

STANDARDS COMMITTEE – 4TH MARCH 2008

LOCAL ASSESSMENT CRITERIA

Report of the: Monitoring Officer

Status: For consideration and adoption

Executive Summary: The Committee is advised to consider the adoption of criteria to facilitate the evaluation of Member complaints. The Standards Board will be issuing guidance in due course and when this is received the criteria can then be amended in line with such guidance if need be.

This report supports the Key Aim of effective management of Council resources

Portfolio Holder Cllr. Loney

Head of Service Head of Legal and Committee Services – Christine Nuttall

Recommendation: It be RESOLVED that

- a) the Standards Committee is requested to consider and approve the criteria for assessing Member complaints as set out in the report and that such criteria may later be amended in line with guidance when this is received from the Standards Board for England

That the Council be recommended:

- b) that the criteria for adoption and inclusion in the Constitution plus any later amendments based on subsequent guidance received from the Standards Board for England.
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Background

- 1 It is the intention that ethical standards should be handled locally. When the current ethical standards regime and mandatory code of conduct was introduced all complaints were made to the Standards Board for England (the Board). The Board carried out all investigations and those that required a hearing went to the Adjudication Panel for England (the Panel).
- 2 Then local determination was introduced so that hearings of many cases went to local standards committees.
- 3 Then local investigations were introduced so that now a large percentage of cases are investigated locally. The local filter is the last part of the jigsaw, returning the management of complaints to the local authority.

Introduction

- 4 From April 2008 complaints will be made to the local authority whose Standards Committee will decide:
- to refer to its Monitoring Officer for investigation or alternative action such as mediation or training.
 - to refer to the Board;
 - to take no action.
- 5 If the Standards Committee decides to take no action then the complainant may appeal and the Standards Committee must reconsider and may then decide to:
- refer to its Monitoring Officer for investigation or alternative action such as mediation or training;
 - refer to the Board;
 - take no action.

If the Standards Committee decides again to take no action there is no further appeal.

This is the local filter.

Local Assessment of Complaints: Pilot Findings

- 6 During last summer, the Board piloted the local assessment of complaints with a broad geographical range of authorities of all types, across England. A total of 38 standards committees participated in the pilot, each of which considered 12 real but anonymised cases, including two appeal cases.
- 7 The Board collected a range of data and feedback from the pilot, developing an overview of how the local system might work in practice. Detailed analysis of the results and feedback supplied by 30 committees was undertaken. The results are based on 360 allegations considered by standards committees.
- 8 The average referral rate for standards committees was just over six out of the ten cases (excluding the two appeals) at 66.5% compared with the Board's referral rate on the same cases of three out of ten, or 30%. However, local standards committees had the further option to consider alternative action such as mediation, training or an apology, which is not available to the Board, and referrals for alternative action are included in their average.
- 9 The average rate of referral for alternative measure was 7.3%. The average non-referral rate for standards committees was low at 33.5% compared with the Board's non-referral rate of 70%

Local Assessment Guidance

- 10 The Board has promised to help Standards Committees by providing guidance on all aspects of the local assessment process, subject to the passage of the relevant regulations.

The Board's Assessment Criteria

- 11 The Board does not refer cases if:
- It is malicious, relatively minor or tit for tat.
 - The same, or substantially similar, complaint has already been the subject of an investigation or inquiry and there is nothing further to be gained by seeking the sanctions available to the Panel or the local Standards Committees.
 - The complaint concerns acts carried out in the Member's private life, when they are not carrying out the work of the authority or have not misused their position as a Member.
 - It appears that the complaint is really about dissatisfaction with a council decision.
 - There is not enough information currently available to justify a decision to refer the matter for investigation.

Local Assessment Criteria

- 12 If an allegation discloses a potential breach of the Code of Conduct then this Committee would have to decide whether to do anything about it. When deciding this it could adopt the Board's present criteria as set out above plus the following additional criteria:
- Is there prima facie evidence of a breach of the Code?
 - Is it serious enough to warrant a sanction?
 - Is this part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the authority and are there no other avenues left to deal with it except investigation.
 - In considering the case the Committee will take into account the time that has passed since the alleged conduct occurred.
 - Would an investigation serve a useful purpose?
 - Is the case suitable for local investigation?
 - Is this a case where alternative action such as training or mediation would be more appropriate?

Item No. 5

- Would an apology be appropriate?

Referral to the Board:

- Complaints concerning the Leadership of the Council or in some cases the opposition.
- Complaints from the Chief Executive and Monitoring Officer
- Instances where a large number of key people are conflicted out and there is a risk of successful judicial review.
- Instances where there has been national attention, or where the Standards Committee feels that the matter turns on an important point of interpretation of the Code (a test case).

Options (and Reasons for the Recommendation)

- 13 Until further guidance is produced by the Board the Committee is asked to consider the adoption of the above criteria for evaluating complaints with the option of amending such criteria once guidance is received from the Board.

Key Implications

Financial

- 14 A criteria policy should enable cases to be dealt with speedily thus reducing unit costs per allegation. The criteria should also reduce the number of appeals that take place thus enabling further savings to be made.

Legal, Human Rights etc.

- 15 There is an obligation to ensure that the whole hearing process is conducted in a fair and equitable manner in accordance with the relevant articles of the European Convention on Human Rights.
- 16 Referral criteria are necessary to ensure that cases are not decided arbitrarily and that cases are decided in a proportionate manner and the decision can be justified.

Resource (non-financial)

- 17 The criteria if adopted should allow complaints against Members to be evaluated quickly thus reducing staff and Member resources. It may also mean that there is less chance of an Appeal thus saving additional staffing and Member resources.

Value For Money

- 18 The criteria will add value all round to the assessment process thus creating a cost efficient service.

Equality

- 19 The criteria will ensure that cases are not decided arbitrarily and thus no-one is disadvantaged. It will allow sound reasons to be given for a particular decision.

Conclusions

- 20 The Standards Committee may have to start evaluating complaints from early April 2008 and will need criteria to help them in the evaluation process. The criteria set out in this report will be capable of amendment on the basis of guidance later to be received from the Board.

Risk Assessment Statement

- 21 There are risks in not evaluating complaints in accordance with set criteria. Without set criteria cases may be decided arbitrarily. Reasons for a decision may be difficult to evaluate thus increasing the amount of sustainable appeals.
- 22 There are risks to the authority's reputation and standing if cases are not evaluated in a fair and systematic way in accordance with set criteria. In addition there is an increased chance of a successful judicial review.

Sources of Information: Guidance received from the Board

Contact Officer(s): Christine Nuttall – ext. 7245

Dr. Pav Ramewal
Corporate Resources Director

