

12 June 2009

Our ref: Standards 22.6.09  
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To: The Chairman and Members of the Standards Committee of North Hertfordshire District Council

Mr N. Moss (Chairman), Mr P. Chapman (Vice-Chairman), Mr S. Gillies and Mr P. Joester; District Councillors A. Bardett, S. Bloxham, Judi Billing, Lee Downie, David Kearns, Bernard Lovewell, M.R.M. Muir and L.W. Oliver; Parish Councillors M. Goddard, B. Hillan and R. Wornham + 1 vacancy.

You are invited to attend a

## **MEETING OF THE STANDARDS COMMITTEE**

To be held in the

**COUNCIL CHAMBER, COUNCIL OFFICES,  
GERNON ROAD, LETCHWORTH**

on

**MONDAY, 22 JUNE 2009 at 7.30p.m.**

Yours sincerely,



David Miley  
Democratic Services Manager

**AGENDA**  
**PART I**

<b>ITEM</b>	<b>PAGE</b>
<b>1. APOLOGIES FOR ABSENCE</b>	-
<b>2. MINUTES</b> To take as read and approve as a true record the Minutes of the meeting of the Standards Committee held on 23 February 2009.	-
<b>3. NOTIFICATION OF OTHER BUSINESS</b> Members should notify the Chairman of other business which they wish to be discussed by the Committee at the end of the business set out in the agenda. They must state the circumstances which they consider justify the business being considered as a matter of urgency.  The Chairman will decide whether the item(s) raised will be considered.	-
<b>4. CHAIRMAN'S ANNOUNCEMENTS</b> Members are reminded that any declarations of interest in respect of any business set out in the agenda, should be declared as either a prejudicial or personal interest and are required to notify the Chairman of the nature of any interest declared at the commencement of the relevant item on the agenda. Members declaring a prejudicial interest can speak on the item, but must leave the room before the debate and vote.	-
<b>5. NEW GUIDANCE ON "OTHER ACTION"</b> REPORT OF THE ACTING MONITORING OFFICER <i>To make the Standards Committee aware of new guidance issued by the Standards Board for dealing with local assessment of Member complaints.</i>	<b>1</b>
<b>6. LOCAL ASSESSMENT CRITERIA</b> REPORT OF THE ACTING MONITORING OFFICER <i>To consider whether the Standards Committee wishes to adopt local assessment criteria as guidelines for helping to assess complaints about Members' conduct and whether the criteria proposed in the report are suitable.</i>	<b>21</b>
<b>7. UPDATE ON PROGRESS AND WORK PROGRAMME</b> REPORT OF THE ACTING MONITORING OFFICER <i>To update Members on outstanding matters and to agree a Work Programme for the coming year.</i>	<b>27</b>

**Future Meetings of the Standards Committee:**

Tuesday, 10 November 2009

Tuesday, 2 March 2010

<b>STANDARDS COMMITTEE</b> <b>22 JUNE 2009</b>
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<b>*PART 1 – PUBLIC DOCUMENT</b>	<b>AGENDA ITEM No.</b>  <b>5</b>
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**TITLE OF REPORT: NEW GUIDANCE ON ‘OTHER ACTION’**

REPORT OF THE ACTING MONITORING OFFICER

**1. SUMMARY**

- 1.1 To make the Standards Committee aware of new guidance issued by the Standards Board for dealing with local assessment of member complaints

**2. FORWARD PLAN**

- 2.1 This matter is not relevant to the Forward Plan.

**3. BACKGROUND**

- 3.1 When assessing complaints about member conduct, the Assessment Sub-Committee has one of three options:
- To refer the matter to the Monitoring Officer or the Standards Board for England for investigation;
  - To refer the matter to the Monitoring Officer to take ‘other action’;
  - To take no further action.
- 3.2 Guidance has been issued by the Standards Board which clarifies for members what ‘other action’ might mean and when it might be appropriate to consider ‘other action’ as a suitable means of addressing matters raised in a complaint.

**4. ISSUES**

- 4.1 A copy of the Guidance on ‘other action’ is attached at Appendix 1. This section summarises some of the main points of the Guidance.
- 4.2 The Guidance helpfully sets out at page 3 two indicators for when other action is most appropriate. These are:
- There is evidence of poor understanding of the Code of Conduct and/or the authority’s procedures
  - Relationships within the Council have broken down to such an extent that it becomes difficult to conduct the business of the Council.

- 4.3 Training and mediation or conciliation are the two primary methods of combating these problems. These can be delivered either individually to the member complained of or to a group of members where there is evidence of difficult relations. A comprehensive list of 'other action' is included at page 4 of the Guidance.
- 4.4 Sometimes training and mediation can be delivered together, for example, where the Monitoring Officer makes a concerted effort to intervene to resolve Council wide issues.
- 4.5 At the recent Monitoring Officer conference, one of the speakers encouraged Monitoring Officers to assist town and parish councils to set up an internal complaints system (similar to the Council's own 3C's procedure) so that complaints could be addressed internally where appropriate. This would avoid persons using the local referrals process as the only means of seeking redress against members carrying out their functions.
- 4.6 In all therefore the use of 'other action' is developing as a tool for resolution of problems which may be wider than simply one member's behaviour.
- 4.7 The Guidance does, however, make some other useful points which members of the Assessment Sub-Committee must always bear in mind:
- A referral for other action closes the opportunity to investigate. It is not therefore possible to refer the matter back to the Assessment Su-Committee to investigate if other action has not been successful. Members need to be aware that where an investigation is warranted, other action should not be seen as the softer option. These are two mutually distinct processes.
  - A decision to take other action must not imply that the member has breached the Code of Conduct and the process of other action cannot result in a finding that the member has or has not failed to comply with the Code. The Assessment Sub-Committee needs to be aware therefore that other action might not be favourably considered by a member who might wish to have the opportunity to be exonerated through an investigation.

*What if other action is not successful?*

- 4.8 It is possible that a member might refuse to take part in the action proposed by the Assessment Sub-Committee. In that event there is no sanction that can be imposed on the member, however the Guidance does indicate that a refusal to take part in other action might give rise to a complaint that the member has brought their Council into disrepute.

## **5. LEGAL IMPLICATIONS**

- 5.1 The consideration of complaints against members transferred to the Council in May 2008 and the procedures are carried out by the Standards Committee under the Local Government Act 2000, the Standards Committee (England) Regulations 2008 and statutory guidance issued by the Standards Board.
- 5.2 This new Guidance is not statutory guidance. This means that members are not required to have regard to it in making decisions on whether to request the Monitoring Officer to carry out 'other action'. It is for information and assistance only.

## **6. FINANCIAL AND RISK IMPLICATIONS**

- 6.1 A process of training or mediation can often prove to be very time consuming and expensive. A choice to use other action should therefore only be considered by reference to the serious nature of the issue.
- 6.2 Financial considerations can be taken into account in deciding upon an appropriate course of action to deal with a complaint. Sometimes the risk and financial implications in failing to deal with a case suitable for other action can be greater than the cost of the action.

## **7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS**

- 7.1 None.

## **8. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

- 8.1 None although this report will be issued to all parish clerks who may comment on the proposals to the Monitoring Officer or to the Committee meeting.

## **9. RECOMMENDATIONS**

- 9.1 The Standards Committee are asked to note the Guidance issued by the Standards Board and consider the advice contained within it. It is recommended that this Guidance is included in the handbook for Assessment and Review Sub-Committee Members.

## **10. REASONS FOR RECOMMENDATIONS**

- 10.1 To promote good standards of conduct amongst Members.

## **11. APPENDICES**

- 11.1 Appendix 1 - Other action guidance issued by the Standards Board on 26 May 2009.

## **12. CONTACT OFFICERS**

- 12.1 Kim Sawyer - Acting Monitoring Officer

## **13. BACKGROUND PAPERS**

- 13.1 None.

# OTHER ACTION GUIDANCE

# contents

<b>introduction</b>	<b>2</b>
<b>what is other action?</b>	<b>3</b>
<b>what might other action involve?</b>	<b>4</b>
<b>deciding on other action</b>	<b>5</b>
<b>when is other action appropriate</b>	<b>7</b>
<b>adjournment</b>	<b>8</b>
<b>role of the monitoring officer</b>	<b>10</b>
<b>consideration of the monitoring officer's report</b>	<b>11</b>
<b>what if other action does not work?</b>	<b>12</b>
<b>why other action closes the opportunity to investigate</b>	<b>13</b>

# 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:
- 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.

STANDARDS (22.6.09)

# 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.

**TITLE OF REPORT: LOCAL ASSESSMENT CRITERIA**

**REPORT OF THE ACTING MONITORING OFFICER**

**1. SUMMARY**

- 1.1 To consider whether the Standards Committee wish to adopt local assessment criteria as guidelines for helping assess complaints about member's conduct and whether the criteria proposed by this report are suitable.

**2. FORWARD PLAN**

- 2.1 This matter is not relevant to the Forward Plan.

**3. BACKGROUND**

- 3.1 As members are aware, the initial assessment of a complaint about member conduct is to determine whether the complaint appears to show that there has been a breach of the Code of Conduct, and then whether

- the complaint should be subject to a formal investigation,
- whether the authority's Monitoring Officer should be directed to take other appropriate action in respect of the complaint, or
- whether no action should be taken in respect of the complaint.

- 3.2 For this purpose, the Sub-Committee will take into account the complaint letter and any other information which is readily available to them. Accordingly, it is the responsibility of the complainant to set out clearly –

- who the complaint is against
- what the relevant member did
- why he/she considers that the member's conduct amounted to a breach of the Code of Conduct,

And to provide copies of any documents which he/she wants the Sub-Committee to consider.

- 3.3 The Monitoring Officer will collect any other information which is readily available and which may assist the Sub-Committee in its consideration of the complaint. This will not include conducting interviews with witnesses, but may include providing the Sub-Committee with copies of the agenda, reports and minutes of a meeting of the authority at which the alleged misconduct occurred, or providing copies of the member's entry in the register of members' interests.

- 3.4 The Monitoring Officer prepares a report for consideration by the Sub-Committee which appends the evidential documents and in addition offers advice and guidance for consideration of the complaint, including extracts from the Standards Board guidance and reference to any Adjudication Panel decisions of relevance.

- 3.5 The Monitoring Officer's report will always refer to the 'initial tests' and the 'assessment criteria' stated within the Standards Board guidance entitled 'Local Assessment of Complaints' (Appendix 1) and members will often discuss the questions raised within the Guidance to inform their decision.
- 3.6 The Guidance encourages Standards Committees to develop their own assessment criteria and the purpose of this report is to consider whether this Standards Committee wishes to develop criteria proposed by the Acting Monitoring Officer which expands upon the Guidance provided by the Standards Board.
- 3.7 The Standards Board has been sent a copy of this report to review the criteria proposed. Any proposals made by the Standards Board can be verbally reported to the Committee at the meeting.

#### **4. ISSUES**

- 4.1 The following criteria are suggested for consideration and/or adoption by the Committee. The Assessment Sub-Committee will still be referred to the matters contained within the Guidance where these have not developed into personalised criteria. Adopted criteria can be placed on the website for access by the general public.
- 4.2 Criteria 1:  
*Submission of information for assessment*
- 4.2.1 Complainants should, in all cases, be encouraged to complete a complaint form. This enables the Monitoring Officer and the Assessment Sub-Committee to be sure that the complainant has considered how the complaint relates to the Code and what evidence might be available to support the complaint. The Sub-Committee will accept letters of complaint (rather than a complaint form) where the letter addresses all the matters set out in the complaint form. The Assessment Sub-Committee has instructed the Monitoring Officer that a complaint will not be considered valid until all of the information in the complaint form has been addressed and the target date for hearing all complaints within 20 days will only begin to run from receipt of all relevant information.
- 4.2.2 The Assessment Sub-Committee will consider all evidence put forward in support of the complaint. In addition to the Monitoring Officer's report, this includes all documents submitted by the complainant and any submitted by the member complained of.
- 4.2.3 Where the Assessment Sub-Committee is not satisfied that it has sufficient information to make a decision as to whether the complaint ought to be referred for investigation or other action, it may decide to take no further action and direct the Monitoring Officer to write to those concerned explaining that there was insufficient information to proceed. Should the complainant provide further evidence, this will be treated as a request for a review of the original decision.
- 4.3 Criteria 2:  
*Delay*
- 4.3.1 The period of time that has passed between the alleged conduct and the complaint will be taken into account by the Assessment Sub-Committee when deciding whether a matter, which on the face of it discloses a potential breach of the Code, ought to be investigated or other action taken.

4.3.2 Where there has been a considerable period of delay the Assessment Sub-Committee may decide to take no further action where there is no apparent reason for the delay. A lengthy period between the conduct and the complaint suggests that the matter is not serious. Where a matter is serious, it would be reasonable to expect the complainant to make a complaint promptly.

4.3.3 Even where the complainant has given good reason for the delay the Assessment Sub-Committee are still required to consider the rules of natural justice and whether the member complained of will receive a fair hearing given the lapse of time, particularly for example where proof of the breach may rely upon individual recollection of events.

#### 4.4 *Politically motivated complaints*

4.4.1 Politically motivated complaints are those which are made by someone with political views or aspirations or who is in office, against a member with opposing political views.

4.4.2 Whilst it may be apparent from the complaint that political motivation may be part of, or the whole reason for the complaint, the Monitoring Officer cannot refuse to put the complaint before the Assessment Sub-Committee on the grounds that it may be politically motivated.

4.4.3 In considering whether a complaint was politically motivated the Assessment Sub-Committee will consider first whether there is any substance to the complaint. If the complaint has substance, the Assessment Sub-Committee will disregard any political motivation in making the complaint. For the sake of clarity, political motivation is only relevant to consideration of a complaint where it is the sole or main reason for the complaint.

4.4.4 The Assessment Sub-Committee may decide that even if the complaint has substance it is not sufficiently serious to proceed to investigation.

#### 4.5 *Malicious, tit-for-tat or vexatious complaints*

4.5.1 The Monitoring Officer or the Assessment Sub-Committee cannot refuse to consider a complaint on the ground that it is either malicious, tit-for-tat or vexatious.

4.5.2 The Assessment Sub-Committee must always consider whether the complaint has substance and can only decide to take no further action if either the complaint does not demonstrate any potential breach of the Code, or is not sufficiently serious to justify any further action.

#### 4.6 *Withdrawn complaints*

4.6.1 Where the complainant purports to withdraw the complaint before the Assessment Sub-Committee has had the opportunity to take a decision on it, the Sub-Committee will consider whether to accept such withdrawal.

4.6.2 Where the complainant submits further evidence demonstrating that the complaint was ill-founded, it may be appropriate for the Sub-Committee formally to resolve that the complaint as amended shows no evidence of a breach of the Code of Conduct, so that the matter is formally concluded.

4.6.3 Where the alleged misconduct is simply a matter of alleged failure on the part of the member to treat the complainant with respect, and raises no wider issues of public interest, the Sub-Committee will normally accept such withdrawal.

- 4.6.4 However, where the complaint raises issues of wider public interest, it may be appropriate for the Sub-Committee to ensure that such wider issues are formally investigated and resolved.

## **5. LEGAL IMPLICATIONS**

- 5.1 The consideration of complaints against members transferred to the Council in May 2008 and the procedures are carried out by the Standards Committee under the Local Government Act 2000, the Standards Committee (England) Regulations 2008 and statutory guidance issued by the Standards Board.
- 5.2 Whilst it is not compulsory for Standards Committees to develop assessment criteria, the Guidance does urge Councils to develop criteria in the context of local knowledge and experience.

## **6. FINANCIAL AND RISK IMPLICATIONS**

- 6.1 Having an agreed set of criteria available for complainants should assist in making the procedure easier to understand and reducing the administrative burden for the Monitoring Officer.

## **7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS**

- 7.1 None.

## **8. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

- 8.1 None although this report will be issued to all parish clerks who may comment on the proposals to the Monitoring Officer or to the Committee meeting.

## **9. RECOMMENDATIONS**

- 9.1 It is recommended that the Standards Committee adopt the assessment criteria set out at paragraph 3 above subject to any amendments made by the Committee and that the Monitoring Officer be directed to display the criteria on the Council's website.

## **10. REASONS FOR RECOMMENDATIONS**

- 10.1 To promote good standards of conduct amongst Members.

## **11. APPENDICES**

- 11.1 Appendix 1 - Extract from the Standards Board Guidance 'Local assessment of complaints' on 'initial tests' and 'developing assessment criteria'.

## **12. CONTACT OFFICERS**

- 12.1 Kim Sawyer - Acting Monitoring Officer.

## **13. BACKGROUND PAPERS**

- 13.1 Standards Board Guidance 'Local Assessment of Complaints'.

**TITLE OF REPORT: UPDATE ON PROGRESS AND WORK PROGRAMME**

REPORT OF THE ACTING MONITORING OFFICER

**1. SUMMARY**

- 1.1 To update the members on outstanding matters and agree a Work Programme for the coming year.

**2. FORWARD PLAN**

- 2.1 This report does not contain matters referred to in the Forward Plan

**3. BACKGROUND**

- 3.1 The current Acting Monitoring Officer leaves the Council's employment on the 30 June and considered this an appropriate moment to review the work undertaken over the previous year and set a work programme for future Committee meetings.

**4. ISSUES**

4.1 *Work Programme*

- 4.1.1 Since the Acting Monitoring Officer took responsibility for attending Standards Committee last year there have been regular meetings with the Chair of the Committee to develop an agenda that would ensure members are appraised of the developing role of the Standards Committee and kept aware of developments at a national level.

- 4.1.2 Although the Standards Committee has received a number of reports from the Acting Monitoring Officer over the past year, there has never been a planned programme of work for the Committee. It is recommended that a work programme is developed which would operate similar to the Forward Plan, to ensure that members are adequately able to monitor and review the work of the Monitoring Officer.

- 4.1.3 A suggested work programme will be tabled at the meeting. Members will be requested to review and add to the work programme at each meeting of the Committee.

4.2 *The role of the Standards Board*

- 4.2.1 The referral of member complaints to local Standards Committees was introduced on 8 May 2008. The Standards Board for England became the regulator for the local referrals process and it requires each Council to submit quarterly and annual returns to the Standards Board. To date all quarterly and annual returns have been submitted on time.

- 4.2.2 A copy of the Council's annual return is attached as Appendix 1.
- 4.2.3 On the anniversary of the new process the Standards Board issued a press release on the national statistics it had gathered through the quarterly and annual return monitoring. There were 2,863 complaints received locally from 8 May 2008 to 31 March 2009. Just over half of all allegations received by local authorities were not referred for investigation, with 29% investigated locally and 12% referred to monitoring officers for alternative measures, such as training or mediation. In comparison, between 1 April 2007 and 31 March 2008, the Standards Board for England received 3,547 complaints and referred just 14% for investigation.
- 4.2.4 54% of the complaints made since May 2008 were from members of the public. Just 4% were made by council officers and 36% were from elected members. The latest data received shows that there were far fewer complaints than might be expected about town and parish councillors. Despite making up around 80% of all elected members, only 51% of complaints are about their conduct.
- 4.2.5 The most frequent potential breaches of the Code of Conduct investigated are failure to declare personal interests, failure to treat others with respect and bringing the authority into disrepute.

#### 4.3 *Training*

- 4.3.1 Members of the Standards Committee recently underwent training on the Code of Conduct and the local referrals process. As part of that training, it was agreed that the Standards Board DVD entitled 'The Code Uncovered' should be shown to all members of the Council either immediately before or following a full Council meeting. This is included in the work programme for the interim Monitoring Officer from 1 July 2009.
- 4.3.2 It was also recommended that all members of the Council and all parish clerks should receive a copy of the DVD. Parish Clerks were sent a copy of the DVD in June with a recommendation that they show the DVD to their members at their next meeting. Copies of the DVD are also available for distribution to all members following the next Council meeting.
- 4.3.3 The Monitoring Officer has also produced a 'checklist' for members to decide if they should declare an interest. This to be tabled at the meeting for approval by the members of the Standards Committee. If approved the checklist will be available at all meetings of the Council to assist members in deciding if they have a personal or prejudicial interest.
- 4.3.4 Finally the Monitoring Officer has also produced a handbook for members of the Assessment Sub-Committee which aims to be a useful source of all necessary information for members to have when assessing or reviewing complaints. The handbook will also be available for members to review at the meeting.

#### 4.4 *Introduction of the whistleblowing policy*

- 4.4.1 On the 16 September 2008 the Acting Monitoring Officer brought a whistleblowing policy to the Committee for approval. Following some suggested amendments to the policy the matter was referred to the Council's Joint Staff Consultative Committee for approval.

- 4.4.2 The policy with the amendments was agreed in December 2008.
- 4.4.3 In order to ensure that managers are aware of the requirements of the new policy the Acting Monitoring Officer delivered a talk on the whistleblowing policy to the Senior Managers Group on the 18 June 2009.
- 4.4.4 Members may recall that the Acting Monitoring Officer also agreed to work with the Audit Manager to produce protocols for the processing of confidential reports under the policy. Because of the unexpected number of complaints dealt with under the local referrals process, this planned work has not been completed. It is suggested therefore that this matter is included within the work programme for the Standards Committee to come back at a later date for approval.
- 4.5 *Appointment of Town/Parish Council members*
- 4.5.1 Members will recall that one town and one parish council member were appointed to the Standards Committee to comply with the requirements of the new local referrals process. This is because at least one parish member is required to sit on an assessment or review or hearing sub-committee whenever parish matters are being considered.
- 4.5.2 A referral was made to Council last year to amend the constitution to permit the Standards Committee to adopt its own selection procedures for future appointments of parish members. The matter was the subject of much debate at Council and it expressed a preference that the Hertfordshire Association of Local Councils should be asked to propose appointments to the Committee.
- 4.5.3 It was recommended that a selection protocol should be agreed and referred back to the Standards Committee for approval following the recommendations made at Council.
- 4.5.4 As this matter remains outstanding it is also included within the work programme for the Committee.
- 4.5.5 Members might be aware that one of the existing parish members did not stand for office at the recent elections and therefore there is a vacancy on the Standards Committee for a new parish member. However recruitment to this vacant post is not urgent.
- 4.5.6 It was expected that the Regulations governing the local complaints process would require specific members to be allocated to each Sub-Committee, requiring the Council therefore to have a minimum of 4 parish members. As it transpired the Regulations and Guidance permit members of the Sub-Committee to be taken from a pool and also permit members on the assessment or review sub-committee to sit on the hearing sub-committee. Therefore there is no immediate requirement to ensure the vacancy is filled although it would be preferable to deal with this matter expeditiously.
- 4.6 *Revision of the Constitution*
- 4.6.1 The Monitoring Officer is the guardian of the Constitution and has to ensure that it adequately reflects the governance arrangements of the Council.

4.6.2 Members will be aware that last year it was involved in a review of the Planning Code of Good Practice. This year the Acting Monitoring Officer has identified that the Member / Officer Protocol requires a review. This is included in the work programme.

4.6.3 By way of update, a copy of the Planning Code of Good Practice was issued to all members of the Council following its approval by full Council last year.

#### 4.7 *Review of the Members induction pack*

4.7.1 The Acting Monitoring Officer has also identified that the induction pack given to members may not contain sufficient information on the Code of Conduct (particularly given the changes brought about by the 2007 amendments) and responsibilities of members acting on outside bodies to which they have been appointed by the Council. It is proposed that a review is undertaken of the induction pack and any changes approved by this Committee

#### 4.8 *Declarations of office*

4.8.1 In December 2008 the Acting Monitoring Officer reported that there were several parish councils who had failed to return declarations of acceptance of office or register of interests.

4.8.2 Following that meeting several parish clerks wrote to the Council to state that they had returned all forms as requested. As we were unable to locate these within the office, copies of the forms were re-sent by the Clerks. I am now pleased to confirm that all declarations of office and registers of interests have been returned.

4.8.3 Following the recent elections, the Monitoring Support Officer will ensure that all new declarations of office and register of interests have been received within the requisite 28 days.

4.8.4 The Acting Monitoring Officer has identified that registers of interests often have to be returned to members where obvious omissions are made. Approval of a guidance note for members completing the register has been included within the work programme for this Committee.

#### 4.9 *Consultation on changes to the Code of Conduct*

4.9.1 Members will recall that a consultation response to proposed changes to the Code of Conduct was approved by the Committee on 15 December 2008 and submitted to DCLG. The consultation closed on the 24 December and DCLG indicated that a revised Code could be expected in May 2009.

4.9.2 The Code changes have not yet been announced and DCLG has indicated that the draft Code may be available in July, however this is not a fixed timetable and a draft Code could be introduced as late as October this year.

4.9.3 The draft Code will be reported to Committee when available.

**5. LEGAL IMPLICATIONS**

- 5.1 There are no specific legal implications arising from this report. Legal implications will be dealt with when each of the work programme matters are brought back to the Committee.

**6. FINANCIAL AND RISK IMPLICATIONS**

- 6.1 None.

**7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS**

- 7.1 None.

**8. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

- 8.1 None, although clerks of the parish councils will receive copies of this report.

**9. RECOMMENDATIONS**

- 9.1 That Members note the updates in this report and agree the work programme.

**10. REASONS FOR RECOMMENDATIONS**

- 10.1 To ensure good governance within the Council.

**11. ALTERNATIVE OPTIONS CONSIDERED**

- 11.1 None.

**12. APPENDICES**

- 12.1 Appendix 1 – Annual return

**13. CONTACT OFFICERS**

- 13.1 Kim Sawyer x4561  
Acting Monitoring Officer

## **WORK PROGRAMME FOR STANDARDS COMMITTEE**

This work programme for the Standards Committee comprises:

- Table of regular agenda items which will be brought to the Committee annually
- Table of ongoing work subject to review at each Committee meeting

### **Annual Calendar of regular items for the Standards Committee**

January - March	Recruitment of parish and independent members (tri-annually, and when any vacancies arise)
	Review of list of politically restricted posts
April – June	Review of Code of Conduct complaints
	Indemnity confirmation for independent members
	Annual report to full Council on the work of the Standards Committee
	Quarterly and Annual Returns to Standards Board to be completed and reported to Standards Committee
July – September	Review of Confidential Reporting code
	Review of Gifts and Hospitality policy and register for members
	Review of Register of Interests and training for members
October - December	Review of Conflicts of Interest policy
	Review of Code of Conduct complaints

### **Forward planning: Matters for consideration at Standards Committee 2009-2010**

June 2009 – June 2010	<p>Ongoing updating to Council as necessary / liaison between Members and the Chair of Standards Committee</p> <p>Training for: Standards Committee Members District Council Members Parish and Town Councils</p> <p>Meetings with Parish/Town Councils in the future to consider the introduction of local complaints processes to curtail the number of Code of Conduct complaints</p> <p>Code of Conduct Complaint Handling (Assessment Sub</p>
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	<p>Committee, Review Sub Committee etc)</p> <p>Reporting of new draft Code when available</p>
July – September 2009	<p>New Declarations of Office and Registers of Interest to be received within 28 days</p> <p>Recruitment to vacant parish seat on Standards Committee</p> <p>Draft selection protocol on recruitment of parish members to be approved by Standards and referred to Council</p> <p>MO to work with Audit Manager to produce protocols for processing of confidential reports under Confidential Reporting Policy</p> <p>Standards Board training DVD to be shown prior to or after full Council meeting.</p>
October – December 2009	<p>Revise and approve the Member / Officer protocol and refer to Council to amend the Constitution</p> <p>Advice/Guidance on publication of members interests and other registers on the Council's website</p>
January – March 2010	<p>Revise and approve Members Induction Pack</p>
April – June 2010	<p>Annual Report to Council</p> <p>Annual Return to Standards Board to be completed and reported to Standards Committee</p> <p>Review local authorities who have been acknowledged by Standards Board to consider whether any methods used by them can be considered by NHDC.</p>