



Report of the Assistant Chief Executive (Corporate Governance)

Standards Committee

Date: 17th February 2010

Subject: Local Assessment – Readily obtainable information

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

1. The purpose of this report is to clarify what information can be obtained by the Monitoring Officer in relation to a complaint against a Member in order to assist the Assessment Sub-Committee with its decision on that complaint.
2. During the meeting on 16th December 2009, the Standards Committee considered a report which reviewed the local assessment arrangements. This report contained a list of the matters raised by Assessment and Review Sub-Committee Members under the 'lessons to learn' agenda item. One of the potential 'lessons to learn' raised by Members was that "Officers need to ensure that they provide as much readily obtainable information as possible, perhaps including background information on the complainant".
3. Members of the Assessment Sub-Committee felt that receiving such information may assist them in deciding whether the complaint discloses a potential breach of the Members' Code of Conduct, and whether the complaint might be malicious, politically motivated or tit-for-tat.
4. Members of the Standards Committee are asked to note the advice provided by Standards for England on what information can be obtained by the Monitoring Officer to assist the Assessment Sub-Committee with its decision.

1.0 Purpose Of This Report

1.1 The purpose of this report is to clarify what information can be obtained by the Monitoring Officer in relation to a complaint against a Member in order to assist the Assessment Sub-Committee with its decision on that complaint.

2.0 Background Information

2.1 According to Standards for England guidance on local assessment, the Monitoring Officer is able to carry out pre-assessment enquiries and produce reports for the Assessment Sub-Committee to assist them with their decisions.

2.2 The guidance states that such reports may contain the following information:

- whether the complaint is within the Assessment Sub-Committee's jurisdiction;
- the paragraphs of the Code of Conduct the complaint might relate to, or the paragraphs the complainant has identified;
- a summary of key aspects of the complaint if it is lengthy or complex; and
- any further information that the officer has obtained to assist the Assessment Sub-Committee with its decision.

2.3 During the meeting on 16th December 2009, the Standards Committee considered a report which reviewed the local assessment arrangements. This report contained a list of the matters raised by Assessment and Review Sub-Committee Members under the 'lessons to learn' agenda item. One of the potential 'lessons to learn' raised by Members was that "Officers need to ensure that they provide as much readily obtainable information as possible, perhaps including background information on the complainant".

2.4 This report explores what information can be provided to the Assessment Sub-Committee under this provision.

3.0 Main Issues

3.1 Standards for England provide examples of the further information that can be provided to the Assessment Sub-Committee. This includes:

- obtaining a copy of the a declaration of acceptance of office form and an undertaking to observe the Code of Conduct;
- minutes of meetings;
- a copy of the Member's entry in the Register of Interests;
- information from Companies House or the Land Registry; and
- other easily obtainable documents.

3.2 However, they also clarify that pre-assessment enquiries should not be carried out in such a way as to amount to an investigation. For example, they should not extend to interviewing potential witnesses, the complainant, or the subject Member. Officers should not seek opinions on an allegation rather than factual information as this may prejudice any subsequent investigation. They should also ensure their report does not influence improperly the Assessment Sub-Committee's decision or make the decision for it.

3.3 Officers also sought advice from Standards for England on the nature of such information in October 2008, and received the following response from the Standards for England Legal Team:

“Where we say that the monitoring officer can gather easily obtainable documents to assist the assessment sub-committee with its decision, we mean that if the monitoring officer is able to get their hands on useful documents without having to carry out a mini-investigation, they can do so. It does not matter whether or not the documents are publicly available - it is more about how readily available they are. Public documents tend to be readily available. The monitoring officer can, however, include documents that they can easily get hold of which are not publicly available.”

- 3.4 Examples of the types of information the Monitoring Officer has provided for Members to date are:
- Information from the Charity Commission;
 - Articles and letters from local newspapers;
 - Reports and minutes of Committee meetings;
 - Register of Interests entries;
 - Clerk’s notes; and
 - Advice from Standards for England on the interpretation of the Code of Conduct.
- 3.5 Questions have been raised regarding whether it would be acceptable for the Monitoring Officer to provide more private information, such as copies of correspondence between the subject Member and the complainant which may be obtainable from Group Support Officers, or information regarding whether the complainant may have been banned from using a particular Council service, or whether they are a member of the political party.
- 3.6 Members of the Assessment Sub-Committee felt that receiving such information may assist them in deciding whether the complaint discloses a potential breach of the Members’ Code of Conduct, and whether the complaint might be malicious, politically motivated or tit-for-tat.
- 3.7 However, Members of the Assessment Sub-Committee must be cautious not to seek to prove a complaint prior to making an initial assessment. The initial assessment decision should be made on the basis of the information that the complainant has provided, and on the assumption that the allegations will be proven.
- 3.8 A query was submitted to Standards for England asking whether:
- background information from the complainant;
 - copies of correspondence from the subject Member (provided by officers); and
 - information provided by the subject Member themselves (if they were aware of the content of the complaint);
- would be allowable under these provisions.
- 3.9 Standards for England provided the following response on 19th January 2010:
- “As you have rightly pointed out any information the monitoring officer supplies at this stage should be easily obtainable. This means that if the monitoring officer is able to get their hands on useful documents without having to carry out a mini-investigation, they can do so. It does not matter whether or not the documents are publicly available - it is more about how readily available they are. The monitoring officer can, however, include documents that they can easily get hold of which are not publicly available.

The interpretation of what is easily obtainable and how far a monitoring officer can go in the collection of that information is for each local authority to decide. Keeping in mind the pre-assessment enquiries should not extend to interviewing potential witnesses, the complainant or the subject member. Officers should not seek opinions on an allegation rather than factual information as this may prejudice any subsequent investigation. They should also ensure their report does not influence improperly the assessment sub-committee's decision or make the decision for it.

Using this advice and applying it to the three bullet points in your e-mail it is probably that most local authorities might allow the monitoring officer to collect the information provided in the first two bullet points. However, we recommend that evidence supplied by the subject member is not used at this early stage.

The main considerations for each complaint should be whether a breach of the Code is revealed and the relative seriousness of the matter. Although it may be sensible in some cases to look into the motivation behind the complaint this should not be an overriding factor in taking no action on complaints that clearly reveal a potential for a breach.”

4.0 Implications For Council Policy And Governance

- 4.1 As a result of this additional guidance the Monitoring Officer will consider providing additional information to the Assessment Sub-Committee, depending upon the specific circumstances of the complaint. The Standards Committee can be assured that its practices comply with the guidance of Standards for England.

5.0 Legal And Resource Implications

- 5.1 The legal implications are set out in the main body of the report.
- 5.2 There are no resource implications to the information in this report.

6.0 Conclusions

- 6.1 Questions have been raised regarding whether it would be acceptable for the Monitoring Officer to provide more private information, such as copies of correspondence between the subject Member and the complainant which may be obtainable from Group Support Officers, or information regarding whether the complainant may have been banned from using a particular Council service, or whether they are a member of the political party.
- 6.2 Members of the Assessment Sub-Committee felt that receiving such information may assist them in deciding whether the complaint discloses a potential breach of the Members' Code of Conduct, and whether the complaint might be malicious, politically motivated or tit-for-tat.
- 6.3 A query was submitted to Standards for England asking whether background information from the complainant, copies of correspondence from the subject Member (provided by officers), and even information provided by the subject Member themselves (if they were aware of the content of the complaint) would be allowable under these provisions. Standards for England provided the response set out in paragraph 3.9 of this report.

7.0 Recommendations

- 7.1 Members of the Standards Committee are asked to note the advice provided by Standards for England on what information can be obtained by the Monitoring Officer to assist the Assessment Sub-Committee with its decision.

Background Documents

“Local Assessment of Complaints”, guidance from Standards for England, last updated July 2008

Report of the Assistant Chief Executive (Corporate Governance) to the Standards Committee, “Review of Local Assessment Arrangements”, 16th December 2009

Email from Standards for England Policy Adviser, dated 6th November 2008

Email from Standards for England Guidance and Information Adviser, dated 19th January 2010