



22 April 2009

Andrea G McCaskie

Head of Legal & Democratic Services and Your Ref: AGM/JB
Monitoring Officer

South Derbyshire District Council

Civic Offices

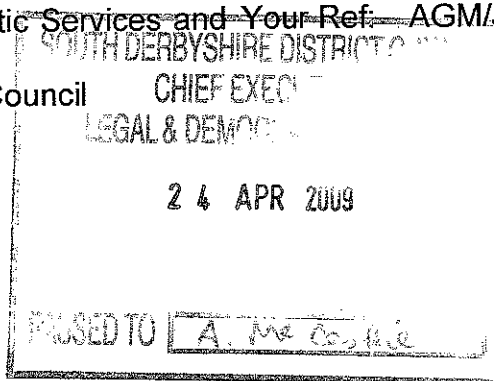
Civic Way

Swadlincote

Derbyshire

DE11 0AH

Our Ref: 090422 McCaskie



Dear Ms McCaskie,

Local Assessment of Complaints - Monitoring Officer 'Other Action'

Thank you for your letter of 19 March, enclosing previous correspondence dated 12 February, about the local assessment of complaints and 'other action'. Your letters have been passed to me for response because my team has policy responsibility for the local authority members' conduct regime.

There is no doubt that local authority elected members who abuse their position or abuse others should be brought to book. That is what the conduct regime is there for. But often cases are not so clear-cut and can be the result of more complicated, deep seated issues; a breakdown in working relationships perhaps, or a long standing dispute over a contentious issue, or lack of training.

Recognising this, Standards Board investigators, several years ago, sought and received the power to use their discretion in certain cases and after examining a matter to recommend an action other than full investigation – typically facilitating mediation between warring parties. The Standards Board consider that such an approach often yielded the most successful and longstanding solutions.

Hence, when the new ethical framework was introduced last year, alternative action was built into the system at an early stage. The devolved regime gives standards committees, where they consider the merits of individual cases deem it appropriate, the option to refer a matter for alternative action rather than investigate it. This means that instead of an allegation of misconduct resulting in a full investigation and possibly censure, the matter can be quickly addressed at an early stage through alternative action, such as mediation, training or a review of the local authority's procedures. Under the devolved conduct regime, indications are that around 9% of allegations result in their being referred for alternative action.

This is no quick fix, and it will not be right in all circumstances, there is a right time and place for it to be used. But it is a useful tool in that it recognises that a problem has arisen and it attempts to address that problem in the most pragmatic way possible. Importantly, such a recommendation does not imply guilt. This course of action is consistent with other regimes which deal with complaints about individuals.

I should be clear that we are not advocating that all allegations a local authority receives should be dealt with by action other than an investigation, or that there should be any default approach. The suitability of alternative action is very much dependent upon the nature of the allegation. However, such a measure lends itself to allegations that might be judged to be less serious, where alternative action might be the most proportionate and cost effective way of resolving an allegation.

We are aware of concerns that when an allegation is referred for action other than investigation, the subject of the allegation is not afforded an opportunity to have their name cleared. However, we consider that in terms of the conduct regime, this concern is without foundation.

We do not for a moment underestimate that the subjects of allegation, breach of the code, innocence and guilt are all very sensitive matters. Reputations are important in local democracies where the candidate and the voter trade in the currency of trust. However, let me reiterate, and as explicitly stated in the guidance issued by the Standards Board, where a decision is made to refer a matter for alternative action, everyone involved in the process should be made aware that the purpose of alternative action is not to determine whether an individual has failed to comply with the code of conduct and it should be clear that no finding of guilt or innocence can or should be made.

I note your remark about failure to undertake alternative action not being an automatic breach of the Code. There is no intention at this time to make further changes to the legislation that underpins the conduct regime with regard to alternative action.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. McAllister', with a stylized flourish at the end.

Stephen McAllister