Council of the City of London

the Council of the Isles of Scilly,

fire and rescue authorities

police authorities,

joint authorities established by Part IV of the Local Government Act 1985,

the Broads Authority, or

national park authorities

There are some authorities where one party has jurisdiction but the other does not. A significant example is town and parish councils which are not within the jurisdiction of the Commission.

5. DISCLOSURE OF INFORMATION

Section 67 of the Local Government Act 2000 provides powers for an ethical standards officer and an Ombudsman to consult if either of them believes that matters which are the subject of their own investigation could also partly or wholly be matters which could give rise to an investigation by the other. In particular, the LGA 2000 disapplies the restrictions on information sharing by an ethical standards officer contained in section 63(1) of that Act and similarly disapplies the restrictions on information sharing by an Ombudsman contained in section 32(2) of the LGA 1974.

Both the Ombudsman and ethical standards officers are therefore able to share information, including, but not restricted to the conduct of the investigation, where this would allow the other to fulfill their functions. This does not require the consent of the complainant or others involved in the investigation, and comments or consent will not normally be sought for this. However, there is no compulsion under legislation for either party to share information. And there is no provision which allows joint investigations.

The Ombudsman is also able to consult and share information with the relevant standards committee of a local authority. Again the comments or consent of the complainants and members involved will not normally be sought.

6. LIAISON AND COOPERATION

Neither the Standards Board nor the Commission has a statutory obligation to consult or cooperate with the other. Further, neither party needs to rely on the findings of the other in order to consider a complaint. However, since the objectives of both organisations, though differently worded, are to support and improve the work of local government, both parties wish to deal with complaints in the most appropriate, timely and cost-effective manner.

Each party will want to deal with complaints as quickly as possible. But occasionally it may be sensible for one party to delay investigation of a complaint pending the outcome of investigation by the other party and, among other things, the parties will have regard to the wishes of the complainant. If it is decided to delay investigation, the complainant should be informed.

Complaints may have some common features, without being exactly the same. For example, a complaint to the Ombudsman may allege administrative fault in a number of respects, only one of which is an allegation of a breach of the Code of Conduct by a councillor.

Each party will need to consider a complaint made to it in the normal way in accordance with its own jurisdiction and procedures. This may result in an early decision by one or other party.

For example, the Standards Board may decide at an early stage that a complaint should not be investigated.

As far as the Commission is concerned there could be an early decision for example:

- if the authority has not had an adequate opportunity to consider the complaint and the Ombudsman determines the complaint as 'premature' and refers it to the authority for consideration;

- if the Ombudsman considers that, even if there was an administrative fault there was no or insufficient injustice to the person complaining and therefore exercises discretion not to investigate the complaint; or,
- if the authority takes early action to provide a 'local settlement' which the Ombudsman considers a satisfactory resolution of the complaint.

But inevitably there will be some complaints made to both parties that require extensive consideration by both.

When complainants, members or third parties are advised about the possibility of the involvement of the other party, they need to be told that information may be shared; and given details of the respective retention and destruction policies for documents.

7. HOW COMPLAINTS ARE HANDLED

Complaints within the Standards Board's jurisdiction only

The Standards Board will follow its own procedures where it receives complaints that clearly fall solely within its own jurisdiction.

Complaints within the Ombudsman's jurisdiction only

The Ombudsmen will follow their own procedures where they receive complaints that clearly fall solely within their jurisdiction, eg complaints that members have acted with maladministration, but not in breach of the Code of Conduct.

Complaints that are made to the wrong party

The Standards Board and the Ombudsmen will have regard to the wishes of the complainant when they receive complaints that could be made to the other party. If the Standards Board receives complaints that fall exclusively within the Ombudsmen's jurisdiction it will advise complainants accordingly. Where the Ombudsmen receive complaints relating to an alleged breach of the Code of Conduct it will advise complainants that such complaints are outside jurisdiction, but that they could make a complaint to the authority's standards committee. If the question of maladministration causing injustice will be determined by whether or not the authority's code of conduct has been breached, the Ombudsman may wish to consider the matter again in the light of the Standards Committee's decision.

Complaints made to one party, but could also be made to the other

The Standards Board and the Ombudsmen will have regard to the wishes of the complainant when complaints are received by one body, but could also be made to the other. Where either party receives complaints that are within jurisdiction but could also be made to the other party, complainants will be advised that they can also make a complaint to the other party or the local standards committee. If the allegation of member misconduct is not solely determinative of the question of maladministration causing injustice, the Ombudsmen will consider whether, on the facts of each case, they can reach a view without a definitive view of the member conduct.

Complaints sent to both parties

The Ombudsmen and ethical standards officers will liaise on a case-by-case basis where a complaint is sent to both parties and either or both parties have been informed that this is the case. Contact will be made as soon as practical after it is known that a complaint has been made to both parties. In cases where the finding of maladministration causing injustice depends on whether a member has breached the Code of Conduct, the Ombudsman will await the Standards Board's decision. This is because the Ombudsman cannot determine whether there has been breach of the Code.

Those where the position is unclear

One party may receive a complaint and it may seem possible, but not certain, that a complaint has been made to the other. In such circumstances, enquiries will be made of the complainant or the other party in order to clarify the position.

Complaints that are for neither party

These will be dealt with according to each party's own arrangements. Where it is known, the person complaining will be informed of any other possible avenues for the complaint.

8. OPERATIONAL MATTERS

Where contact on operational matters is required, this should be between the Standards Board's Director of Casework and the appropriate Deputy Ombudsman, or members of staff authorised to act on their behalf.

The following operational matters will be decided on a case-by-case basis:

- the detail and type of information to be disclosed to the other party;
- arrangements for regular review of case progress;
- arrangements for ensuring the other party knows the proposed outcome of an investigation in time to comment
- any other issues that may be relevant to each party's ability to investigate the complaint;
- whether it would be appropriate to seek comments or consent of any other person; and,
- any other issues that may be relevant to the complaint.

9. GUIDANCE

Arrangements will be made for communicating the provisions of this Memorandum within the Standards Board and the Commission.

Each body will, where appropriate, send enquirers a copy of the other body's general information leaflet.

The Standards Board and the Commission will ensure that the provisions of this memorandum are followed by each party and that the memorandum is clear to the public, local authorities and advisory bodies.

The Standards Board and the Commission will regularly review this memorandum so as to ensure that developments and changes in the practices and working relationships of both bodies are adequately reflected.

The Standards Board and the Commission will regularly convene meetings to discuss other matters of common interest.



**Chair
Standards Board for England**



**Chairman
Commission for Local
Administration in England**