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REPORT TO:	STANDARDS COMMITTEE	AGENDA ITEM: 9
DATE OF MEETING:	21ST JULY 2009	CATEGORY: DELEGATED
REPORT FROM:	MONITORING OFFICER	OPEN
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SUBJECT:	MONITORING OFFICER 'OTHER ACTION' GUIDANCE	REF: AGM/JB

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## **1.0 Reason for Exempt**

1.1 Not applicable.

## **2.0 Recommendations**

2.1 The Standards Committee is asked to:-

- (a) note the guidance issued by the Standards Board for England in relation to 'Other Action'; and
- (b) adopt the assessment criteria in relation to Monitoring Officer 'Other Action', as set out in the Standards Board for England guidance at paragraph 23 and keep that under review, bringing a report back to a future Committee if and when necessary.

## **3.0 Purpose of Report**

3.1 The Standards Board for England (SBE) has issued guidance on 'Other Action', which discusses what 'Other Action' is, what it can involve, when it is appropriate and what to do if it is not successful. It also addresses the role of the Monitoring Officer, adjournment of assessment committee meetings and explains why Other Action closes the opportunity to investigate. The guidance is being brought to the attention of Members, who are asked to adopt the assessment criteria, as set out in the guidance.

## **4.0 Detail**

4.1 Members will be aware that under the Local Assessment regime which has been operative from 8th May 2008, the Standards Sub-Committee (Initial Assessment) has 3 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 for England (SBE) or take no action.

4.2 If the Sub-Committee decides to refer a complaint to the Monitoring Officer, it can direct them to investigate the matter or alternatively take steps other than carrying out an investigation. This is known as 'Other Action'.

4.3 The Sub-Committee can direct a Monitoring Officer to:-

- arrange for a Member to attend a training course
- arrange for a Member and complainant to engage in a process of conciliation
- take any other steps (not including an investigation) which appear appropriate

4.4 Members will be aware that they have directed the Monitoring Officer to undertake Other Action on two occasions and the guidance confirms the process and procedures that were undertaken and supports the way in which these directions were undertaken.

4.5 It should be remembered that a referral for Other Action does not mean that the Member has been found to have done anything wrong and, therefore, it is very important that the action proposed does not imply this. Therefore, Other Action cannot take the form of requiring the subject Member to apologise.

4.6 It should be remembered that the Standards Sub-Committee (Initial Assessment) can only direct a Monitoring Officer to take Other Action. It has no power to direct anyone else to do so.

4.7 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. It must be emphasised that a decision to direct the Monitoring Officer to take Other Action is an alternative to an investigation and such, a referral is not to find out whether the Member breached the Code of Conduct, and it will never result in a finding that the Member has or has not failed to comply with the Code.

4.8 The Standards Sub-Committee (Initial Assessment) must not refer an allegation for Other Action without consulting the Monitoring Officer. The SBE believes that Other Action is most beneficial when used to deal with systemic problems, rather than individual ones.

4.9 In the Other Action guidance, the SBE has set out factors that might be considered when the Sub-Committee is contemplating referring matters for Other Action. A copy of the guidance is attached at **Annexe 'A'**.

4.10 It is proposed that those items found on page 7 of the guidance, at paragraph 23, be adopted by the Committee, to act as the assessment criteria, which will detail the matters that a Standards Sub-Committee (Initial Assessment) or Standards Sub-Committee (Review) will take into account when deciding what action, if any, to take. They include:-

- the same particular breach of the Code by many Members, indicating poor understanding of the Code and the Authority's procedures;
- a general breakdown in the 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.

- 4.11 Once the Monitoring Officer receives a referral with a direction to take Other Action, they must deal with the matter in accordance with that direction. It should be noted that the Monitoring Officer does 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. The Monitoring Officer must submit a written report back to the Sub-Committee which referred the matter within 3 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.
- 4.12 It is then for the appropriate Sub-Committee to consider the report and decide whether it is satisfied with the action described. If the Sub-Committee is satisfied with the action described in the Monitoring Officer's report, the matter is then closed. If it is not satisfied, it must give another direction to the Monitoring Officer which must again be to take some kind of Other Action. It should be noted that, at this stage, the Standards Committee cannot decide that the matter should be investigated.
- 4.13 There is no formal route for dealing with a Member who categorically refuses to comply with Other Action. However, the SBE believes that deliberate and continued failure to co-operate with a Monitoring Officer who is trying to carry out the directions of a Sub-Committee may potentially amount to conduct which brings the office of Councillor into disrepute. The Standards Committee could only consider this matter if a complaint was received, stating that a Member did not co-operate with Other Action in relation to a previous complaint. At this stage, the Standards Sub-Committee (Initial Assessment) should only assess the complaint about the failure to co-operate and should not take into account the conduct which led to the original complaint.
- 4.14 If the complaint is accepted for investigation, then it is vitally important that any investigation focuses on the lack of co-operation and not the original complaint that led to the Other Action. Otherwise, there is a danger that the original complaint will be resurrected.
- 4.15 Once a Standards Sub-Committee (Initial Assessment) has decided to refer a matter for Other Action, this becomes the way forward in that particular case. Even if the Sub-Committee is not satisfied that the Other Action taken has achieved the aim of the direction, it cannot then decide the matter should be investigated. There is no power under the legislation that allows the case to be referred on for investigation if Other Action is perceived to have failed. This is due to the fact that, in some circumstances, it may risk deliberate non-cooperation with the action

prescribed in order to secure an investigation. Also, there is a risk that Other Action will not be taken seriously if it is perceived merely as a precursor to investigation.

## **5.0 Financial Implications**

- 5.1 South Derbyshire District Council is responsible for standards issues, not only in relation to District Council Members, but also in respect of Members of the Parish Councils in our District. However, it should be noted that there is no mechanism in the legislation to recharge Parish Councils for the cost of undertaking Other Action.

## **6.0 Corporate Implications**

- 6.1 Article 8.02 of the Council's Constitution provides that a role of the Standards Committee is to assess all written complaints alleging a breach of the Members' Code of Conduct against a Councillor or Co-opted Member, review such decisions and hear and determine any allegations. Obviously, one of the options open to a Standards Sub-Committee (Initial Assessment) is referral to the Monitoring Officer for Other Action.

## **7.0 Community Implications**

- 7.1 The Council's Standards Committee plays a vital role in promoting and maintaining the highest standards of conduct by Councillors of South Derbyshire District Council and all the Parishes in its area.

## **8.0 Background Papers**

The Standards Board for England 'Other Action' guidance