

CANNOCK CHASE COUNCIL

STANDARDS COMMITTEE

25 SEPTEMBER, 2008

REPORT OF DIRECTOR OF GOVERNANCE

INITIAL ASSESSMENT OF STANDARDS COMPLAINTS – ASSESSMENT AND REVIEW CRITERIA

1. Purpose of Report

- 1.1 This report sets out the criteria which the Initial Assessment Panel acting as a Sub-Committee of the Standards Committee can apply in conducting the initial assessment of allegations of failure by Members to observe the Code of Conduct. The Standards Board for England advises that an assessment and review criteria should be adopted by the Standards Committee.

2. Recommendation(s)

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| 2.1 | The Standards Committee is recommended to adopt the initial assessment of standards complaint assessment and review criteria as included in the annex enclosed. |
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3. Conclusions and Reason(s) for the Recommendation(s)

- 3.1 The standards regime governing the determination of complaints of breaches of Code of Conduct are now within the jurisdiction of the District Council. The District Council receives all complaints in relation to councillor misconduct regarding district and town / parish councillors. The Standards Committee sits as a Sub-Committee when the Initial Assessment Panel determines whether or not a complaint should be investigated. In addition, were the Initial Assessment Panel to come to a view that the complaint should not be investigated, the complainant may request a review of that decision. The document attached gives an assessment and review criteria for the Initial Assessment Panel in determining how a complaint should be considered and how any subsequent review should be dealt with. The Committee is recommended to adopt the assessment and review criteria as a matter of best practice.

4. Key Issues

- 4.1 How the Standards Committee (and its Sub-Committees) determine complaint from members of the public and other councillors is fundamental to good governance and ethics within the district. To ensure consistency and a robust approach to the determination of complaints and to decide whether or not they should be subject to an investigation (or what should happen when a review is requested) a criteria is recommended. This criteria indicates how local resolutions may be considered where a local matter does not justify a full investigation but it is worthy of a different approach between the complainant and the councillor. The criteria

attached indicates how complaints should be considered at the early stage and what options are available to the Initial Assessment Panel. The criteria ensures that those who make complaints will have an understanding of how the matter will be considered and how any aspects of confidentiality will be undertaken. The assessment criteria needs to be considered with the guidance received from the Standards Board for England and the protocol for the Monitoring Officer previously agreed at Committee, where the Monitoring Officer may take some preliminary investigatory / data gathering steps to assist the Initial Assessment Panel in its determination.

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Section 1

Background

Following the transfer of responsibilities to the District Council for determining matters relating to breaches of the Code of Conduct, various key documents are required to be adopted by the Committee. The attached criteria is recommended following consultation with other local authorities and other individuals who have considered various wider implications on councils on adopting criteria of this nature. The criteria is suggested to be the most transparent and fair means of advising and guiding Standards Sub-Committees on the determination of complaints at the early stage.

Section 2

Details of Matters to be Considered

The Standards Committee may consider that a criteria is not appropriate or may change what is suggested. The guidance from the Standards Board for England strongly suggests that Standards Committee should adopt an assessment and review criteria to ensure consistency and transparency in decision making. Were this Committee not to follow this advice, it may make the decisions of the Initial Assessment Panel more vulnerable to challenge and may result in a lack of confidence in the Committee's work.

Section 3

Contribution to CHASE

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| Children & Young People | - A place where children, young people and their families have a good start in life and remain healthy, safe from harm, achieve their potential in education and skills to make a positive contribution to their community and become economically secure |
| Healthier Communities, Housing and Older People | - A place where people are healthy, have opportunities to live in a decent house in a good environment. Where people have greater choice and control over their own lives and have an active role in the community with access to the support they need to remain living as independently as they choose |
| Access to Skills, Economic Development and Enterprise | - A place with a thriving economy providing diverse employment opportunities to a workforce that is increasing its skills, knowledge and value by making the area more competitive and attractive to investors |
| Safer and Stronger Communities | - A place where individuals, neighbourhoods and communities feel free from crime and anti-social behaviour; where communities become stronger and the quality of life is improved for all |
| Environment | - A place where the community values their local environment and contributes to its conservation, enhancement and management to meet the needs of the present without compromising the ability of future generations to meet their own needs |

Good governance and maintaining appropriate and robust ethical standards must be a cornerstone to delivering all the CHASE Objectives. Public confidence and faith in local government can only be maintained where there is a robust and transparent process for citizens and others to complain about councillor behaviour. This assessment criteria ensures that the transparency of any process adopted is well understood by all.

Section 4

Financial Implications

There are no financial implications arising directly as a result of this report.

Section 5

Human Resource Implications

There are no human resource implications arising directly as a result of this report.

Section 6

Legal Implications

The legal implications on the consequence of this decision are included in the main body of this report.

Section 7

Section 17 (Crime Prevention)

There are no Section 17 implications arising directly as a result of this report.

Section 8

Human Rights Act Implications

There are no Human Rights Act implications arising directly as a result of this report.

Section 9

Data Protection Act Implications

There are no Data Protection Act implications arising directly as a result of this report.

Section 10

Risk Management Implications

There are no risk management implications arising directly as a result of this report.

Section 11

Equality and Diversity Implications

There are no equality and diversity implications arising directly as a result of this report.

Section 12

Other Options Considered

Please see the background information above. The Committee could consider not adopting the criteria or directing the Monitoring Officer to re-write the criteria following any principles or points raised at the Committee meeting.

Annexes

Annex 1 Initial Assessment of Standards Complaint Assessment and Review Criteria.

Cannock Chase District Council

Initial Assessment of Standards Complaints

Assessment and Review Criteria

1 Introduction

This paper sets out the criteria which the Initial Assessment Panel (acting as a sub-committee of the Standards Committee) will apply in conducting the initial assessment of allegations of failure by members to observe the Code of Conduct.

Cannock Chase District Council (the authority) takes all allegations of member misconduct extremely seriously and seeks to secure the highest standards of conduct at all times. The initial assessment process determines 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 (either by the Standards Board for England or locally under the direction of the authority's Monitoring Officer), whether the authority's Monitoring Officer should be directed to take other appropriate actions in respect of the complaint, or whether no action should be taken in respect of the complaint.

2 Local resolution of complaints

The Standards Committee is acutely aware that the formal investigation of complaints is costly and time consuming. Whilst formal investigation may be necessary in some cases, many complaints can often be dealt with more rapidly and effectively if an early, informal resolution of the matter can be achieved.

The Standards Committee has instructed the Monitoring Officer, where a complaint has been received, to explore the potential for local resolution to the satisfaction of the complainant, to avoid the need for a formal investigation. But any attempts at local resolution do not take away from the right of a complainant to have their complaint of member misconduct considered by the Initial Assessment Panel (IAP).

3 Which complaints can be considered?

The IAP must consider every complaint that a member of the authority (or of any Parish or Town Council within its area) has failed to comply with the Code of Conduct which that authority has adopted. Accordingly, it has no jurisdiction in respect of any complaint which relates to:

- (a) persons who are not members of the authority (or a Parish or Town Council in its area)

- (b) conduct which occurred at a time when the person against whom the complaint was made was not a member of the authority (or of a Parish or Town Council in its area)
- (c) conduct which occurred before the relevant authority adopted a Code of Conduct. All local authorities were required to adopt a Code of Conduct in 2001. In practice, the IAP will expect complaints to be made promptly after the events to which they relate (see below)
- (d) conduct which occurred in the member's private life, as the Code of Conduct only applies to a member's conduct as a member of a local authority
- (e) conduct which occurred when the member was acting as member of another authority. Where a member is also a member of another authority (other than a Parish or Town Council within its area) which has its own Code of Conduct, then the complaint should be addressed directly to that authority.
- (f) complaints which do not relate to the apparent misconduct of a relevant member but are, for example, about the policies and priorities of the authority, or are a request for the provision of a service by the authority, or are a complaint about the conduct of an officer of the authority

Such complaints will not be referred to the IAP but will instead be dealt with by the Monitoring Officer who will advise the complainant as to the most appropriate avenue for proper consideration of their complaint or request.

4 Does the complaint appear to show a breach of the Code of Conduct?

The first assessment which will be undertaken by the IAP will be to determine whether the complaint appears to show that a breach of the Code of Conduct may have occurred.

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

- (a) who the complaint is against
- (b) what they understand that the relevant member did
- (c) why they consider that the member's conduct amounted to a breach of the Code of Conduct,

And to provide copies of any documents which they want the IAP to consider.

Following receipt of your complaint, the Monitoring Officer will collect any other information which is readily available and which may assist the IAP in its consideration of the complaint. This will not include conducting interviews with witnesses, but may include providing the IAP 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.

The IAP will then consider whether, on the basis of the complaint and that additional information, there appears to have been a breach of the Code of Conduct.

If the IAP concludes that the evidence does not disclose an apparent breach of the Code of Conduct, it has no further jurisdiction in respect of the matter.

5 Possible actions where an apparent breach of the Code of Conduct has occurred

Where the IAP has concluded that there appears to have been a breach of the Code of Conduct, it has four options available to it. These are as follows:

(a) **direct the Monitoring Officer to secure that the complaint is investigated locally**

A local investigation will normally be appropriate where the alleged conduct is sufficiently serious to merit the imposition of a sanction against the member, but not so serious that it would merit a greater sanction than the authority's Standards Committee could impose following a formal hearing. In practice, this means that a local investigation would not be appropriate where the appropriate sanction is likely to be a suspension as a member of the relevant authority for a period of more than 6 months, or disqualification as a member of any local authority. See paragraph 5(b) below for more detailed grounds for referring a complaint to the Standards Board for England.

However, recognising that a formal investigation is an expensive and time-consuming process, and can only address the immediate subject matter of the complaint, the IAP can direct the Monitoring Officer to take other appropriate action short of a formal investigation – see paragraph 5(c) below.

In addition, particularly where the conduct complained of is not sufficiently serious to merit any action or occurred a considerable time ago, the IAP may determine that no action should be taken in respect of it. For more detail, see paragraph 5(d) below.

(b) **refer the matter to the Standards Board for England with a request that the Board undertakes a national investigation into the complaint;**

The following factors will be considered by the IAP to be factors which support referring the complaint to the Standards Board for England for a national investigation:

- (i) that the complaint is so serious that, if proven, the conduct complained of merits a sanction in excess of that which could be imposed by the Standards Committee. In practice this means that the appropriate sanction would be either a suspension from the relevant authority for a period of more than 6 months, or a disqualification from any local authority
- (ii) that the investigation required is so extensive that it would impose an unreasonable burden on the authority and/or that any hearing conducted on the basis of that investigation would be unreasonably complex for the Standards Committee
- (iii) that the status of the member against whom the complaint has been made or of the person by whom the complaint has been made is such that either the

authority could not conduct a full and impartial investigation and hearing, or that there is likely to be a public perception that the authority could not conduct a full and impartial investigation and hearing

- (iv) that so many members of the Standards Committee have a conflict of interest in respect of the matter that the authority is going to be in difficulty in organising an impartial Hearings panel for the matter
 - (v) that the complaint raises significant or unresolved legal issues where a national ruling would be helpful
 - (vi) that the authority itself has an interest in the outcome of the investigation and/or hearing, for example where the report may lead to a judicial review of a decision of the authority
 - (vii) that there are other exceptional circumstances which would prevent the authority from securing a timely, full and impartial investigation and/or hearing of the matter, or which are likely to give rise to the perception that the authority cannot secure a timely, full and impartial investigation and/or hearing of the matter.
- (c) **direct the Monitoring Officer to take other appropriate action short of a formal investigation;**

The IAP cannot impose a sanction on the member against whom the complaint has been made without a formal investigation and hearing. But it can direct the Monitoring Officer to take a range of other actions, including providing training for members, securing conciliation or mediation between competing interests, or reviewing procedures to minimise conflict.

In some instances, the conduct complained of may be a symptom of wider conflicts within the authority. A formal investigation and hearing would only deal with the particular complaint and may not resolve such underlying conflicts.

Such alternative action is therefore most suitable where –

- (i) the conduct complained of is a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct
- (ii) the conduct complained of is apparently common to a number of members of that authority, demonstrating a lack of awareness or recognition of the particular provisions of the Code of Conduct
- (iii) the conduct complained of is not so serious that it requires a substantive formal sanction such as suspension or disqualification
- (iv) the complaint reveals a lack of guidance, protocols and procedures within the authority, for example on the use of resources or the process of decision-making

- (v) the member complained of and the person making the complaint are amenable to engaging in such alternative action, as there is no power to require them to participate.

(d) **decide to take no action in respect of the complaint.**

The following factors are likely to lead the IAP to decide to take no action in respect of the matter:

- (i) the complaint appears to be trivial, vexatious, malicious, politically motivated or tit for tat.
- (ii) the complaint is anonymous. The IAP can protect the confidentiality of the identity of the complainant where that is justified by a real fear of intimidation or victimisation. However, where this is not an obvious risk, the fact that the complainant has not disclosed his/her identity can indicate that the complaint is less serious, is malicious or is politically motivated
- (iii) a significant period of time has elapsed since the events which are the subject of the complaint. This is both because, where a matter is serious, it would be reasonable to expect the complainant to make a complaint promptly, and because the passage of time may make it more difficult to obtain documentary evidence and reliable witness evidence
- (iv) the complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter. This could be where the matter is such that there is unlikely to be any firm evidence on the matter.

6 Confidentiality

As a matter of fairness and natural justice, a member should usually be told who has complained about them and what the complaint is about. There may be occasions where the complainant requests that their identity is withheld. Such a request should only be granted in circumstances which the IAP consider to be exceptional, for example: -

- (a) the complainant has reasonable grounds for believing that he/she will be at risk of physical harm if his/her identity is disclosed
- (b) the complainant is an officer who works closely with the member and they have a reasonable fear of intimidation or victimisation if their identity is disclosed
- (c) the complainant suffers from a serious health condition which might be adversely affected if his/her identity is disclosed. The IAP may wish to request medical evidence.

7 Withdrawing complaints

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

- (a) Where the complainant submits further evidence demonstrating that the complaint was ill-founded, it may be appropriate for the IAP 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.
- (b) Where the alleged misconduct is simply a matter of alleged failure on the part of the respondent to treat the complainant with respect, and raises no wider issues of public interest, the IAP will normally accept such withdrawal.
- (c) However, where the complaint raises issues of wider public interest, it may be appropriate for the IAP to ensure that such wider issues are formally investigated and resolved.

8 Review

Where the IAP has resolved to take no action in respect of a matter (that is, not to refer the matter to the Standards Board for England for investigation, and not to refer the matter to the Monitoring Officer either for investigation or for other appropriate action), the complainant may request the Review Panel to review the decision of the IAP.

Such a review shall be conducted in two stages:

- (a) First, the Review Panel will determine whether the original decision of the Initial Assessment Panel was unreasonable on the basis of the information available to the IAP at the time of its decision and in accordance with these approved criteria for assessment. This review shall be conducted on the basis of the original complaint, the Monitoring Officer's report to the IAP, the decision-notice of the IAP and any information contained within the complainant's request for a review. Note that this is a review of the initial decision, rather than a reconsideration of the matter de novo.
- (b) Second, the Review Panel shall consider whether there is any new evidence which demonstrates that the initial assessment decision is no longer the correct decision. This consideration shall take into account any new information provided by the complainant and/or the Monitoring Officer.

If the Review Panel determines that the initial decision was unreasonable, or that new information now available to the IAP demonstrates that the original decision is no longer the correct decision, it shall take a new decision in relation to the matter in accordance with these approved criteria.