

Report of the Assistant Director Corporate Services (City Solicitor) to the meeting of Standards Committee to be held on 30 October 2008.

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Subject:

Relevant criteria when considering alternative action to local investigation.

Summary statement:

This report sets out the present position and criteria for consideration when an Assessment Panel deems alternative action an appropriate method of dealing with a complaint regarding the alleged conduct of a District or Town/Parish Councillor.

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Improvement Area:



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Suzan Hemingway, Assistant Director Corporate Services (City Solicitor)



1. Summary

This report sets out the present position and criteria for consideration when an Assessment Panel deems alternative action an appropriate method of dealing with a complaint regarding the alleged conduct of a District or Town/Parish Councillor.

2. Background

- 2.1 From May 2008 complaints about the conduct of a Councillor are referred to the Standards Committee of the Local Authority for their consideration.
- 2.2 The first stage of that consideration is the pre investigation filter process which is undertaken by a panel of 3 members.
- 2.3 Standards Committee considered at their meeting on 11 September the Pre-Investigation Local Filter Process and the guidance on how the filter is to be undertaken.
- 2.4 At that meeting Standards Committee discussed the option of “other action” or “alternative action”. It was noted that monitoring officers have some misgivings relating to the application of alternative action in the context where there is no finding of culpability and therefore no compulsion for a member to attend proposed alternative resolutions. These would include mediation, training or providing an oral or written apology.
- 2.5 These misgivings have been brought to light as a result of an issue raised in another local council which led to questions in Parliament regarding the application of the Alternative Action Procedure.
- 2.6 The Council’s Monitoring Officer attended the Standards Board for England conference on 13 and 14 October as a speaker on a workshop to consider alternative action entitled “Alternative Action Master Class”. In an attempt to clarify the issues around the application of alternative action the Council’s Monitoring Officer has attached at Appendix A to this report the PowerPoint presentation slides used at the workshop and would wish to discuss these with the Standards Committee at this meeting.

3. Other considerations

What is “Alternative Action” and when is it used?

- 3.1 Alternative action is not a routine, fix all, easy solution for dealing with allegations about a member’s failure to comply with the Code. However there are some circumstances where it may be considered as an alternative to investigation.
- 3.2 The Monitoring Officer will usually be aware of the Councils in their area where alternative action may be of assistance as a result of previous complaints, investigation and calls for assistance and advice.
- 3.3 Members should be cautious about referral for alternative action where the initial complaint is made by a member of the public and/or the allegation is sufficiently serious that it warrants an investigation. Members are reminded that once a complaint has been referred for alternative action it cannot then be the subject of an investigation even if the Member concerned does not then cooperate with the referral. This has been the subject of much debate and at the moment the Standards Board for England is considering further guidance on whether it is appropriate to adjourn an assessment panel to allow the Monitoring Officer to ascertain if the Member is willing to cooperate. Monitoring Officers have expressed some concerns about this proposal in that it could possibly be regarded as “negotiating” with the

subject Member rather than the assessment panel determining matters objectively.

3.4 Generally the suitability of alternative action falls under 2 headings:

- a) There is evidence of poor understanding of the Code of Conduct and/or the authority's procedures. This can be demonstrated by:
- Several members (not just one individual) failing to comply with the same paragraph of the Code.
 - Usually several members fail to register interests and fail to declare personal prejudicial interests.
 - New members join a long established group of Councillors and raise Code issues.
 - Members may have been given incorrect advice by officers in the past and continue to operate according to that advice.
 - Inadequate and incomplete protocols, eg for the use of the authority's resources, leading to confusion and misunderstanding.
 - Use of the Code to gain political points.
 - Allegations about the conduct of formal meetings.
- b) There is a breakdown of relationships within the Council and it becomes very difficult to conduct business of the Council. This is manifested by:
- The number of tit for tat allegations.
 - Factionalised groupings within the Council.
 - History of member on member complaints and personal conflict between members.
 - Ongoing employment issues with the clerk who may find it difficult not to become aligned to one faction of the Council.

Members are asked to note that where there is a breakdown of relationships these can be as a result of very deep seated issues originating in old rivalries, family feuds and local history.

3.5 Standards Committee Members are invited to consider the document at Appendix A and discuss issues raised. Standards Committee are invited to make comments on the document attached.

4. **Options**

4.1 N/A

5. **Financial and resource appraisal**

5.1 There are no financial implications in terms of this report.

6. **Legal appraisal**

6.1 The document is provided to assist Standards Committee in understanding the implications of referral for alternative action and ensure it is applied consistently to complaints received.

7. **Recommendations**

- 7.1 Standards Committee is recommended to consider the document attached and discuss the implications.

Reason for recommendation:

To ensure the Standards Committee is fully aware of the implications of referrals for alternative action.

8. **Appendices**

- A Slides from Workshop – Presentation to Standards Board for England Conference – Alternative Action Master Class.

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Alternative action masterclass

Chair: **Jennifer Rogers**
Ethical Standards Officer
the Standards Board for England

Speakers: **Suzan Hemingway**
Assistant Director Corporate Services
City of Bradford Metropolitan District Council

Alan Eastwood
Director of Legal and Democratic Services
Bolton Council



What is alternative action? Where and how can it be used?

Jennifer Rogers

Ethical Standards Officer, the Standards Board for England



- Ethical standards officers have been referring allegations back to monitoring officers to 'take any other steps ...in connection with an allegation of a breach of the Code of Conduct' since November 2004.

(Section 60(2) and 66(6) Local Government Act 2000 and Regulation 5(11) of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 as amended).

- 144 cases since November 2004
- 71 cases in 2007/2008



- **Regulation 13 Standards Committee Regulations 2008 gives the standards committee the powers to refer a matter to a monitoring officer to take steps other than carrying out an investigation.**
- **See also Standards Board for England guidance on *Local assessment of complaints*, page 15.**



Alternative action should be used judiciously

- **not routine**
- **used rarely**
- **each case on its merits**

There will be no investigation.

There are no findings of fact.

It is not a cheap option.



Indicators for alternative action (1/2)

Poor understanding of Code of Conduct and of the authority's procedures leading to:

- a number of members failing to comply with the same paragraph of the Code
- officers giving incorrect advice
- inadequate or incomplete protocols for use of authority resources
- use of Code to gain political points



Indicators for alternative action (2/2)

Breakdown in relationships within the authority resulting in:

- tit for tat allegations
- factionalised groupings
- ongoing employment issues
- history of member on member complaints and personal conflict between members and/or members and officers



- **Standards committee must consult with monitoring officer before giving direction to take other action.**

- **Some preliminary enquires may be necessary**
 - would the member co-operate?
 - what alternative action would be effective?

- **Is an adjournment possible to accommodate further enquires?**



What could alternative action consist of?

- **Provision of training, advice or guidance to members.**
- **Facilitating mediation, conciliation, mentoring of members.**
- **Monitoring officer to work with the parish to overcome particular problems.**
- **Monitoring officer to review register of interests with members.**
- **Recommend review and revision of standing orders, protocols and other procedures and the general governance arrangements of the authority.**



Alternative action (1/3)

- rarely straightforward
- can be time consuming and resource intensive
- not a quick fix



Alternative action (2/3)

It can help:

- to have involvement of standards committee members
- to have involvement of Local Associations
- to be clear that cannot investigate once there is decision to go for alternative action
- to have early intervention to nip 'tit for tat' in the bud
- be clear about what mediation involves



Alternative action (3/3)

Don't

- **get into the specifics of an investigation/allegation – inflames situation**
- **get drawn into the role and conduct of the clerk – no jurisdiction**



Examples of alternative action and table discussion

Alan Eastwood

Director of Legal and Democratic Services, Bolton Council



Alternative action

Key issues

Suzan Hemingway

Assistant Director Corporate Services,
City of Bradford Metropolitan District Council



Clarity of outcome

- All parties (monitoring officer, standards committee, subject of the complaint and possibly the complainant) must understand the purpose of alternative action.
- Parties cannot be required to participate.
- Try to define success from perspective of role of standards committee and governance framework.
- Recognise only partial success may be achievable.
- Clarify when alternative action will be concluded.



Managing expectations

- **Complaints from members of public – may not understand value of alternative action.**
- **Complaints from members – recognise difficulties where there is a “history” or breakdown in personal relationships.**
- **Recognise importance of effectively communicating the reasons for seeking alternative action.**
- **Recognise role/impact of local media.**



Not just about mediation and guidance/training

- **Recognise where Code is genuinely misunderstood – guidance required.**
- **Identify where there are inadequate/incomplete protocols which may assist in clarifying expected behaviours. For example officer/member relations protocol, protocol on use of council resources.**



No finding of culpability

- **Ensure all parties understand this.**
- **Mediation should not seek to investigate specific allegations but try to find a way forward.**
- **Recognise where there is a history or breakdown of relationships and that monitoring officer and assessment panel will need to be clear how far you are prepared to discuss past issues.**



No finding of culpability

- **If alternative action fails the matter is not referred back to the standards committee for a finding of culpability.**
- **Ensure all parties understand their confidentiality responsibilities and have reached agreement in respect thereof.**



Standards committee support

- **Fundamental to ensure success. All members must be on message.**
- **Consider skills set of individual members – can they assist?**
- **Consider where specific circumstances merit use of particular type of member (independent/town or parish council member).**



Relationship with town and parish councils and their clerks

- **Need to develop trust with town and parish councils to ensure they recognise the value of alternative action.**
- **Communicate with parish council liaison committees.**
- **Early discussion with clerk to clarify their involvement in any issues.**
- **Avoid action used as a means of “investigating” conduct of clerk.**



Employment issues

- Recognise where there is officer culpability.
- Deal with these issues through appropriate employment procedures.
- Not the role of standards committee or local investigation to deal with employee disciplinary matters.



Relationship with groups and/or whips

- Recognise role of groups and/or whips in discipline.
- Liaise with whips regarding alternative action options where appropriate.



Alternative action masterclass

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