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## Report of the Assistant Chief Executive (Corporate Governance)

### Standards Committee

Date: 8<sup>th</sup> July 2009

Subject: Standards Board for England "Other Action Guidance"

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#### Electoral Wards Affected:

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

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### Executive Summary

1. The purpose of this report is to make Members of the Standards Committee aware of the new guidance published by the Standards Board for England on the use of other action. The report also proposes amendments to the Standards Committee's Assessment Flowchart as a result of this guidance.
2. This new guidance has been written to assist Standards Committees with understanding what other action is, when it might be used, and how the process can be managed. The guidance also expands on the questions the Assessment Sub-Committee should ask when considering applying other action, and the circumstances in which other action is appropriate.
3. The new guidance also explains the different ways in which Monitoring Officer reports regarding other action can be received and considered, and the advantages and disadvantages of using adjournment in Assessment Sub-Committee meetings.
4. Members of the Standards Committee are asked to:
  - Note the contents of this report and the attached guidance (attached as Appendix 1);
  - Consider whether to add the receipt of the Monitoring Officer's report on Other Action to the Assessment Sub-Committee Terms of Reference; and
  - Approve the amendments to the Assessment Flowchart (attached as Appendix 2).

## **1.0 Purpose Of This Report**

1.1 The purpose of this report is to make Members of the Standards Committee aware of the new guidance published by the Standards Board for England on the use of other action. The report also proposes amendments to the Standards Committee's Assessment Flowchart as a result of this guidance.

## **2.0 Background Information**

2.1 This new guidance has been written to assist Standards Committees with understanding what other action is, when it might be used, and how the process can be managed. The guidance also expands on the questions the Assessment Sub-Committee should ask when considering applying other action, and the circumstances in which other action is appropriate. This guidance is not mandatory for Standards Committees.

2.2 The Standards Board's key messages in relation to other action are as follows:

- 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 Assessment Sub-Committee's 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 Member has breached the Code of Conduct.
- The Assessment Sub-Committee cannot direct the subject Member or other party to take action. The direction is to the Monitoring Officer.
- Although there is no formal route for dealing with a subject Member who refuses to co-operate with the other action, failure to do so may amount to bringing the authority into disrepute.

2.3 So far in Leeds, the Assessment Sub-Committee have used other action only once. In order to ensure the success of the other action, the Assessment Sub-Committee decided to adjourn the meeting pending discussions between the Monitoring Officer and the subject Member. This new guidance outlines the advantages and disadvantages of adjournment decisions.

## **3.0 Main Issues**

### **Key points from the guidance**

#### When other action is appropriate

3.1 The Standards Board outline that there should be two indicators present in order for other action to be appropriate. These are:

- There is evidence of poor understanding of the Code of Conduct and/or the authority's procedures.
- Relationships within the authority has a whole have broken down to such an extent that it becomes very difficult to conduct the business of the Council.

3.2 According to the guidance the Assessment Sub-Committee will need to be satisfied that the following circumstances apply when deciding to refer an allegation for other action:

- If the behaviour occurred as alleged, it would not be behaviour which would require the subject Member to face a sanction (except training);
- The other action could assist the proper functioning of the Council;
- That the case is not too trivial - genuinely trivial cases are better dealt with by a decision to take no further action as other action can also be costly and time consuming;
- That the complaint does not merit investigation i.e. the behaviour fundamentally challenges the subject Members' honesty or integrity; and
- Should the other action be unsuccessful or only partially successful, that it would still then remain the preferred course of action.

3.3 The Standards Board advise that other action is most beneficial when it is used to deal with systematic problems as oppose to individual ones. The types of cases where the Standards Board believe that other action might be useful are as follows:

- The same breach of the Code by many Members (indicating poor understanding of the Code and Council procedures);
- A general breakdown of relationships 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; and
- Allegations that may be symptomatic of governance problems within the Council, which are more significant than the allegations in themselves.

#### Types of other action

3.4 The Standards Committee (England) Regulations 2008 specify training and conciliation as examples of other action open to the Assessment Sub-Committee. However the Regulations also state that the Assessment Sub-Committee can direct the Monitoring Officer to take any other steps (apart from investigation) which appear appropriate. The Standards Board have provided the following list of examples for Standards Committees:

#### **Examples of training courses:**

- Chaining 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

**Other steps:**

- Redrafting of council procedures or policies
- Training of Members of the Council as a whole
- Mentoring of a Member or Members, or the whole Council
- Management of conflict
- Development of Council protocols
- Implementation of a Council complaints procedure

3.5 As the decision to take other action does not mean that the subject Member has been found to have breached the Code, other action cannot take the form of requiring the Member to apologise. If the subject Member has admitted the breach and already provided an apology, the Assessment Sub-Committee may decide that no further action is necessary.

3.6 The Assessment Sub-Committee also have to consult the Monitoring Officer before deciding to take other action. If the Monitoring Officer is not present, and has not previously provided any views on the matter, the meeting would have to be adjourned.

Use of adjournment in Assessment Sub-Committee meetings

3.7 The Standards Board suggest that Assessment Sub-Committee's may wish to adjourn their meetings when considering taking other action in order to ascertain whether the subject Member and any other Members of the authority would comply with the decision. Although such adjournments are not provided for by the legislation, the Standards Board do not consider that they are prohibited.

3.8 The Standards Board advise that when deciding to adjourn the meeting the Assessment Sub-Committee should consider the following advantages and disadvantages:

<b>Advantages</b>	<b>Disadvantages</b>
The Assessment Sub-Committee will know what the subject Member thinks of the proposed decision and may be more confident in making their decision.	Finding out the Member's views may put the decision on what action to take in the hands of the Member, rather than the Sub-Committee.
Members may be more likely to cooperate if they are made aware of the options available.	The authority of the Sub-Committee may be undermined if other action is agreed by negotiations between the Monitoring Officer and the Member.
When Members indicate that the action would be ineffective, the Sub-Committee still have the option of referring the matter for investigation.	By making further enquiries, the Monitoring Officer may end up starting an investigation before the assessment decision is made.
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 Member may try to pass on more information to the Monitoring Officer, to persuade the Sub-Committee to take no action.

- 3.9 However, if the Assessment Sub-Committee have already satisfied themselves that investigation would not be in the public interest and that the case, if proven, would be unlikely to attract a sanction, it would seem unnecessary to use adjournment in order to retain the option of referring the matter for investigation. A further disadvantage would also be that the case would not be assessed within the 20 working day deadline.
- 3.10 The Assessment Sub-Committee in Leeds have used other action on one occasion so far. In this instance the Assessment Sub-Committee did decide to adjourn their considerations pending discussions between the Monitoring Officer and the subject Member, so that they could be reassured that the subject Member would cooperate with the other action. The Standards Board advise that it is up to each authority to decide whether their assessment of a particular complaint should be adjourned, and in doing so they should consider the particular advantages and disadvantages of adjournment.
- 3.11 The Standards Board also suggest that an alternative to adjourning the meeting could be agreeing that the Monitoring Officer should seek views on other action when they receive the complaint. In Leeds this would not be practical given that the subject Member is unaware of the complaint until after the Assessment Sub-Committee has made their decision.

#### Follow up actions

- 3.12 After the Assessment Sub-Committee have referred the case to the Monitoring Officer for other action, the Monitoring Officer is required to deal with the case in accordance with the direction, and has no discretion to take a different course of action. After the other action is completed the Monitoring Office 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.
- 3.13 The Standards Board advise that the report can be considered by the same Assessment Sub-Committee Members who initially assessed the complaint, by another Sub-Committee, or by the whole Standards Committee, and say that each authority must decide who will receive these reports. In Leeds, it is quite common for the Assessment Sub-Committee to only refer part of a complaint for action, and to take no action on the remainder of the complaint. This leaves part of the complaint open for review and raises the possibility that a Review Sub-Committee will need to meet to consider the remainder of the complaint. It would therefore be preferable if there were some Members who were unfamiliar with the complaint who could sit on such a Sub-Committee if required.
- 3.14 In addition, the body receiving the report are able to decide that they are not satisfied with the action taken and can give another direction to the Monitoring Officer. It is therefore an advantage for a Sub-Committee of the same Members to consider the Monitoring Officer's report as they are familiar with the original complaint. As this function is not specifically included within the terms of reference for the Assessment Sub-Committee, the Standards Committee may wish to consider adding it.
- 3.15 If the Assessment Sub-Committee decides it is satisfied with the action described in the report it must notify the relevant parties. If the Assessment Sub-Committee is not satisfied, for example if the subject Member has refused to cooperate or has done so unwillingly or inadequately, it must give another direction to the Monitoring

Officer, which must again be to take some kind of other action. The Standards Board recommend, however, that the process should be drawn to a close after a limited number of attempts by the Monitoring Officer to bring about the other action, in order to remain proportionate and reasonable. The Standards Board advise that there is no formal route for dealing with a subject Member who does not cooperate with the other action, however such conduct may potentially bring their office into disrepute and would be taken in account by a Sub-Committee assessing a further complaint against the Member.

- 3.16 If a complaint is referred to the Assessment Sub-Committee regarding a subject Members' lack of cooperation, the Assessment Sub-Committee must only consider this allegation, not the original allegation which led to the decision to take other action in the first place.

#### **4.0 Implications For Council Policy And Governance**

- 4.1 Although this guidance is not mandatory for Standards Committees, it will be helpful for the Standards Committee to have regard to the guidance when carrying out local assessment, as it will assist them in complying with the relevant Regulations.

#### **5.0 Legal And Resource Implications**

- 5.1 There are no legal or resource implications to this report.

#### **6.0 Conclusions**

- 6.1 This new guidance has been written to assist Standards Committees with understanding what other action is, when it might be used, and how the process can be managed. The guidance also expands on the questions the Assessment Sub-Committee should ask when considering applying other action, and the circumstances in which other action is appropriate.
- 6.2 The new guidance also explains the different ways in which Monitoring Officer reports regarding other action can be received and considered, and the advantages and disadvantages of using adjournment in Assessment Sub-Committee meetings. A copy of the guidance has been added to the Assessment Sub-Committee Guidance Notes folders for Members' reference.

#### **7.0 Recommendations**

- 7.1 Members of the Standards Committee are asked to:
- Note the contents of this report and the attached guidance (attached as Appendix 1);
  - Consider whether to add the receipt of the Monitoring Officer's report on Other Action to the Assessment Sub-Committee Terms of Reference; and
  - Approve the amendments to the Assessment Flowchart (attached as Appendix 2).

#### Background Documents

Standards Committee (England) Regulations 2008

"Other Action Guidance" by the Standards Board for England