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Commissioner for Complaints in other jurisdictions

This paper considers the roles of the Commissioner for Complaints in other jurisdictions, in particular, the system used under the Localism Act in England; however it also briefly explores the approaches used in Wales and Scotland.

Introduction

The Local Government provides for the production of a Code of Conduct for councillors in clause 56:

56.—(1) *The Department may issue a code of conduct as regards the conduct which is expected of councillors (to be known as the Northern Ireland Local Government Code of Conduct for Councillors).*

The Commissioner for Complaints may investigate allegations made in relation to a councillor (or former councillor) having breached the Code. It is important to note that the Code and any investigations relate to councillors or former councillors only. However in England, Scotland and Wales the remit for investigations into conduct is wider.

In England there is no Commissioner for Complaints similar to the proposals under the NI Local Government Bill. The Localism Act 2011 introduced a new standards regime by abolishing the Standards Board, requiring local authorities to produce their own ethical code and to deal with standards complaints internally. The Code and any investigations apply to councillors and public bodies as detailed in the section below. However, the case is different in Wales where complaints are dealt with by the Local Government Ombudsman, similar to the Commissioner for Complaints proposed under the Local Government Bill. However the role of the Ombudsman includes investigations into the conduct of councillors, council staff and public bodies (see section under Wales). In Scotland complaints are dealt with by the newly established Commissioner for Ethical Standards whose remit includes councillors, members of devolved public bodies and Members of the Scottish Parliament.

England

Prior to the 2011 Act, standards for councillors were handled by 'Standards for England', the independent standards board established under the [Local Government Act 2000](#). The Government also published a model code of conduct in 2007 (under section 50 of the 2000 Act).¹ However the power was repealed, with regard to England, by Schedule 4 paragraph 49 of the *Localism Act 2011*. The local standards regime applies to councillors, not to local authority staff. A power existed in section 82 of the *Local Government Act 2000* to introduce a national code of conduct for local authority employees. However, no such code was ever introduced. Despite this, many local authorities maintain and publish their own codes of conduct for staff.

Standards regime under the Localism Act

Under the standards regime established by the [Localism Act 2011](#), local authorities must determine their own standards procedures. The Act provides that standards procedures must be consistent with the 'Nolan principles': selflessness, integrity, objectivity, accountability, openness, honesty and leadership (same principles of the Code of Conduct provided under the Local Government Bill). Local authorities must include a requirement to disclose any pecuniary interests.

Breaches

Most importantly, local authorities must also include mechanisms for investigating allegations that a member (or co-opted member of the authority, or of a committee or sub-committee of the authority) has not complied with the code of conduct, and provide arrangements under which decisions on allegations may be made. This must include the appointment of an independent person whose views must be sought by the authority in the event of an allegation.

¹ See the [Local Authorities \(Model Code of Conduct\) Order 2007](#) (SI 2007/1159).

In a letter to all local authority leaders the Minister at the time, Robert Neill, said:

All councils now have the opportunity to make a clean break from the bureaucratic standards arrangements of the old regime which so often led to petty or politically motivated complaints. I am sure you and your council will wish to make the most of this opportunity and put in place simple, fit-for-purpose arrangements in which all can have confidence.²

Independent Person

Section 28 (7) of the Localism Act requires local authorities to appoint one independent person to advise the council before it makes a decision on an allegation. However there are restrictions on who can be appointed; in general the independent cannot be a councillor, officer or their relative or close friends. Former members of standards committees were allowed to be appointed until the 30 June 2013 as part of transitional arrangements to the new regime.³

The Act has also abolished the requirement for local authorities to have standards committees. However, local authorities may choose to operate a voluntary standards committee (or something similar). Membership would have to follow the political balance rules. Individual authorities determine how the independent person works as part their standards arrangement. During debate of the Localism Bill in the House of Lords, Baroness Hanham said:

I want to make it clear that whatever the system and whether local authorities have independent members in that committee structure, they will still be required to have a further independent member [i.e. the independent person] who will act outside the committee system and will have to be referred to.⁴

The Procedure

- Complaints are to be made to the local authority's Monitoring Officer in writing.
- The Monitoring Officer will assess every complaint against set criteria and after consultation with the independent person and the appropriate whip of the member's group a decision is made on what action to take.

² Letter to Local Authority Leaders from Bob Neill Secretary of State (June 2012). Accessed at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5657/2169997.pdf

³ There are transitional arrangements in place as described in the Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012 <http://www.legislation.gov.uk/ukxi/2012/1463/article/7/made> .

⁴ HL Deb 31 Oct 2011 c1051. The legislation requires local authorities to appoint an 'independent person'. A useful discussion of some of the principles involved is provided on the website of the Association of Council Secretaries and Solicitors; see <http://www.acses.org.uk/news/standards-%E2%80%93-sanctions-and-independent-persons-press-release>.

- It may be decided that informal resolution is adequate without the need of formal investigation. Informal resolution may involve the member accepting their conduct was unacceptable and offer an apology, or other remedial action by the authority
- If it is decided that formal investigation is needed, the Monitoring Officer will appoint an investigating officer
- If the complaint identifies criminal conduct or breach of other regulations by any person, the monitoring officer has the power to call in the Police or other regulatory agencies.⁵

Power of local authorities

The powers of the local authority in relation to allegations are for local determination, following advice from the authority's Monitoring Officer or legal team. These powers might include censure or the removal of a member from a committee, but the authority cannot disqualify or suspend members as this power was revoked (from 1 June 2012) by the Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.

Public Bodies covered

The bodies covered by the standards regime are listed in section 27 (6) of the Localism Act 2011 where a "relevant authority" means:

- a county council in England,
- a district council,
- a London borough council,
- a parish council,
- the Greater London Authority,
- the Metropolitan Police Authority,
- the London Fire and Emergency Planning Authority,
- the Common Council of the City of London in its capacity as a local authority or police authority,
- the Council of the Isles of Scilly,
- a fire and rescue authority in England constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies,
- a police authority (in England or in Wales) established under section 3 of the Police Act 1996,
- a joint authority established by Part 4 of the Local Government Act 1985,

⁵ Lambeth Council, *Making a complaint: Complaining about a member of Lambeth Council*
<http://www.lambeth.gov.uk/Services/CouncilDemocracy/CommentsComplaints/ComplaintAboutMember.htm>

- an economic prosperity board established under section 88 of the Local Democracy, Economic Development and Construction Act 2009,
- a combined authority established under section 103 of that Act,
- the Broads Authority, or
- a National Park authority in England established under section 63 of the Environment Act 1995.”

The provisions in section 27 also cover co-opted members of local authority committees and joint committees of local authorities. These are specific legal entities. Members of partnerships would not be covered.

The Localism Act provisions do not cover council staff.

Wales

In Wales, complaints about councillor standards are handled by the Public Service Ombudsman for Wales. The governing legislation is the [Public Service Ombudsman \(Wales\) Act 2005](#). This Act created a unified ombudsman for Wales, replacing the remit of the Parliamentary and Health Service Ombudsman and the Local Government Ombudsman within Wales.

Schedule 4 of this Act also made the new ombudsman body responsible for complaints against councillors and council staff in Wales. This system was not changed by the new standards regime introduced by the *Localism Act 2011, as it only applies to England*.

The Ombudsman can consider complaints about the behaviour of members and staff of:

- County and county borough councils;
- Community councils;
- Health and social care councils;
- Fire authorities, and national park authorities; and
- Police and crime panels

For a full list of the bodies refer to [Schedule 3](#) of the 2005 Act.

All of these authorities have a code of conduct which sets out how members must follow recognised principles in public life.

Complaints made about a councillor will go to the authority's Monitoring Officer to try to be resolved locally before going to the Ombudsman.

The Ombudsman cannot investigate:

- Complaints about the behaviour of individual employees of an authority (however if their behaviour led to unfair treatment or receiving of a bad service, a complaint can be made about the authority itself, for which a different method applies)
- Complaints not made in writing or made anonymously

For more details refer to the Ombudsman for Wales leaflet: [How to complain that a Local Authority member has broken the code of conduct](#).

Scotland

The Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 set up the Commissioner for Ethical Standards. The Order came into force on 1 July 2013, replacing the previous Commission for Ethical Standards, Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland.

The Role of the Commissioner for Ethical Standards

The Commissioner is an independent officeholder who can consider complaints about:

1. a councillor or member of a devolved public body who is alleged to have contravened the Councillors' or the appropriate Members of a public body's Code of Conduct. Where appropriate, the Commissioner will report on the outcome of these investigations to the Standards Commission for Scotland.
2. a Member of the Scottish Parliament who is alleged to have broken the Code of Conduct for MSPs. Where appropriate, the Commissioner will report on the outcome of these investigations to the Scottish Parliament.

The Codes of Conduct imposes requirements on Councillors, Members of devolved public bodies and MSPs on how to conduct themselves in carrying out their duties.⁶

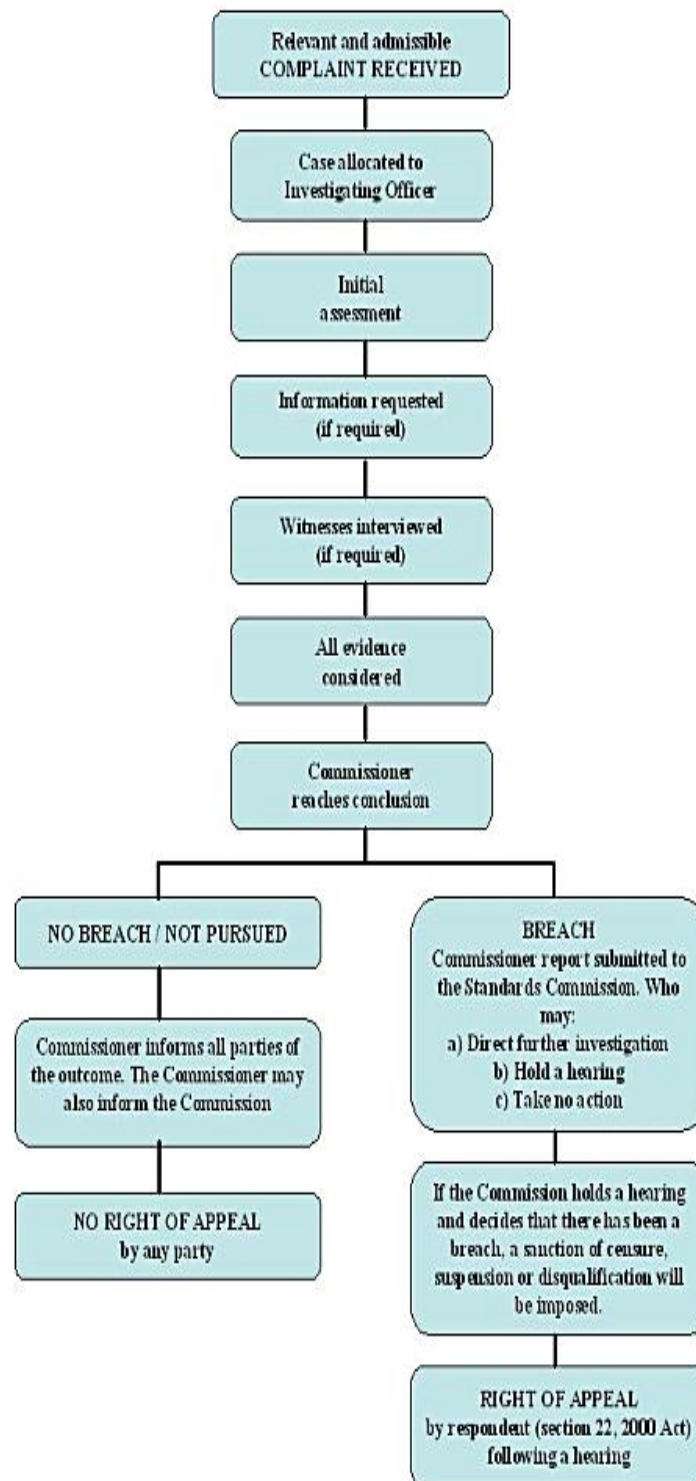
Where the Commissioner has concluded a breach of the Code has been found, the [Standards Commission](#) then decides whether or not to hold a hearing. If a hearing is held, the Standards Commission will decide whether there has been a breach and if so, what sanction (censure, suspension or disqualification) should be imposed. The Standards Commission also has responsibility for issuing general guidance in relation to the Codes.⁷

⁶ For information the three model codes of conduct can be viewed here <http://www.publicstandardscommissioner.org.uk/make-a-complaint/overview/>

⁷ Commissioner for Ethical Standards <http://www.publicstandardscommissioner.org.uk/about-us/overview/>

The Process

The following diagram illustrates how the Commissioner processes a complaint



Source: Commissioner for Ethical Standards⁸

⁸ Commissioner for Ethical Standards Complaint Leaflet <http://www.publicstandardscommissioner.org.uk/make-a-complaint/complaint-leaflet/>

Public bodies

A full list of the relevant public bodies is available from the Standards Commission's website. They include:

- National public bodies
- National park authorities
- Further education colleges
- NHS boards
- Regional transport partnerships
- Community justice authorities

For a full list see: <http://www.standardscommissionscotland.org.uk/content/which-bodies-have-codes>

What the Commissioner cannot investigate

The following is outside the remit of the Commissioner:

- complaints about a council or public body as an organisation;
- complaints about corporate failure to meet service standards;
- complaints about misconduct by an employee of a council or public body;
- complaints about misconduct by a community councillor;
- complaints involving private conduct (that is when a councillor is not acting as a councillor);
- complaints about a councillor before they were elected or member before they were appointed;
- complaints which are not about the type of behaviour covered by the relevant Codes.