

Standards Committee : 28 July 2009

Title of report: Other Action – When It Is Appropriate?

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	N/A
Is it in the Council's Forward Plan?	N/A
Is it eligible for "call in" by Scrutiny?	N/A
Cabinet member portfolio	Corporate

Electoral wards affected and ward councillors consulted: All

Public or private: Public

1. Purpose of Report

To consider the guidance issued by Standards for England on "other action" and to agree criteria for when such action will be suitable following local assessment.

2. Key Points

2.1 At local assessment an assessment sub-committee has three options in dealing with a complaint. Firstly, it can refer the complaint to the Monitoring Officer or Standards for England for investigation, or it can take no action, or it can refer the matter to the Monitoring Officer for other action. To date, there has been some confusion over when other action will be appropriate, and what format other action should take. Guidance recently issued by Standards for England aims to give more advice on what is suitable.

There are a few key points to remember:

- 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
- There is no finding of fact in a referral for other action and the action decided upon must not imply that the subject of the complaint has breached the Code of Conduct
- The direction is to the Monitoring Officer only
- A failure to co-operate with other action may amount to bringing the Authority into disrepute and lead to a further complaint
- Other action cannot take the form of requiring the subject member to apologise as this infers that there has been a breach
- A decision to refer a complaint for other action does not involve making any findings of fact, and no conclusion is reached about what happened

2.2 When is other action appropriate?

Generally there are two indicators for other action:

1. When there is evidence of poor understanding of the Code of Conduct and/or the Authority's procedures
2. When relationships within the Authority as a whole have broken down to such an extent that it becomes very difficult to conduct the business of the Council

2.2.1 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.

2.2.2 Assessment committees must be careful to avoid it appearing to the complainant that deciding to take other action is sweeping matters under the carpet.

2.2.3 If an assessment sub-committee make a referral for other action, then there is no right of review for the complainant or the subject member.

2.2.4 Once an assessment sub-committee have referred a matter for other action, they then cannot refer it for investigation if the other action is not successful.

2.3 What might other action involve?

2.3.1 A referral for other action may consist of a direction to the Monitoring Officer to arrange for the member to attend a training course on an appropriate subject, such as chairing skills, working with external bodies and partnerships, governance issues, the Code of Conduct, Council procedures and protocols, legal matters, planning and licensing, working with officers and

use of Council resources.

2.3.2 The drafting of Council procedures or policies

2.3.3 Training of members of the Council as a whole

2.3.4 Mentoring of a member or members, or whole Council

2.3.5 Management of conflict

2.3.6 Development of Council protocols

2.3.7 Implementation of the Council complaints procedures

2.4 Criteria for referral for other action

Standards for England guidance recommends that each standards committee should consider criteria which detail the matters they will take into account when deciding what action to take. The Committee has already agreed assessment criteria which are set out at Appendix A. The Committee is asked to consider whether it wishes to amend those assessment criteria in the light of the latest Standards for England guidance on other action. In particular, the guidance sets out matters which standards committees might consider referring for other action which 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
- Inter-personal 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

The Committee is asked to consider these matters and decide which, if any, should be included within the assessment criteria.

2.5 How to make the decision to refer for other action

2.5.1 Assessment sub-committees may be reluctant to refer a complaint for other action without knowing whether the subject member and other members of the Authority will co-operate with the proposed approach. One way of dealing with this issue is by adjourning the assessment of a complaint that the assessment sub-committee considers may be suitable for other action. They can ask the Monitoring Officer to find out whether the member or members will co-operate.

2.5.2 The advantages of adjournment are:

- 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 more likely to co-operate if they are made aware of the options available
- When members indicate that the action will be ineffective, the assessment sub-committee still have the option of deciding to refer the complaint for investigation. (Note that this is not the case once the matter is formally referred for other action, and then it is not successful.)
- 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.

2.5.3 The disadvantages of adjournment are:

- Finding out the member's 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.

2.5.4 The Standards for England guidance suggests that an alternative to adjourning the assessment meeting may be for the assessment sub-committee to agree that the Monitoring Officer seeks views on other action when they initially receive a complaint. The Monitoring Officer does not favour that option, as it could be inferred that the Monitoring Officer and the assessment sub-committee are pre-judging the outcome of the assessment.

2.6 What happens next?

2.6.1 The Monitoring Officer must submit a written report to the standards committee within three months of receiving the direction for other action 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. It is considered appropriate that this report is made initially to the assessment sub-committee that referred the matter for other action. This does not preclude the standards committee overall receiving such reports since they have an overview of the success of other action.

2.6.2 If the assessment sub-committee is satisfied with the action described in the Monitoring Officer's report it will give notice to all parties concerned and the matter is then closed.

2.6.3 If the assessment sub-committee is not satisfied with the action described in the Monitoring Officer's report, then it must give another direction to the Monitoring Officer which must again be to take some kind of other action. In theory, if an assessment sub-committee continues to be dissatisfied, it can continue to issue directions until it is satisfied. However action must be proportionate and reasonable and the process should be drawn to a close after a limited number of the attempts by the Monitoring Officer to bring about other action.

2.6.4 There is no formal route for dealing with a member who categorically refuses to comply with other action. However, continued failure to co-operate with a Monitoring Officer who is trying to carry out the directions of an assessment sub-committee may potentially amount to conduct which brings the office of councillor into disrepute. An assessment sub-committee may take this into account when deciding what action to take if they are assessing a complaint about a member who has previously failed to co-operate.

3. Implications for the Council

The Standards for England guidance on other action is useful in setting out the circumstances in which other action may be appropriate. When local determination first began, whilst this route was open to assessment sub-committees, it was not clear what purpose it served and what was appropriate. Consequently, assessment sub-committees were reluctant to use that option. This further guidance may assist assessment sub-committees in dealing more appropriately with complaints.

4. Consultees and their opinions

N/A

5. Officer recommendations and reasons

The Committee is asked to comment on this new guidance and decide what, if any, alterations should be made to the assessment criteria.

6. Cabinet portfolio holder recommendation

N/A

7. Next steps

N/A

8. Contact officer and relevant papers

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Background Papers:

Standards for England guidance on other action, available at
www.standardsforengland.gov.uk.