

**Agenda Item No: 7**

**Report No: 227/08**

**Report Title: Initial Assessment of Standards Complaints**

**Report To: Standards Committee**

**Date: 21 November 2008**

**Lead Councillor: Councillor A C De Vecchi**

**Ward(s) Affected: All**

**Report By: District Solicitor and Monitoring Officer**

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**Purpose of Report:**

**To adopt agreed procedures and assessment and review criteria for the initial assessment of complaints received.**

**(Please note that those matters requiring decision by the Standards Committee are indicated by italics in the report).**

**Officer's Recommendations:**

- 1** To decide whether the Monitoring Officer should be given authority to attempt local resolution of a complaint in appropriate cases as an alternative to formal investigation.
- 2** To instruct the Monitoring Officer to produce a summary of any complaint for the Assessment Sub-Committee as a matter of course.
- 3** To adopt the assessment and review criteria set out in paragraphs 2.10.1 – 2.10.4 of the report.
- 4** To adopt the model answers suggested by the Standards Board on page 12 of the attached Guidance extract at Appendix 1.
- 5** To notify councillors who are the subject of complaint only after initial assessment of the complaint by the Assessment Sub-Committee.
- 6** To adopt those criteria set out on page 25 of the attached Guidance extract at Appendix 1 for the purposes of considering any request by a complainant for confidentiality.

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**Reasons for Recommendations**

- 1** To enable any Assessment Sub-Committee to deal with the initial assessment of any complaint received in accordance with defined procedures and using agreed assessment and review criteria.

## 2 Information

- 2.1 The assessment and investigation of complaints against councillors is the responsibility of the District Council's Standards Committee.
- 2.2 The Standards Board for England has published guidance on the way in which Standards Committees are to handle complaints received. It is a requirement of legislation that the Committee has regard to that guidance in dealing with complaints.
- 2.3 An extract from guidance published by the Board is enclosed. That guidance requires Standards Committees to establish Assessment sub-committees to make an initial assessment of any complaint received. The Sub-Committee's job is to determine whether:

- (i) the complaint discloses a possible breach of the Code of Conduct, and
- (ii) in the event that a possible breach is disclosed, whether anything should be done about it.

The Assessment Sub-Committee is required to reach one of the three following decisions:

- The complaint should be referred to the Monitoring Officer, either for investigation or for some other action.
  - The complaint should be referred to the Standards Board.
  - No action should be taken in respect of the complaint).
- 2.4 If the Assessment Sub-Committee decides no action should be taken the complainant has the right to request a review of that decision, in which case the Standards Committee must set up a Review Sub-Committee (comprising different people from those who sat on the Assessment Sub-Committee).
- 2.5 Essentially, the Review Sub-Committee must decide whether the original decision of the Assessment Sub-Committee was unreasonable on the basis of the information available to it at the time of its decision. The review is to be conducted on the basis of the original complaint, the Monitoring Officer's summary to the Assessment Sub-Committee (if any), the decision-notice of the Assessment Sub-Committee and any information contained within the complainant's request for a review. It should be noted that this is a review of the initial decision, rather than a reconsideration of the matter anew.
- 2.6 In addition, the Review Sub-Committee shall consider whether there is any new evidence which demonstrates that the initial assessment decision is no longer the correct decision. This consideration shall take into account any new information provided by the complainant and/or the Monitoring Officer.

## 2.7 **The Assessment Process**

- 2.7.1 The Standards Committee must take all allegations of councillor misconduct seriously and it is the responsibility of the Standards Committee to encourage and foster the highest standards of conduct at all times.
- 2.7.2 At the same time, the Standards Committee must be aware that the formal investigation of complaints is costly and time-consuming. Sometimes there may be a more appropriate solution.
- 2.7.3 On the initial receipt of a complaint it is possible, (in some but not all cases), that early intervention by the Monitoring Officer might effect an informal resolution of the matter without the need to resort to the Assessment process.
- 2.7.4 There is no provision for such intervention in guidance issued by the Standards Board, but no reason why such a resolution should not be attempted in appropriate circumstances. Some Standards Committees have instructed their Monitoring Officer, where a complaint has been received, to explore the potential for local resolution to the satisfaction of the complainant, to avoid the need for a formal investigation.
- 2.7.5 *Does the Standards Committee want to do this?* Clearly, the Monitoring Officer has to be awarded some discretion. There may be cases where it is apparent that such a course would be fruitless or, even worse, counter-productive. Furthermore, whilst an attempt at local resolution might be made, the complainant retains the right to insist that their complaint of councillor misconduct is considered by the Assessment Sub-Committee if this is their preferred course of action.

## 2.8 **What type of complaint can be considered by the Assessments Sub-Committee?**

- 2.8.1 The complaint must be:
- about a district councillor, or a town/parish councillor, acting in that capacity.
  - about conduct which occurred at a time when the councillor was in office.
  - about conduct which occurred in the councillor's public (as opposed to private) life.

## 2.9 **Does the complaint disclose a potential breach of the Code of Conduct?**

- 2.9.1 The District Council has adopted a Code of Conduct, as have all Town and Parish Councils within the district. All codes are very

similar, although not identical. The Monitoring Officer has a record of the content of all Codes adopted.

2.9.2 The first assessment to be undertaken by the Assessment Sub-Committee will be to determine whether the complaint appears to show that a breach of the Code of Conduct may have occurred.

2.9.3 The Sub-Committee will have the following information before it to do this:

2.9.3.1 a complaint form or letter together with any documents supplied by the complainant.

2.9.3.2 if it wishes, the Sub-Committee can ask the Monitoring Officer to provide a summary. This will include basic information covering the following points:

- is the complaint within the jurisdiction of the Standards Committee?
- which paragraphs of the Code of Conduct might the complaint relate to?
- key aspects of the complaint.
- the Monitoring Officer may attach other information which is readily available and which may assist the Sub-Committee in its consideration of the complaint eg. copy of relevant agendas/minutes, copy of the relevant authority's Code of Conduct, copy of the councillor's entry in the register of interests.

However, the Monitoring Officer will not interview or investigate any aspect of the complaint at this stage.

*The Standards Committee is asked to decide whether it wishes the Monitoring Officer to provide a summary as standard practice.*

## 2.10 **What happens where there is an apparent breach of the Code of Conduct?**

The Assessment Sub-Committee has four options set out in subparagraphs 2.10.1 – 2.10.4 below. The Standards Committee needs to adopt assessment criteria which the Assessment Sub-Committees and Review Committees will use to guide them in choosing the appropriate option. These criteria can be added to over time as the Committees gain more experience in assessing complaints.

*However, suggested criteria, drawn from Standards Board guidance are set out below and it is recommended that they be adopted as a starting point.*

### **2.10.1 Direct the Monitoring Officer to investigate the complaint.**

This may be appropriate where:

- the alleged conduct, if found to be substantiated, is sufficiently serious to merit the imposition of a sanction which it is within the power of the Standards Committee to impose.

### **2.10.2 Refer the matter to the Standards Board for England with a request that the Board investigates.**

This may be appropriate where:

- the alleged conduct, if found to be substantiated, is so serious that it would merit a sanction in excess of that which is within the power of the Standards Committee to impose (ie. suspension for a period of more than six months or disqualification as a councillor).
- the investigation required is so extensive as to be unreasonably burdensome and/or any Standards Committee hearing conducted on the basis of that investigation would be unreasonably complex.
- the status of the complainant or the councillor complained about is such that the authority could not conduct (or could not realistically be perceived as conducting) a full and impartial investigation and hearing.
- an impartial Hearings panel cannot be organised because too many Standards Committee members have conflicts of interest.
- other exceptional circumstances eg. the complaint raises significant legal issues where a national ruling would be helpful.

### **2.10.3 Direct the Monitoring Officer to take other appropriate action short of a formal investigation.**

The range of other appropriate action to be taken might include providing training for members, securing conciliation or mediation between competing interests, or reviewing procedures to minimise conflict.

This may be appropriate where:

- the conduct complained of is a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct.

- the conduct complained of is apparently common to a number of councillors within a council, suggesting a lack of awareness or understanding of the provisions of the Code.
- the conduct complained of, if found to be substantiated, is not so serious that it requires a substantive formal sanction such as suspension or disqualification.
- the complaint reveals a lack of sound protocols or procedures within the council

#### 2.10.4 **Decide to take no action in respect of the complaint.**

This may be appropriate where:

- the complaint appears to be trivial, vexatious, malicious, politically motivated, tit for tat, or such as to not warrant an investigation or other action.
- the complaint is anonymous, save in exceptional cases where anonymity is justified by a real fear of intimidation or victimisation.
- the complaint is stale in that a significant period of time has elapsed since the events which are the subject of the complaint.
- it is unlikely that an investigation will be able to come to a firm conclusion eg. where there is unlikely to be any firm evidence on the matter.
- the complaint has already been the subject of an investigation or other action relating to the Code of Conduct, or has been the subject of an investigation by another regulatory authority.
- the complainant has submitted insufficient information to satisfy the assessment sub-committee that the complaint should be referred for investigation or other action

2.11 *Guidance issued by the Standards Board suggests some model answers for some of the above circumstances (see page 12 of the attached guidance extract) which the Standards Committee might wish to adopt.*

#### 2.12 **Procedural points requiring decision by the Standards Committee.**

2.12.1 *Should a councillor the subject of complaint be told about it immediately on receipt or only after initial assessment by the Standards Committee?*

2.12.1.1 This is a matter for the Standards Committee's discretion.

Guidance from the Board states that if a councillor is told about a complaint on receipt he/she should be given very limited information ie. just the name of the complainant and the relevant paragraphs of the Code which may have been breached. In particular, he/she should be told that a written summary of the allegation will only be made available to them once the Assessment Sub-Committee has met to consider the complaint.

- 2.12.1.2 In practice this is difficult to operate. When a councillor is notified that they are the subject of a complaint he/she will often want to know full details of the complaint. In some cases, and contrary to advice, councillors have contacted the complainant to take issue with them about the complaint, thus making the matter more difficult to deal with.

Sometimes the Assessment Sub-Committee will find that a complaint does not warrant any action, in which case the councillor the subject of complaint will have been alarmed unnecessarily

- 2.12.1.3 *It is recommended that the better course is to notify the councillor the subject of complaint only once the Assessment Sub-Committee has met to consider the complaint and has decided whether any action should be taken. This practice would mirror that adopted by the Standards Board when it was responsible for the initial assessment of complaints.*

#### 2.12.2 Confidentiality

- 2.12.2.1 As a matter of fairness a councillor should usually be told who has complained about them. It is recommended that any request by a complainant that their identity be withheld should only be granted in exceptional circumstances and at the discretion of the Assessment Sub-Committee.

- 2.12.2.2 *The Standards Board has suggested some criteria by which Assessment Sub-Committees may consider requests for confidentiality (see page 25 of the guidance extract). This Committee may wish to adopt those criteria for its own use.*

## **4 Financial Appraisal**

There are no financial implications arising as a result of this report.

## **5 Environmental Implications**

I have completed the Environmental Implications Questionnaire and there are no significant effects as a result of these recommendations.

## **6 Risk Management Implications**

The initial assessment of complaints against councillors is a new responsibility for the District Council's Standards Committee. Failure to adopt and adhere to agreed procedures and failure to define appropriate assessment and review

criteria will increase the risk of poor and inconsistent decision-making and the risk of successful legal challenge.

**7 Background Papers**

None

**8 Appendices**

Extract from Standards Board guidance entitled “Local Assessment of Complaints.”