

STANDARDS COMMITTEE

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STANDARDS FOR ENGLAND GUIDANCE ON OTHER ACTION

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Summary

This report advises members of new guidance issued by Standards For England on the sanction of 'other action' and requests members to consider and comment on the assessment criteria, and to adopt it for use.

1. Background

- 1.1 Under section 57A(2) of the Local Government Act 2000 (as amended), the Standards Committee is able to refer allegations that a councillor has failed to comply with the Code of Conduct to the Monitoring Officer for action other than investigation. The Committee can only do so having firstly consulted with the Monitoring Officer and in so doing is not making any finding as to whether or not the Code has been breached.
- 1.2 Standards For England has now issued guidance on referrals for 'other action' (see Appendix 1). In assessing complaints, the Standards Committee is required to have regard to guidance from SFE and so this guidance will be copied to each Assessment Sub-Committee or the Monitoring Officer will advise as to its content.
- 1.3 The Guidance emphasises that 'other action' should not be directed where (i) it would be in the public interest for there to be an investigation, (ii) where the honesty or integrity of the member is being challenged and (iii) where a sanction, other than training, would be appropriate if the allegation were proven.
- 1.4 As a direction for 'other action' does not make a finding of fact or breach, it is not appropriate for the 'other action' to be a direction for an apology to be given as this would imply that the member has failed to comply with the Code. We highlight in our formal decision notices and covering letters that where there has been a direction for 'other action' that there has been no finding of failure by the Assessment Sub-Committee.

- 1.5 Members will note at paragraph 9) of the Guidance that there are some helpful suggestions on the type of training that might be directed and at paragraph 10) there are examples of other types of 'other action'. Paragraph 23) then lists some circumstances in which a direction may be appropriate.
- 1.6 At paragraph 24 it is advised that standards committees draw up their own assessment criteria..

2. Financial Implications

This report contains no specific financial implications although there may be individual costs for any alternative action taken, for example mediation.

3. Legal Implications

These are contained in the body of the report.

4. Recommendations

- 4.1 That the content of the 'Other Action Guidance' published by Standards For England be noted.
- 4.2 That the committee adopt the assessment criteria at Appendix 2 and that it be applied with immediate effect.

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OTHER ACTION GUIDANCE

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introduction

- 1) This guidance on other action is aimed at members of standards committees. It is not mandatory but has been written to help describe what other action is, when it might be used, and how the process can be managed.
 - 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.
- 2) Advice for monitoring officers on carrying out other action is available in the Standards Board's guidance, **Local Investigations and Other Action and How to Conduct an Investigation**.
- 3) The Standards Board's key messages on other action 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.

what is other action?

- 4) An assessment sub-committee has **three** options when dealing with a complaint that a member has failed or may have failed to comply with the Code of Conduct. The Local Government Act 2000, as amended, states that it can decide to refer the complaint to the monitoring officer of the authority concerned, refer it to the Standards Board, or take no action.
- 5) If the assessment sub-committee decides to refer a complaint to the monitoring officer, it can direct them to investigate the matter. Alternatively, it can direct them to take steps other than carrying out an investigation. This is known as other action.
- 6) Generally, there are **two** indicators for other action. The **first** is when there is evidence of poor understanding of the Code of Conduct and/or the authority's procedures. The **second** indicator for other action is 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.
- 7) The Standards Committee (England) Regulations 2008 explain that the steps a standards committee can direct a monitoring officer to take are:
 - arranging for the member to attend a training course
 - arranging for the member and complainant to engage in a process of conciliation
 - any other steps (not including an investigation) which appear appropriate
- 8) Suggestions as to types of training courses a member might attend, and other steps a standards committee might consider appropriate, are listed in the next section (**What might other action involve?**).

what might other action involve?

- 9) 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. Training may be in anything the assessment sub-committee deems appropriate, 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
 - use of council resources
- 10) In general, other action may take the form of directing the monitoring officer to arrange for the:
- 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 a council complaints procedure
- 11) A referral for other action does not mean that the member has been found to have done anything wrong (see the next section 'Deciding to take other action'). 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. Of course, in those cases where the member has admitted the breach and offered an apology, the assessment sub-committee may decide that no further action is necessary.
- 12) It is particularly important to remember that an assessment sub-committee can only direct a monitoring officer to take other action. It has no power to direct anyone else to do so.

deciding on other action

- 13) A decision to refer a complaint for other action – like all assessment decisions – does not involve making any findings of fact. All parties should understand that a decision to take other action means that no conclusion has been reached about what happened. Furthermore, no decision has been made about whether the subject member failed to comply with the Code.
- 14) Similarly, everyone involved in a decision to take other action must understand that the purpose of such a referral is not to find out whether the member breached the Code of Conduct. This is regardless of how simple it may be to establish the facts. A decision to direct the monitoring officer to take other action is an alternative to an investigation. It cannot ever result in a finding that the member has or has not failed to comply with the Code.
- 15) The assessment sub-committee needs to be satisfied that even if the specific allegation had occurred as alleged, it would not be behaviour which would necessarily require the subject member to face one of the sanctions it could impose. This excludes training, which can be other action decided on at assessment stage, and a sanction following a hearing. The assessment sub-committee should also be satisfied that other action could assist the proper functioning of the council.
- 16) 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. While other action can be a cost-effective way of getting a matter resolved, it is not a quick-fix. Furthermore, 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.
- 17) Standards committees should take care to avoid it appearing to the complainant that deciding to take other action is sweeping matters under the carpet. The decision should demonstrate to the complainant that their complaint is being addressed and being taken seriously, although perhaps as part of a wider issue.
- 18) Importantly, if a complaint merits being investigated, then it should be referred for investigation. For example, complaints should not be referred for other action when an investigation would be in the public interest. Other action should also be avoided where the allegation fundamentally challenges the member's honesty or integrity. It should additionally be avoided where the allegation, if proven, would warrant any of the sanctions (apart

deciding on other action

from training) available to a standards committee after a hearing.

- 19) Assessment sub-committees must not refer an allegation for other action without consulting the monitoring officer, who will often be present at the assessment meeting. If the monitoring officer is not present, and has not given any indication of their views on other action, the assessment meeting may need to be adjourned.
- 20) The monitoring officer may be able to advise the assessment sub-committee how viable the proposed other action is, by providing information on the resources available to them. They may be able to tell the assessment sub-committee how much any proposed other action might cost. They might also be able to advise whether, for example, the authority has access to the facilities or resources needed to accomplish it, such as trained mediators.

when is other action appropriate?

- 21) The first stage in assessing a complaint is to determine whether it is within jurisdiction. In other words, the assessment sub-committee needs to decide whether, if what the complainant alleges were true, the Code of Conduct would apply. If the Code would not apply to the alleged conduct, the only decision an assessment sub-committee is able to make is to take no action. Other action will never be appropriate in these cases.
- 22) In general, the Standards Board believes that other action is most beneficial when used to deal with systemic problems rather than individual ones. The action proposed does not have to be limited to the subject of the complaint. Several members, or indeed a whole authority, could be included in the action the monitoring officer is asked to take.
- 23) Matters which standards committees might consider referring for other action 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
- 24) We advise standards committees to draw up assessment criteria which detail the matters they will take into account when deciding what action, if any, to take. Every decision to take other action – like all assessment decisions – can then be made with reference to these criteria.

adjournment

- 25) Some assessment sub-committees are reluctant to refer a complaint for other action without knowing whether the subject member and other members of the authority will cooperate with the proposed approach.
- 26) One way of dealing with this issue is by adjourning the assessment of a complaint that the assessment sub-committee considers might be suitable for other action. The standards committee can then ask the monitoring officer to find out whether the member or members will cooperate. Although this option is not specifically provided for by the legislation, we do not consider that it is prohibited. Meetings may also be adjourned to enable the monitoring officer to find out more information about the complaint.
- 27) It is up to each authority to decide whether their assessment of a particular complaint should be adjourned. They should consider the advantages and disadvantages of adjournment when making this decision. They should also bear in mind that we advise that assessment decisions should be made within an average of 20 working days, and that an adjournment may mean that that the average assessment time increases.
- 28) 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 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.
- 29) Disadvantages of adjournment 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.

adjournment

- The member or members may try to pass on more information to the monitoring officer, to persuade the sub-committee to take no action.
- 30) As an alternative to adjourning the assessment meeting, the standards committee could agree that the monitoring officer seeks views on other action when they receive a complaint.

role of the monitoring officer

- 31) When a matter has been referred for other action, it is the monitoring officer's duty to give notice to the relevant parties. These relevant parties are:
- the subject member
 - the person who made the allegation
 - the standards committee of any other authority concerned
 - any parish council concerned
- 32) If the standards committee issues a decision notice that goes to all these parties, the Standards Board considers that the monitoring officer's responsibility is met.
- 33) Whoever notifies the parties of the decision should take care over how the decision is conveyed. It is important that the wording does not imply that the member is culpable. It is also important that members do not feel they have been found guilty without an investigation of the allegation. Note that both parties could end up potentially feeling dissatisfied. This is because complainants and subject members do not have the right to have the decision to refer a matter for other action reviewed under Section 57B of the Local Government Act 2000.
- 34) When a monitoring officer receives a referral with a direction to take other action, they must deal with it in accordance with the direction. They do not have discretion to take a different course of action and should make every attempt to ensure that the action specified is carried out successfully.
- 35) Information and advice for monitoring officers on carrying out other action is available in the Standards Board's guidance, **Local investigations and other action** and **How to conduct an investigation**.
- 36) The 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.

consideration of the monitoring officer's report

- 37) 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 meeting at which the report is considered is subject to the general notice and publicity requirements under regulation 8 of the Standards Committee (England) Regulations 2008.
- 38) 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. This is a decision to be made by each authority, and will depend on the way in which the committee has been set up, what sub-committees it has and the terms of reference of each body.
- 39) The advantage of the same members considering the report is that they will be aware of the details of the original complaint. However, some authorities may consider that convening a sub-committee simply for this purpose is not a good use of time and resources. They might instead choose to include consideration of the monitoring officer's report as an item on the agenda of the regular meeting of the standards committee.
- 40) If the standards committee or sub-committee is satisfied with the action described in the monitoring officer's report, it should give notice of this to all of the following:
- the subject member
 - the person who made the allegation
 - the standards committee of any other authority involved
 - any parish council concerned
- The matter is then closed.
- 41) If the standards committee or sub-committee is **not** satisfied, it must give another direction to the monitoring officer, which must again be to take some kind of other action. The standards committee cannot at this stage decide that the matter should be investigated. This is discussed further in the section below.
- 42) If the report describes action which has been proposed but not yet taken, the standards committee should decide whether this is satisfactory. If it has doubts about whether the action will take place, it should consider whether or not to give a further direction to the monitoring officer. 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.

what if other action does not work?

- 43) Each time a standards committee or sub-committee directs a monitoring officer to take other action, the monitoring officer must submit a written report detailing the action taken or proposed. If dissatisfied, the standards committee can direct the monitoring officer to take further other action.
- 44) In theory, if a standards committee continues to be dissatisfied, it can continue to issue directions until it is satisfied. However, standards committees should be proportionate and reasonable in their directions. We believe that the process should be drawn to a close after a limited number of attempts by the monitoring officer to bring about other action – even where this has not occurred in accordance with the direction.
- 45) There is no formal route for dealing with a member who categorically refuses to comply with other action. However, the Standards Board believes that deliberate and continued failure to cooperate with a monitoring officer who is trying to carry out the directions of a standards committee may potentially amount to conduct which brings the office of councillor into disrepute. Furthermore, 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 cooperate.
- 46) If a standards committee receives a complaint that a member did not cooperate with other action in relation to a previous complaint, they should only assess the complaint about the failure to cooperate. They should not take into account the conduct which led to the original complaint.
- 47) If the complaint is accepted for investigation then it is vitally important that any investigation focuses on the lack of cooperation and not the original complaint that led to the other action. Otherwise there is a danger that the original complaint will be resurrected. This is particularly important where the member says that the lack of cooperation was because they had done nothing wrong.

why other action closes the opportunity to investigate

- 48) Once an assessment sub-committee has decided to refer a matter for other action, this becomes the way forward in that particular case. If a standards committee is not satisfied that the action taken has not achieved the aim of the direction to take other action, it cannot then decide the matter should be investigated. The assessment sub-committee needs to be clear at the outset that should other action be unsuccessful or only partially successful, that it would still then remain the preferred course of action.
- 49) The legislation is clear on this issue. Once an allegation is referred under Section 57A(2) of the Local Government Act 2000 to the monitoring officer to take steps other than investigation, those steps are the ones referred to in regulation 13(3) of the Standards Committee (England) Regulations 2008. They are limited to arranging for training, a process of conciliation or such other steps – not including investigation – which the standard committee considers to be appropriate. There is no power that allows the case to be referred on for investigation if these options under regulation 13(3) are perceived to have failed.
- 50) Regulation 14(1) of the same regulations says that regulation 14 applies only if regulation 13 is not applied. If other action has been attempted, regulation 13 has been applied.
- 51) As well as being set out in statute, there are sound reasons why complaints which have been referred for other action should not then be investigated. Firstly, there are difficulties in deciding why the action has 'failed'; whether it has failed and if so, why an investigation is thought to be needed. This subjective judgment has the potential to increase the complainant or the subject member's dissatisfaction with the process. In some circumstances, it may also risk deliberate non-cooperation with the action prescribed in order to secure an investigation.
- 52) An investigation should not be viewed as something that can take place after other action has been attempted and is not to the satisfaction of one of the parties. There is a risk that other action will not be taken seriously if it is seen merely as a precursor to an investigation.

why other action closes the opportunity to investigate

- 53) The issue of timeliness is also key for all parties when dealing with an allegation of misconduct. It is questionable as to how fair the process would be, for both the subject member and complainant, if it is extended for the duration of the other action taking place and the investigation that follows it. Where other action is undertaken before an investigation, there is the risk that the case will be prejudiced. Witnesses may become prejudiced, there may be problems obtaining evidence, and an investigation may be jeopardised if the issues are discussed in detail as part of a mediation process.

Criteria for Referring Complaints to the Monitoring Officer for 'Other Action'

Is the complaint suitable for 'other action'?

A complaint will be unsuitable for 'other action' if the answer to any one of the following questions is 'yes':

- 1 ***Would an investigation be in the public interest?***
- 2 ***Does the allegation challenge the member's honesty or integrity?***
- 3 ***If the allegation were proven to be true, would a sanction undoubtedly be warranted?***
- 4 ***Has the subject member indicated that they would be unwilling to participate in 'other action'? Has the member refused to co-operate with 'other action' before?***
- 5 ***Has the member been found to be in breach of the Code before in relation to the same or similar conduct?***
- 6 ***Has 'other action' in respect of this member been unsuccessful before?***

A complaint may be suitable for 'other action' if the answer to any one of the of the following questions is 'yes':

7. ***Is the same particular breach of the Code alleged against two or more members, indicating a poor understanding of the Code and/or the council's procedures?***
8. ***Does there appear to be a general breakdown of relationships, including those between members and officers?***
9. ***Is there 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?***
10. ***Does there appear to be a misunderstanding by the councillor of procedures or protocols?***
11. ***Has there been misleading, unclear or misunderstood advice from officers?***
12. ***Does the councillor have a lack of experience or training?***
13. ***Is there interpersonal conflict?***
14. ***Are the allegations and retaliatory allegations from the same members?***
15. ***Is the allegation about how formal meetings are conducted?***

16. ***Is the allegation symptomatic of governance problems within the council, which are more significant than the allegation in itself?***

Before proceeding:

17. ***Has the Monitoring Officer been consulted?***
18. ***Would the form of 'other action' assist in the proper functioning of the council?***
19. ***Is there facility or resource available to undertake the 'other action'?***
20. ***Do you accept that the same complaint cannot be re-considered if the 'other action' fails?***

Examples of 'other action'

1. Training, such as:
 - (a) chairing skills
 - (b) working with external bodies & partnerships
 - (c) governance issues
 - (d) the Code of Conduct
 - (e) council procedures & protocols
 - (f) legal matters
 - (g) planning & licensing
 - (h) working with officers
 - (i) use of council resources
2. Conciliation or mediation.
3. Redrafting of council procedures, policies or protocols.
4. Training of members of the council as a whole
5. Mentoring of a member or members, or whole council
6. Management of conflict/conflict resolution
7. Development or amendment of council procedures or protocols e.g. Member/Officer protocol
8. Implementation of a council complaints procedure