

OFFICER REPORT TO STANDARDS COMMITTEE

REVIEW OF LOCAL STANDARDS FRAMEWORK 15 February 2010

PURPOSE OF REPORT:

To review the operation of local assessment and determination and to identify any areas of improvement and actions

OVERVIEW OF COMPLAINTS RECEIVED AND PROCESSED:

- The local assessment process was introduced in May 2008. Since then the Standards Committee has dealt with 15 complaints about member conduct. An overview of the handling of those complaints is set out below.

Alleged breach of Code	Type of Complainant	Initial Assessment	Consideration Hearing	Determination Hearing
Misuse of position/council resources improperly for party political purposes	Councillor	Referred for investigation	Referred to a determination sub committee	Breach of Code – Member censured
Failure to disclose prejudicial interest	Member of public	Referred for investigation	Agreed with MO's finding of no breach	N/A
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Failure to disclose prejudicial interest	Member of public	Referred for investigation	Agreed with MO's finding of no breach	N/A
Failure to disclose prejudicial interest	Member of public	Referred for investigation	Returned to assessment sub committee and discontinued	N/A
Failure to treat others with respect/bullying	Member of public	Referred for investigation	Agreed with MO's finding of no breach	N/A
Disclosure of confidential information	Councillor	Referred for investigation	Agreed with MO's finding of no breach	N/A
Use of position improperly to secure an advantage	Councillor	Referred to MO for other action	N/A	N/A
Compromised impartiality of officer/failure to treat others with respect	Councillor	No action	N/A	N/A
Bringing authority into disrepute	Member of public	No action	N/A	N/A
Failure to disclose prejudicial interest	Member of public	No action	N/A	N/A
Disclosure of confidential information	Member of public	No action	N/A	N/A

INFORMING THE MEMBER THAT THERE IS A COMPLAINT ABOUT THEM:

2. The Council has an obligation to administer the process of dealing with complaints about member conduct in accordance with statutory Regulations and Guidance. The Standards Board has also produced a number of template letters, for use at key points of the process, but these are not always in "reader friendly language". An example of the initial letter is attached to this report. Where the Monitoring Officer receives an allegation against a member, the Guidance states that the Monitoring Officer can take the "administrative step" of informing the member that a complaint has been made about them. However the Regulations do not allow the Monitoring Officer to disclose any details of the complaint until an assessment meeting

has agreed a summary to be sent to the member. The Monitoring Officer has to date always informed a member that she has received a complaint, after seeking the permission of the complainant to disclose an outline of the complaint. The result however is not particularly satisfactory and there is a possibility that not all members would want the anxiety of knowing there had been a complaint about them without getting more facts at the same time. One approach suggested at a recent Standards Board workshop was to ask each member individually whether they would want early notification of a complaint, in the knowledge that little detail would be supplied. The Committee is asked to consider this and reach a view as to whether it would be a good practice to adopt.

COMPLAINTS ISSUES:

3. Another issue for officers is the increasing number of people who wish to complain about the performance of a councillor or the Council rather than the behaviour of a councillor. The Committee has helpfully given guidance on how to handle complaints about failure to answer correspondence and this has been applied to good effect. When a complaint about member performance is received the procedure adopted to date has been to approach the member in question, to explain the complaint and that this is not a Standards issue but to suggest that the member might like to see what they can do to address the matter. The Committee is asked to confirm that it considers this the right approach
 4. A further issue is the confused complainant who is not really sure what outcome they are seeking, or is trying to use the process to address a service delivery matter or policy issue that the councillor cannot resolve. Where the issue is clearly one of service delivery the Monitoring Officer refers the complaint to the Customer Relations team, however on at least one occasion a person who was dissatisfied with the outcome of that process has sought to reopen an issue through a complaint about his local councillor's response to the issue. One complainant has persistently accused a councillor of failing to answer correspondence, but does not seem to be able to correctly address his letters, thus adding to his frustration when correspondence incorrectly addressed to officers goes astray and is not answered either!
 5. Officers will continue to manage these situations by liaising closely with the Customer Relations team, but some complainants will eventually be told that correspondence with them will be discontinued. Legal and Democratic Services do not have sufficient resources to enter into lengthy correspondence on matters that have been fully investigated elsewhere.
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CONSIDERATION HEARINGS:

6. One of the most difficult issues that has arisen has been whether a consideration hearing should be held in public. Standards Board Guidance on this is not particularly helpful and reads as follows:

A meeting of the Standards Committee to consider the Monitoring Officer's investigation report must be convened under Regulation 17 of the Regulations. Regulation 8(6) allows the consideration of any information presented for that purpose to be considered as exempt information. As with all exempt information decisions the Standards Committee must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. When advising on this matter the monitoring officer should consider the effect of Regulation 17 (4). This Regulation allows the subject member to prohibit the publication of a notice, stating that the standards committee has found that there has been no failure to comply with the code.

7. Even where a meeting is held in part 2 county councillors may attend the meeting but would need to demonstrate a "need to know" (which must be more than simply curiosity). The Monitoring Officer is of the view that a member who is the subject of the complaint would, in most cases have a prejudicial interest which would prevent him or her from attending a consideration hearing. The meeting's purpose is clearly to consider the investigation report and the subject member has no right to speak or make representation at that meeting. The member will have been interviewed by the investigator and been given an opportunity to comment on the investigator's report. In the event that the matter proceeds to determination he or she has full rights to speak and be represented before any final decision is made on the alleged breach of the Code.

SUPPORT FOR SUBJECT MEMBERS:

8. Where an assessment meeting refers a complaint for investigation, the Monitoring Officer provides the member who is the subject of the complaint with a written guide to explain what happens next. A senior member of Legal and Democratic Services' staff is also made available to discuss the process with the member. However Council staff must remain impartial in administering complaints and cannot advise or represent the member. Some members have found this support useful but it has, on one occasion, caused difficulties because the subject member was dissatisfied with the level of support available.
9. It would be possible to purchase insurance cover to provide legal support to members faced with a complaint about conduct. The Local Authorities (Indemnities for Members and Officers) Order 2004 Order enables a local authority to grant an indemnity, including an indemnity via insurance, to its members in respect of the cost of defending "Part 3 Proceedings". This is a reference to Part 3 of the Local Government Act 2000, which governs the conduct of local authority members. It is therefore possible to provide an indemnity in respect of an investigation, consideration hearing and determination by the Standards Committee or the Standards Board for England. However the Order provides that any such indemnity must be

subject to a requirement for the member to reimburse the authority, or the insurer, for any sums expended by the authority or insurer in relation to those proceedings in the event that:

- a) There is a finding that the member has failed to comply with the Code of Conduct and that finding is not overturned on appeal, or
- b) The member admits that they have failed to comply with the Code of Conduct.

10. It has been established that the Council's insurers would provide a policy to cover members for the cost of defending standards proceedings. The premium in the first instance would be about £31.00 p.a. for each member to be covered. The Committee may wish to consider recommending this. As a change in Council policy it would require a Cabinet decision.

The factors in favour of obtaining specific insurance cover for members against whom standards complaints are made would include:

- Removing the risk that members would not be able defend themselves properly in such proceedings because they cannot afford legal representation.
- Potential gains in the efficiency of the investigation and hearing process if members are represented.

The factors in favour of not obtaining the specific insurance cover would include:

- The risk that a relatively simple and straightforward procedure could become overly legalistic and expensive.
- Complainants who wished to take legal advice or be represented would have to do so at their own expense, which could create a perception of inequality in the standards system if members are insured.

Members of the Committee will also want to consider whether there are any other public perception issues. It is also important to note that if a member were subsequently found to be in breach of the Code of Conduct, however minor that breach they would have to repay the full cost of any legal advice they had obtained. This would be a sum considerably in excess of the cost of their individual premium.

CONCLUSIONS:

Financial and Value for Money Implications

11. Any decision to investigate an allegation has cost implications for the Council, Investigators are generally paid a daily or hourly rate and costs for the more complex investigation have been in the region of £5,000. The less contentious/complex allegations have been handled in house. In its initial assessment a sub committee needs to take into account the seriousness of the allegation before proceeding to investigation. A decision to provide indemnity insurance for members would have an annual premium payment associated with it. It may also make individual cases more legalistic, increasing the Council's own investigation and legal costs.

Equalities Implications

12. The local standards framework has been subject to equalities impact assessment at national level and officers follow Standards Board Guidance to ensure that no group of complainants or members is disadvantaged. Democratic Services have carried out an assessment of rooms available at County Hall and ensure that meetings are held in rooms with disabled access and any other facilities needed to enable all committee members to carry out their task and for the public, a complainant or subject member to observe or participate as appropriate

Risk Management Implications

13. In making decisions the Committee and Sub Committee will generally take into account, public expectation and the Council's reputation as well as the well-being of those involved in the process. Decisions about releasing information to the subject member are risk assessed by the assessment sub-committee. Investigation plans are risk assessed and appropriate action taken to protect the investigator.

Implications for the Council's Priorities or Community Strategy/LAA Targets

14. An effective local standards framework forms part of the Council's good governance arrangements.

RECOMMENDATIONS:

To consider whether:

1. officers should ask all members of the Council to notify them whether they would rather have early notice of a complaint (their replies being held on the members' database) (see paragraph 2 above)
2. the Committee agrees the approach of notifying the member that there has been a complaint about their performance rather than conduct, but to take no further officer action (see paragraph 3 above)
3. to recommend to Cabinet the adoption of an indemnity insurance scheme for members who are subject to complaints about their conduct.

REASONS FOR RECOMMENDATIONS:

To address early lessons from the implementation of the local standard framework and to improve the process accordingly

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Sources/background papers:

Standards for England Guidance (www.standardsforengland.gov.uk)

The Standards Committee (England) Regulations 2008

NOTICE OF RECEIPT OF ALLEGATION

Reference [**insert reference number**]

I am writing to tell you that the standards committee has received an allegation on [**insert date**] that you have failed or may have failed to comply with your authority's Code of Conduct.

EITHER [I enclose a leaflet which explains what this means and what will happen now.]

OR [The next step will be that the assessment sub-committee of the standards committee will meet on [**insert date or timescale**] to consider this allegation.] At this stage all that will happen is that the allegation will be considered based solely on the information provided by the complainant along with any relevant information readily available such as minutes of council meetings. The assessment sub-committee will not meet in public and only committee members and officers advising them will be present.

The assessment sub-committee can decide that no action needs to be taken or that the matter should be referred to the monitoring officer of the authority for an investigation or other action, or referred to the Standards Board for England.

At this stage the assessment sub-committee is not required to decide if the Code of Conduct has been breached. It is only considering if there is enough information which shows a potential breach of the Code of Conduct that warrants referral for investigation or other action.

It is unlikely that you or anyone else will be contacted before the assessment sub-committee meets unless some form of clarification is needed. The assessment sub-committee cannot conduct an investigation into the matter itself.

Once the assessment sub-committee has made a decision, you and the complainant will be told about the outcome and what will happen next.

At this stage you are advised not to contact the complainant or anyone else as this could compromise you, or the fairness of the process. However, you may wish to seek some independent advice on this. You should also be aware that any written request for information made to the authority about this matter will have to be dealt with in accordance with the requirements of the law. This includes any obligations imposed on the authority under the Data Protection Act 1998, the Freedom of Information Act 2000 and the Human Rights Act 1998. If any request for information is received before the assessment sub-committee meets, you will be contacted where it is considered appropriate or necessary to do so.

If you have any queries about the process please contact [insert name]. If you need additional support in relation to this or future contact please let me know as soon as possible. If you have difficulty reading this letter [insert any disability or equalities support that can be provided].

Yours sincerely