

Report to: **Standards Committee**

Date: **1 December 2008**

Title of report: **Assessment criteria for the determination of complaints against Councillors**

By: **Director of Law and Personnel**

Purpose of report: **To seek the Standards Committee's approval for the assessment criteria to be used for the initial stage of the determination of complaints against Councillors.**

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**RECOMMENDATION - That the Committee agrees assessment criteria for the determination of complaints against Councillors.**

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## **1. Financial implications**

1.1 There are no financial implications to this report.

## **2. Background information**

2.1 Additional roles and responsibilities were given to the Standards Committee as a result of the Local Government and Public Involvement in Health Act 2007, which amended Part 3 of the Local Government Act 2000. As a result in July 2008 the Standards Committee introduced arrangements and procedures for the handling of complaints against Councillors.

2.2 As previously reported, the Standards Committee is required to make an initial assessment of any complaint received to determine whether it should be investigated either by the Council's Monitoring Officer, the Standards Board for England or that no further action is taken. This would be undertaken by the Assessment Sub-Committee as set out in the Constitution.

## **3. Assessment criteria**

3.1 The Standards Board have issued guidance that requires all Authorities to develop assessment criteria against which it assesses new complaints and decides what action, if any, to take.

3.2 The guidance states that the assessment criteria should reflect local circumstances and priorities and should be clear and simple. It should also reflect fairness at all times for both the complainant and the Councillor who is the subject of the complaint.

3.3 The guidance from the Standards Board is available at Appendix 1.

3.4 Draft assessment criteria are attached at Appendix 2 for consideration by the Committee.

3.5 When drawing up criteria, the Committee should bear in mind the importance of ensuring that complainants are confident that the complaints about the conduct of a Councillor are taken seriously and dealt with appropriately.

ANDREW OGDEN

Director of Law and Personnel

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Local Members: all

Background Document:

Department for Communities and Local Government: Communities in Control: Real people, real power. Codes of conduct for local authority members and employees

## **EAST SUSSEX COUNTY COUNCIL STANDARDS COMMITTEE – ASSESSMENT CRITERIA**

These criteria are intended to reflect local circumstances and priorities and are simple, clear and open. They are to ensure fairness for the complainant and the subject member.

### **1.0 Circumstances where the Initial Assessment Sub-Committee may decide to take no further action**

Where the complaint:

- (1) does not have enough information to satisfy the sub-committee that the complaint should be referred for investigation or other action;
- (2) is about someone who is no longer a member of the Council;
- (3) has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances;
- (4) or one substantially similar, has already been the subject of an investigation or other action relating to the Code of Conduct or has been the subject of an investigation by other regulatory authorities;
- (5) is believed to be either:
  - (a) relatively minor
  - (b) tit-for-tat
  - (c) politically motivated
  - (d) malicious
  - (e) not sufficiently serious to warrant further action;
- (6) where the subject member has apologised and/or admitted making an error and the matter would not warrant a more serious sanction;
- (7) where it is apparent that the subject Member is relatively inexperienced as a Member;
- (8) where it appears that even if the allegations were fully investigated and a breach of the Code of Conduct upheld, training or conciliation would be the appropriate remedy; OR
- (9) Where it is anonymous.

Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers' and members' time. This is an important consideration where the matter is relatively minor. The Standards Committee will take into account the public benefit in investigating complaints which are less serious, politically motivated, malicious or vexatious. It will not refer a complaint for investigation where it considers that the public interest in investigating the complaint is outweighed by the cost and resources that would be likely to be involved.

## **2.0 Circumstances where the Standards Committee may decide to refer the complaint to the Monitoring Officer for local investigation**

Where the complaint is sufficiently serious to justify the cost of an investigation and it is in the public interest to investigate.

## **3.0 Circumstances where the Standards Committee may decide to refer the allegation to the Monitoring Officer for other positive action**

- (1) Where the complaint:
- (i) could be dealt with more effectively by:
    - (a) requesting an apology
    - (b) mediation
    - (c) training
    - (d) reviewing procedures and protocols
  - (ii) is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the authority which could be dealt with by:
    - (a) mediation
    - (b) training
    - (c) reviewing procedures and protocols
- (2) Where it is not in the interests of good governance to undertake or complete an investigation into a complaint.

- Notes
- (a) The Initial Assessment Sub-Committee must consult the Monitoring Officer before reaching a decision to take other action. It is to be noted that the purpose of this approach is not to determine whether there has been a breach of the Code.
  - (b) If members decide to refer the complaint to the Monitoring Officer for another form of positive action the following must be considered:
    - *What is being proposed.*
    - *Why it is being proposed.*
    - *Why the Member should co-operate*
    - *What the Sub-Committee hopes to achieve*
  - (c) A complaint referred for positive action will not state whether the member breached the Code but that the decision made was an alternative to investigation and that no conclusion was reached on whether the subject member failed to comply with the Code. There will be no opportunity to undertake an investigation into the complaint and it will not be referred back to the Standards Committee even if this action is perceived to have failed.

## **4.0 Circumstances where the Standards Committee may decide to refer the complaint to the Standards Board for England (SBE)**

- (1) Where the status of the member or members or the number of members about whom the complaint is made would make it difficult to deal with the complaint eg

a complaint against the Leader of the Council or senior opposition group members or a Cabinet Member or a Standards Committee Member.

- (2) Where the status of the complainant or complainants would make it difficult to deal with the complaint e.g. a complaint from the Chief Executive or Legal Director or other senior officer or a Group Leader or Cabinet Member or Standards Committee Member.
- (3) Where a large number of key people are conflicted out and there is a risk of successful judicial review.
- (4) Where there is a potential conflict of interest of the monitoring officer or other officers and suitable alternative arrangements cannot be put in place to address the conflict.
- (5) Where the complaint is so serious or complex, or it involves so many members that it cannot be handled locally.
- (6) Where the complaint requires substantial amounts of evidence beyond that available from the authority's documents, its members or officers.
- (7) Where there is substantial governance dysfunction in the Council or its Standards Committee.
- (8) Where the complaint relates to long-term or systemic member/officer bullying which could be more effectively investigated by someone outside the authority.
- (9) Where the complaint raises significant or unresolved legal issues on which a national ruling would be helpful.
- (10) Where the public might perceive the Council to have an interest in the outcome of a case e.g. if the Council could be liable to be judicially reviewed if the complaint is upheld.
- (11) Where there are exceptional circumstances which would prevent the authority or its standards committee investigating the complaint competently, fairly and in a reasonable period of time, or meaning that it would be unreasonable for local provision to be made for an investigation.