

Agenda Item: 11

Meeting: Standards Committee

Date: 1 May 2009

Subject: Criteria for Initial Assessments by Standards Sub-Committee

Report of: Monitoring Officer

Summary: A request for Members to adopt criteria in respect of determination of initial assessments of complaints and referrals back to the Standards Board for England

Contact Officer: Mrs Barbara Morris, Assistant Director Legal & Democratic/Monitoring Officer
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Public/Exempt: Public

Wards Affected: All

Function of: Non-executive

Reason for urgency (if appropriate) N/A

RECOMMENDATIONS:

1. That the Committee adopts the criteria attached at Appendix "A" to this report for the initial assessments of complaints and referrals back to the Standards Board for England.

1. Members will be aware that following the implementation of the Standards Committee (England) Regulations 2008, the Standards Board has issued guidance in respect of these Regulations. Within the Guidance it states that it is good practice for Standards Committees to adopt criteria which will be applied in the initial assessment process by the Sub-Committee and when dealing with matters considered appropriate for reference back to the Standards Board for England.
2. Attached as Appendix "A" to the report are suggested criteria that the Standards Committee would request that the Sub-Committee apply during that initial assessment process and before considering a referral back to the Standards Board for England.
3. Members are, therefore, requested to adopt the criteria set out at Appendix "A" to this report.

CORPORATE IMPLICATIONS

Council Priorities:

Contributes to all Council priorities to ensure good governance

Financial:

None anticipated at this stage. However, dependent upon the number of complaints requiring initial assessment there is a potential for the increase in the numbers of Standards Sub-Committees meetings incurring costs in relation to advertising the outcome of assessments and determinations and staffing resource issues in respect of assessments and investigations if conflict of interest arise.

Legal:

Local Government Act 2000

Local Government and Public Involvement in Health Act 2007

Standards Committee (England) Regulations 2008

Risk Management:

N/A

Staffing (including Trades Unions):

N/A

Equalities/Human Rights:

Section 6(1) Human Rights Act 1998

Article 6 of the Convention on Human Rights

Community Development/Safety:

N/A

Sustainability:

N/A

Location of papers: Priory House, Chicksands

Initial Assessment Sub-Committee Criteria for Assessment

Before assessment of a complaint begins, the Sub-Committee should be satisfied that the complaint meets the following test:-

1. It is a complaint against one or more named persons of the Authority or a Town or Parish Council for which the Standards Committee is responsible.
2. The named Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time.
3. The complaint, if proven, would be a breach of the code under which the Member was operating at the time of the alleged misconduct.

If the complaint fails one or more of the above tests it cannot be investigated as a breach of the code, and the complainant must be informed that no further action will be taken in respect of the complaint.

If, however, the above test is satisfied then the Sub-Committee need to assess the matter by way of considering the following criteria. The criteria reflect local circumstances and priorities and will ensure transparency and openness in decision making:-

1. Has the complainant submitted enough information to satisfy the Initial Assessment Sub-Committee that the complaint should be referred for investigation or other action?
2. Is the complaint about someone who is no longer a Member of the Authority, but is a Member of another Authority? If so, does the Initial Assessment Sub-Committee wish to refer the complaint to the Monitoring Officer of that other Authority?
3. Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?
4. Is the complaint about something that has happened so long ago that there would be little benefit in taking action now?
5. Is the complaint too trivial to warrant further action?
6. Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?
7. Is the complaint really about dissatisfaction with a Council decision?
8. Is it serious enough, if proven, to justify the range of sanctions available to the Adjudication Panel for England or local Standards Committees?
9. Is the complaint part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Authority and there is no other avenue left to deal with it, short of investigation?

Criteria to be adopted for referrals back to the Standards Board for England

In most cases the Authority will be able to deal with investigation of complaints concerning Members of their Authority and those of Town and Parish Councils that they are responsible for. However, there will be some time issues in a case or public interest considerations, which may make it difficult for the Authority to deal with the cases fairly and speedily. In such cases, the Initial Assessment Sub-Committee may wish to refer the complaint to the Standard Board to be investigated by an Ethical Standards Officer.

The criteria set out below can be used in order to determine whether this is an appropriate cause of action:-

1. Does the Sub-Committee believe that the status of the Member or Members, or the number of Members about whom the complaint is made, would make it difficult for them to deal with the complaint? For example, is the Member a Group Leader or a Member of the Authority's Executive or Standards Committee?
2. Does the Sub-Committee believe that the status of the complainant or complainants would make it difficult for the Authority to deal with the complaint? For example, is the complainant a Group Leader or a Member of the Authority's Executive or the Standards Committee, the Chief Executive, the Monitoring Officer or other Senior Officer?
3. Does the Sub-Committee believe that there is potential conflict of interest of so many Members of the Standards Committee that it could not properly monitor the investigation?
4. Does the Sub-Committee believe that there is a potential conflict of interest of the Monitoring Officer or other Officers and that suitable alternatives could not be put in place to address the conflict?
5. Is the case so serious or complex, or involving so many Members, that it cannot be handled locally?
6. Will the complaint require a substantial amount of evidence beyond that available from the Authority's documents, its Members or Officers?
7. Is there substantial governance dysfunctionality in the Authority or its Standards Committee?
8. Does the complaint relate to long term or systematic Member/Officer bullying which could be more effectively investigated by someone outside the Authority?
9. Does the complaint raise significant or unresolved legal issues on which a national ruling would be helpful?
10. Might the public perceive the Authority to have an interest in the outcome of the case? For example, if the Authority could be liable to be judicially reviewed if the complaint is upheld.

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

The Standards Board do have the ability to decline requests for complaints to be referred to them. They will, however, state the circumstances as to why the complaint has been declined and give directions to the Standards Committee as to what needs to be done.