

Guidance on “other action”

Report of the Chief Solicitor

1. Introduction

The purpose of this report is to summarise guidance recently issued by the Standards Board on the taking of “other action” for members of Standards Committees.

2. Key Points

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.
- Although there is no formal route for dealing with a member who refuses to comply with other action, failure to co-operate may amount to bringing the authority into disrepute.

3. What is other action?

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. 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.

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.

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.

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.

4. What might other action involve?

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.

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.

A referral for other action does not mean that the member has been found to have done anything wrong. Other action cannot, for example, take the form of requiring the subject member to apologise.

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.

5. Deciding on other action

A decision to refer a complaint for other action does not involve making any findings of fact. No decision has been made about whether the subject member failed to comply with the Code.

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.

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.

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.

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 from training) available to a standards committee after a hearing.

Assessment sub-committees must not refer an allegation for other action without consulting the monitoring officer.

The monitoring officer may be able to advise the assessment sub-committee how viable the proposed other action is.

6. When is other action appropriate?

The first stage in assessing a complaint is to determine whether it is within jurisdiction.

The Standards Board believes that other action is most beneficial when used to deal with systemic problems rather than individual ones, for example where:-

- the same particular breach of the Code by many members, indicates poor understanding of the Code and the authority's procedures;
- 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.

The guidance recommends using the expedient of an adjournment to find out whether members will co-operate with other action.

7. Consideration of the Monitoring Officer's report

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.

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.

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 relevant persons.

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 or sub-committee may also consider making a further direction where the report indicates that the member has refused to co-operate, has done so unwillingly or inadequately, or has not engaged with the process.

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 co-operate 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.

Recommendation

That the Committee notes the contents of this report and adopts the criteria set out in paragraph 6 above in relation to taking other action and agrees that this be added to the handbook.