

Report of the Assistant Director Corporate Services (City Solicitor) to the meeting of Standards Committee to be held on 13 August 2009.

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Subject:

Other Action – Guidance from Standards for England

Summary statement:

Standards Committee Members are asked to consider the guidance issued by Standards for England “Other Action” and to consider how the outcome of other action is to be reported.

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1. Summary

- 1.1 Standards Committee Members are asked to consider the guidance issued by Standards for England “Other Action” and to consider how the outcome of other action is to be reported.

2. Background

- 2.1 Standards for England have issued new guidance to assist Standards Committee in understanding what other action can be and when it might be used. In addition there is further information on the process for undertaking other action. Members should note this guidance is not mandatory for Standards Committee.
- 2.2 Standards for England set out in the introduction to this guidance their key messages on other action which are:
- Complaints should not be referred for other action when an investigation is in the public interest, when an allegation challenges the member’s honesty or integrity, or where if proven to be true, the alleged conduct would undoubtedly warrant a sanction.
 - A referral for other action closes the opportunity to investigate.
 - A decision to refer a complaint for other action makes no finding of fact, and the action decided on must not imply that the subject of the complaint has breached the Code of Conduct.
 - Assessment sub-committees cannot direct the subject member or any other party to take action. The direction is to the Monitoring Officer.
 - Although there is no formal route for dealing with a member who refuses to comply with other action, failure to cooperate may amount to bringing the authority into disrepute.

3. Summary of the Guidance

- 3.1 The new guidance provides advice on when it is appropriate to direct other action and suggestions as to a process for reporting back when other action has been undertaken.
- 3.2 Members will be aware that an Assessment Sub-Committee has three options when dealing with a complaint. It can decide to refer the complaint to the Monitoring Officer of the authority concerned, refer it to Standards for England or take no action. If the Assessment Sub-Committee refers a complaint to the Monitoring Officer it can direct them to investigate the matter or to take steps other than carrying out an investigation. This latter course of action is known as “other action”.
- 3.3 The Standards Committee (England) Regulations 2008 specifically provide that a referral for other action may consist of a direction to the monitoring officer to arrange for the member to attend a training course. In addition the

direction may also require the Monitoring Officer to arrange for any of the following:

- redrafting of council procedures or policies
- training of members of the Council as a whole
- mentoring of a member or members, or whole council
- management of conflict
- development of council protocols
- implementation of another Council Complaints Procedure

3.4 Members should be aware that the guidance reiterates that a referral for other action does not mean that the Member has not been found to have done anything wrong it is therefore very important that the action proposed does not imply this. Other action cannot, for example, take the form of requiring the subject member to apologise. In cases where the member has admitted the breach and offered an apology the assessment sub-committee may decide that no further action is necessary. However this does not of itself constitute alternative action. Other action cannot ever result in a finding that the member has or has not failed to comply with the Code.

3.5 Members should note that other action is not intended to be a quick and easy means of dealing with matters which the Assessment Sub-Committee considers to be too trivial or time-consuming to investigate. Genuinely trivial cases are better dealt with by a decision to take no action. Whilst other action can be a cost-effective way of getting a matter resolved, it is not a quick-fix. Other action should not be seen as a routine or cheap way of disposing of an allegation, as it can sometimes be a drawn out, costly and time consuming process. In addition members should note that if a complaint merits being investigated then it should be referred for investigation. Complaints should not be referred for other action when an investigation would be in the public interest and should be avoided where the allegation challenges the members honesty or integrity. It should also be avoided where the allegation, if proven would warrant any of the sanctions (apart from training) available to the Standards Committee after a hearing.

3.6 The guidance reiterates previous guidance regarding the circumstances when a Standards Committee Assessment Panel might consider referring for further action, these include:

- the same particular breach of the Code by many members indicating poor understanding of the Code and the authority's procedures
- a general breakdown of relationships, including those between members and officers, as evidenced by a pattern of allegations of minor disrespect, harassment or bullying to such an extent that it becomes difficult to conduct the business of the Council

- misunderstanding of procedures or protocols
- misleading, unclear or misunderstood advice from Officers
- lack of experience or training
- interpersonal conflict
- allegations and retaliatory allegations from the same members
- allegations about how formal meetings are conducted
- allegations that may be symptomatic of governance problems within the Council, which are more significant than the allegations in themselves

Standards Committee will recall that they have already considered criteria for use of alternative action at a previous meeting and endorsed this guidance.

- 3.7 The guidance recognises the reluctance of Assessment Sub-Committees to refer a complaint for other action without knowing whether the subject member and possible other members of the authority will cooperate with the proposed approach. The guidance suggests that one way of dealing with this issue is to adjourn the assessment of a complaint and ask the Monitoring Officer to find out whether the Member or members will cooperate. This option is not provided for by the legislation but Standards for England do not consider it is prohibited.
- 3.8 The guidance sets out advantages and disadvantages of an adjournment for consideration when making this decision. Standards Committees are also reminded that a decision to adjourn may mean that the average assessment time increases and that Standards Committee failed to meet the required 20 day time limit.
- 3.9 The guidance sets out the following advantages of an adjournment:
- Those sitting on the Assessment Sub-Committee will know what the members think about the proposed solution and may therefore be more confident in making their decision.
 - Members may be likely to cooperate if they are made aware of the options available.
 - When members indicate that the action would be ineffective, the sub-committee still have the option of deciding to refer the complaint for investigation.
 - Further information obtained by the Monitoring Officer may mean that the complaint is effectively resolved, enabling the Sub-Committee to decide to take no action.

The guidance also sets out the following possible disadvantages of an adjournment which are:

- Finding out members' views runs the risk of putting the decision about what action to take into the hands of the member, rather than the Sub-Committee
- The authority of the Standards Committee may be undermined if other action is agreed through negotiations between the Monitoring Officer and the member or members.
- By making further enquiries, the Monitoring Officer may end up starting an investigation before the assessment decision is made.
- The member or members may try to pass on more information to the Monitoring Officer, to persuade the Sub-Committee to take no action.

- 3.10 The guidance also sets out procedures for reporting back the outcome of other action. The guidance states that a Monitoring Officer must submit a written report to the Standards Committee within three months of receiving the direction, or as soon as possible after that. This report must give details of the action taken or the action proposed to comply with the direction. The Standards Committee or an appropriate Sub-Committee should consider the Monitoring Officer's report and decide whether it is satisfied with the action described. The Monitoring Officer's report can be considered by the same members who initially assessed the complaint, by another Sub-Committee, or by the Standards Committee as a whole.
- 3.11 Standards Committee Members are invited to consider how they would wish to receive this information. The advantage of the same members considering the report is that they will be aware of the details of the original complaint. However Members may consider that convening a Sub-Committee simply for this purpose is not a good use of time or resources. Another alternative is to include consideration of the Monitoring Officer's report as an item on the agenda of the regular meeting of Standards Committee. In this way all Standards Committee Members will have some understanding of the success or otherwise of other action.
- 3.12 If the Standards Committee or Sub-Committee is not satisfied with the outcome of the other action it must give another direction to the Monitoring Officer, which must again be to take some kind of other action. Members will be aware that the Standards Committee cannot at this stage decide that the matter should be investigated. The Standards Committee or Sub-Committee may also consider making a further direction where the report indicates that the member has refused to cooperate, has done so unwillingly or inadequately or has not engaged with the process. Members should note there is no formal route for dealing with a member who categorically refuses to comply with other action. However Standards for England believes that deliberate and continued failure to cooperate with the Monitoring Officer who is trying to carry out the directions of a Standards Committee may potentially amount to conduct which brings the office of the Councillor into disrepute.

4. Options

4.1 Standards Committee Members are asked to consider the report and the guidance provided by Standards for England. Specifically Standards Committee Members are asked to consider the options set out in Paragraph 3.10 and 3.11 above for receipt of the Monitoring Officers report setting out the outcome of other action.

5. Financial and resource appraisal

5.1 The issues raised in this report do not have any direct financial consequences.

6. Legal appraisal

6.1 The Standards Committee is required to have regard to guidance from Standards for England to ensure local investigation of complaints regarding member conduct is undertaken in an appropriate framework.

7. Other Implications

7.1 There are no Equal Rights, Sustainability, Community Safety, Human Rights Act, Trade Union Implications arising from this report.

8. Not for Publication documents

8.1 None.

9. Recommendations

9.1 That the Standards Committee consider the contents of the report and the guidance from Standards for England and note the information relating to "other action".

9.2 Standards Committee consider how they would wish to receive the Monitoring Officer's report setting out the outcome of any other action direction.

Reason for Recommendation

9.3 To ensure that the Standards Committee is fully aware of all the guidance available in respect of local investigation of complaints and that an appropriate procedure is in place to report the outcome of other action.

10. **Appendices**

10.1 Appendix 1 – Other Action Guidance – Standards for England

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