

Standards Committee : 12 January 2010

Title of report: Review of Assessment and Review Functions

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

Since May 2008 the assessment of complaints about member conduct has been a matter for the Local Assessment Sub-Committee of the Standards Committee rather than Standards for England (previously the Standards Board for England). This report provides information about the assessment and review functions and suggests further action be taken to review the operation of the assessment and review functions.

2. Key Points

The criteria used by the standards committee in assessing new complaints, which are also applied where a complainant seeks a review of a decision to take no further action on a complaint, form Annex 1 to this report. One problem experienced by the local assessment sub-committee is that the information provided by complainants can be inadequate and lead to a decision that no further action should be taken in circumstances where had more information been provided a different outcome might have occurred. The complaints form states:

It is also important that you provide all the evidence you wish to have taken into account by the Standards Committee when it decides whether to take any action on your complaint or not. For example:

⌚ *You should be specific, wherever possible, about exactly what you are alleging the member said or did. For instance, instead of writing that*

the member insulted you, you should state what it was they said or did to insult you.

- 🕒 *You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.*
- 🕒 *You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.*
- 🕒 *You should provide any relevant background information or other relevant documentary evidence to support your allegation(s).*
- 🕒 *If the alleged conduct or behaviour occurred over 28 days ago, clearly explain why the complaint was not made during that period of time.*

However complaints are still received which simply allege that a councillor was rude or disrespectful without providing any further detail. The right for a complainant to seek a review of a decision to take no further action provides a complainant with a second chance to provide a more detail in their complaint.

Although there should be no investigation of a complaint at the assessment stage, it is permissible for the Monitoring Officer to provide basic information from publicly available sources to the local assessment sub-committee. For example, if the complaint relates to an alleged failure to declare an interest the Monitoring Officer may provide the decision summary for the relevant meeting which records which councillors attended and what interests were declared. If a complaint refers to press coverage the Monitoring Officer could provide a copy of the relevant article if the complainant has not done so and there may be complaints where the relevant Land Registry office copies could be provided.

A recurrent issue in the assessments is the question of what constitutes a failure to treat someone with respect. As can be seen from the Adjudication Panel for England cases reported to Standards Committee there is a trend towards a raising of the threshold in relation to the treatment of senior officers ie the panel now expects senior officers to take some fairly trenchant criticism from councillors, especially in contexts where there have been publicised problems with service delivery, without regarding it as disrespectful. Similarly, it is clear that political speech, as opposed to speech motivated by frustration or anger, enjoys protection under the human rights legislation and that this could override the Code of Conduct. The Standards for England guidance is clear that the provisions of the Code of Conduct dealing with respect are not

intended to stand in the way of lively debate in local authorities and that such discussion is a crucial part of the democratic process.

Assessment decisions made by the local assessment sub-committee have taken account of the contexts within which allegedly disrespectful language has been used and where the words or insults used are childish rather than genuinely unpleasant have tended to result in no further action decisions. At Annex 2 to this report is a brief summary of some Adjudication Panel for England decisions on lack of respect.

It may be useful for members of standards committee to have the opportunity to meet to discuss assessment decisions generally and this issue is dealt with in the recommendations below.

3. Implications for the Council

The process for the assessment of complaints about member conduct has an important role to play in winning and maintaining public confidence in the complaints process.

4. Consultees and their opinions

N/a

5. Officer recommendations and reasons

It is recommended that Standards Committee note the contents of this report and decide whether it would be useful for the Monitoring Officer to arrange training where members of the committee could discuss how assessment decisions are made, review decisions that the local assessment sub-committee have made and consider how the system could be improved.

6. Cabinet portfolio holder recommendation

N/a

7. Next steps

See recommendations.

8. Contact officer and relevant papers

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Background Papers:

Decisions on the Adjudication Panel for England website at

<http://www.adjudicationpanel.tribunals.gov.uk/Public/Decisions.aspx>

The Kirklees Council website page for complaints about councillors at:

http://www.kirklees.gov.uk/you-kmc/complaints/member_complaint.shtml

ANNEX 1 – ASSESSMENT CRITERIA

Criteria used in assessing new complaints

Criteria to be used by the assessment sub-committee and review sub-committee in assessing and reviewing new complaints that a member may have breached the code of conduct and in deciding what action, if any, to take.

This paper sets out the following:

1. The principles applying to decision-making generally.
2. The criteria to be taken into account when deciding whether there is a case to answer.
3. The criteria for deciding whether to refer a matter to the Monitoring Officer for other action.
4. The criteria to consider in deciding whether to refer a complaint to The Standards Board for England for investigation.
5. The criteria to take into account when considering whether to take a decision not to name a complainant.

1. The principles applying to decision making generally

The Constitution already specifies (at Article 13.2) that "the following principles apply to decision-making:

- a. Due regard to all relevant considerations and disregard of all irrelevant factors
- b. Proportionality (ie the action must be proportionate to the desired outcome)
- c. Lawfulness and financial propriety and prudence
- d. All due consultation
- e. The taking of professional advice from officers
- f. Respect for human rights and application of The Human Rights Act 1998
- g. A presumption in favour of openness
- h. Clarity of aims and desired outcomes
- i. The ability to explain the options considered and the reasons for decisions"

2. The criteria to be taken into account when deciding whether there is a case to answer

Is the complaint about someone who is a member or co-opted member of Kirklees Council or a parish council covered by the Standards Committee?

If the complaint is about someone who was formerly a member or co-opted member of Kirklees Council or a parish council covered by the Standards Committee, but is no longer such a member, is it in the public interest to investigate the complaint in any event?

Is the detail of the complaint something which is potentially covered by the Code of Conduct?

Has the complaint already been the subject of an investigation or other action, either by this Standards Committee or another regulatory authority?

If so, then is there anything to be gained by taking further action?

Is there sufficient information given by the complainant to demonstrate a potential breach of the Code of Conduct?

Is the complaint too trivial to warrant further action?

Is the complaint about something that happened so long ago that there would be little benefit in taking action now?

If the complaint has been made anonymously, it will be dealt with by reference to the Standards Committees statements on anonymous complaints.

Has the complaint been made by someone who the Committee considers is vexatious, or does the complaint appear to be simply malicious, politically motivated or tit-for-tat?

Is the complaint so similar to one that has been made previously which has either been rejected or investigated, that it should not be investigated now?

3. Criteria for deciding whether to refer a matter to the Monitoring Officer for other action

Where the sub-committee considers a complaint, it may decide that other action rather than an investigation should be taken, and it can instruct the Monitoring Officer to carry this out.

Because it is not possible to set out all the circumstances where other action may be appropriate, the sub-committee must consult the Monitoring Officer before reaching that decision to refer for other action.

4. The criteria to consider in deciding whether to refer a complaint to The Standards Board for England for investigation

The status of the Member or Members who have been complained about, or the number of Members about whom the complaint is made

If the Member is a Group Leader or a Member of the Standards Committee, does that status either as complainant or Member against whom the complaint is made, make it difficult for the Standards Committee to deal with the complaint

Is there a potential conflict of interest of so many members of the Standards Committee that it could not properly monitor the investigation if undertaken by the Monitoring Officer

Is there a potential conflict of interest of the Monitoring Officer or other officers, such that suitable alternative arrangements cannot be put into place to address that potential conflict

Is the complaint so serious or complex or involves so many Members that it cannot be handled locally

Is the complainant alleging substantial governance dysfunction in the Authority or its Standards Committee

Are there exceptional circumstances which would prevent the Authority or its Standards Committee investigating the complaint competently, fairly and in a reasonable period of time, or would it be unreasonable for local provision to be made for an investigation

If the sub-committee believes that a complaint should be referred for investigation by The Standards Board for England, it must instruct the Monitoring Officer to refer it, and advise under which paragraph or paragraphs of the Code of Conduct they consider the complaint is made, together with the reasons why they believe the complaint cannot be dealt with locally

5. The criteria to take into account when considering whether to make a decision not to name a complainant

5.1.

Anonymous complaints about member conduct, or complaints made under false names, raise particular issues for the Standards Committee. Some complainants may be entirely anonymous while other complainants may be prepared to communicate with the Monitoring Officer or Standards Committee on condition that their identity is not revealed to the person they are complaining about. Such complaints may well raise both practical problems and issues of fairness.

5.2.

Where a complaint is anonymous it may create problems in assessing or investigating the complaint. If, for example, a complaint involves allegations about the treatment of the complainant by a member it may be difficult to put

the allegations to the member concerned without either revealing the identity of the complainant or making it very difficult for the member to recall the relevant circumstances. However, the position would be different where the complainant was raising issues which did not directly involve any interaction between the complainant and the member and which could be assessed or investigated by reference to documentary or photographic evidence, for example, a complaint about a failure to declare interests.

5.3.

The presumption must be that, in the interests of fairness, a member is entitled not only to know what allegations are being made against them but also the identity of the person making them. In the normal course of events when the Standards Committee's Local Assessment Sub-committee had decided that a complaint should be referred to the Monitoring Officer or the Standards Board for England a member would receive a summary of the complaint which would include the identity of the complainant, unless the Sub-committee decided that to provide a summary would be against the public interest or would prejudice any future investigation. It could place a member at an unfair disadvantage if they were hampered in challenging the evidence of a complainant because they did not know the identity of the complainant and for example were unable to raise issues about why the complaint was being made and the credibility of the complainant. Anonymity might be misused by a complainant to conceal what would otherwise be readily identified as a malicious, vexatious, politically motivated or tit-for-tat complaint. Similarly, it could make it difficult to investigate a complaint properly if there could be no contact between the investigator and the complainant.

5.4.

However, in deciding whether an anonymous complaint should be referred for investigation or some other action it would be necessary to consider whether there was good reason for the complainant to seek anonymity. There may be circumstances where a complainant would have a reasonable concern that if their identity were revealed it could lead to adverse consequences for their health and safety or financial well-being. This would depend upon the seriousness of the allegations being made and whether the allegations themselves were of a nature which suggested potential adverse consequences for a complainant.

5.5.

Where the allegations were of a particularly serious or significant nature, the importance of referring them for investigation or some other action might outweigh the fact that they had been made on an anonymous basis. There may be circumstances where serious matters are more likely to be raised on an anonymous basis.

5.6.

Factors which might outweigh the presumption that a member is entitled to know the identity of the person making a complaint and allow the complaint to be referred for investigation or some other action would include:

The complaint included allegations of a particularly serious or significant nature or where for other reasons the public interest would be best served by referring the complaint or investigation or other action.

There was a good reason why the complaint was being made on an anonymous basis.

The allegations could be properly investigated by reference to documentary or photographic evidence without need for further contact with the complainant.

The complaint did not involve reference to direct interaction between the complainant and the member.

The complaint could be dealt with without inevitable unfair treatment of the member.

ANNEX 2 – SUMMARY OF ADJUDICATION PANEL DECISIONS ON LACK OF RESPECT

NB These are a selection of decisions of the APE and some predate the High Court decision in the Livingstone case and/or the current version of the Code of Conduct. Accordingly some of the conduct might not now be regarded as being in an official capacity but the views of the APE on lack of respect are still relevant.

APE 378 – Councillor used offensive language towards council officers and a Police Superintendent. The Panel found that the words were expressions of anger, frustration and personal abuse and did not enjoy the protection accorded to political speech. Member disqualified for 1 year.

APE 387 – Councillor approached another councillor at a planning committee, threatened him, using an expletive, to have another councillor deselected if he did not vote in accordance with his wishes. Councillor suspended for 1 month.

APE 386 – Councillor called a Police Chief Superintendent a liar at a public meeting. Councillor suspended for 3 months.

APE 362 – Councillor interrupted an interview between a reporter and another councillor during a break in a council meeting, steered the reporter out of the room, harangued and threatened the councillor whilst using extreme profanities which were overheard by others including the public. An immediate apology was given and the councillor lost their cabinet position. Councillor censured.

APE 332 – Councillor had been convicted of using racially abusive and insulting language towards two members of the public. Councillor disqualified for 18 months.

APE 305 – [This was a disrepute case but is relevant]. A two minute altercation took place in a post office between the shopkeeper and the councillor about a controversial road closure during which each gave as good as they got. In the context of long running local campaigns about the issue and in the absence of swearing or profane or discriminatory language by the councillor the Panel concluded that few people would consider that the council or the office had been brought into disrepute.

APE 0427 Councillor called the new Mayor of the Town Council and the deputy Town Clerk “proven liars” at the council mayor making. This was a reference to a dispute dating back several years over whether a particular telephone call had taken place which had arisen during a previous standards complaint but upon which no finding of fact had been made. Councillor disqualified for 12 months.

APE 0407 - The standards committee had found that the member had failed to follow the provisions of the council’s Code of Conduct by failing to treat an officer with respect by behaving inappropriately towards her at a training session and had also conducted himself in a manner which could reasonably be regarded as bringing his office as a cabinet member into disrepute. The

sanctions imposed were to censure the member, suspend him from the office of cabinet member for one month, require him to submit a written apology to the complainant, require him to undertake appropriate training and, subject to his agreement and that of the complainant, to participate in conciliation. The Panel upheld these sanctions.