

## Standards Committee – 21 July 2014

### Review of Elected Member Complaints 2013/14

#### Summary of report:

The report is to provide information to Elected Members in respect of complaints received by the Monitoring Officer concerning allegations made about breaches of the Council Code of Conduct by Elected Members.

#### Background papers:

None

#### Recommendation:

1. To note the content of the report and Appendices

#### 1.0 Background

- 1.1 The Arrangements for Dealing with Complaints against Elected Members was approved by Walsall Council at an extraordinary meeting of the Council on 25 June 2012.
- 1.2 Under the arrangements for dealing with complaints the monitoring officer has been given delegated authority to every complaint brought against elected members under the Council code of conduct. The monitoring officer will review every complaint, and after consultation with the councils Independent Person, will take a decision as to whether or not the complaint merits formal investigation. It is envisaged under the arrangements that this will normally take 10 working days to determine following receipt of a complaint.
- 1.3 There is no right of appeal against this decision, and to date no complainant has ever raised an issue regarding this. The only possible right challenge therefore in respect of this would be by way of judicial review of the monitoring officer's decision.
- 1.4 Over the past 12 months the Council has received in total 11 complaints alleging that elected members have breached the Council Code of Conduct. These 11 complaints have been reviewed and there have been findings in relation to 8 of the cases that there was no breach of the code of conduct as alleged. In respect of the other 3 cases resolution was agreed with the complainant which meant that the complaints process did not need to continue.
- 1.5 Six of the complaints were in relation to elected members showing a lack of respect. Four of those complaints related to member behaviour in committee meetings. Two of them arose out of planning committee meetings and one

from full council. As Monitoring Officer I would expect complaints to arise out of planning committee meetings due to the adversarial nature of such meetings.

- 1.6 There were three complaints alleging conflict of interests however when reviewed these were not well founded and arose out of a lack of understanding of a Councillor's role in dealing with constituent issues.
- 1.7 Whilst to date there has been no complaint about a lack of appeal against the Monitoring Officer's decision this part of the procedure should be kept under review. However this would add more expense and complexity to the procedure. One of the reasons for the abolition of the Standards Board for England and the changes to the standards regime was to streamline the process of investigating complaints, and save resources. The current regime is quicker and more efficient in dealing with complaints. There is therefore a balance that needs to be struck.
- 1.8 The Independent Person role has kept an element of independence to the complaints process and provided effective challenge and scrutiny to the decision making process. One Independent Person has resigned due to personal issues therefore the council should recruit another Independent Person to support the complaints process. The Independent Person is crucial to the review of complaints.
- 1.9 Elected Member behaviour in meetings has comprised three out of the six lack of respect complaints that have been made to the Monitoring Officer. It has to be remembered that council meetings are open to the public, apart from a few limited circumstances, and in some meetings such as planning and licensing members of the public may have an active role to play. It is therefore important that elected members maintain a high standard behaviour in meetings. If they fall below the standards of behaviour expected it is for the chair of the meeting to deal with such behaviour in the first instance. However if behaviour is persistent or serious the matter should be dealt with under the council code of conduct should a complaint be made. Passion is an integral part of politics and debate can sometimes be heated and vigorous however there is still a line that should not be crossed. Whilst the Standards Board for England has been abolished regard should still be had to the case reviews it produced and the guidance it has given on standards matters. The Standards Board for England gave a wider margin for elected member behaviour in debate and did not want standards to fetter the passion of politics. [See Appendix 1 – Herewith]
- 1.10 In Walsall with the narrow numerical margins between the political groups there is probably more tension in council meetings, which has lead to heated debate in the chamber over the last six months. The Monitoring Officer will be writing to all elected members just to remind them of their responsibilities under the council code of conduct in respect of behaviour in council meetings. [See Appendix 2- Herewith].
- 1.11 In respect of the complaints from constituents the Monitoring Officer has produced a brief note to assist elected members in terms of understanding the wide variety of roles that they undertake.

1.12 Elected Member conduct remains of a high standard as the total number of complaints for 2013/14 would seem to indicate. The nature of the complaints made has also not been of significant gravity even if proven.

## **2.0 Resource and legal considerations:**

2.1 None directly related to this report. The complaints procedure is being managed within Legal and Democratic Services from existing resources. If there is a considerable increase in complaints or the council receives a very serious and complex complaint, consideration may need to be given to outsourcing some work if the demand cannot be met from existing resources.

## **3.0 Performance and Risk Management issues:**

3.1 Performance and risk management are a feature of all council functions. It is important that council policies and procedures are reviewed and updated on a regular basis. If the council fails to do this there is an increased risk that the council will be subject to legal challenge or litigation.

3.2 In terms of performance it is important that both Elected Members have a clear framework of standards to follow in delivering services to the community. These frameworks provide accountability and transparency in respect of the way in which the council delivers services.

## **4.0 Equality Implications:**

4.1 In maintaining up to date policies and procedures the council will ensure that services are delivered fairly in an open and transparent manner. There are specific requirements in both codes that elected members and officers observe equalities. It is important that complaints are dealt with in a fair and transparent manner.

## **5.0 Consultation:**

5.1 There is no requirement to consult on this report.

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# *the Case Review*

*number two*

## Chapter 2

# Political debate and the Code of Conduct

Members of the public expect their elected members to debate issues vigorously, explain their positions clearly, and take a stand on issues of local importance. They also expect members to uphold certain standards of behaviour while doing so. The Code of Conduct aims to balance these expectations.

The public expects members to uphold the law; treat political opponents, officers of their authority and the public with respect; and avoid bringing their office or authority into disrepute. The Code of Conduct aims to promote positive, vigorous political debate while setting some standards for what members can and cannot do and say in the course of their duties.

The Standards Board for England believes it is perfectly acceptable and desirable for members to take a vigorous approach to disputing arguments, but they should be careful that their language and approach do not cross the boundary into disrespect. In the first volume of the *Case Review*, we advised:

*Differences of opinion, and the defence of those opinions through members' arguments and public debate, are an essential part of the cut-and-thrust of politics.*

*A very clear line has to be drawn between the Code of Conduct's requirement of respect for others (including members of the authority with opposing views) and the freedom to disagree with the views and opinions of others...*

*Whilst The Standards Board for England and the ethical standards officers are determined to take a firm line on bullying of officers, this does not mean that members cannot express disagreement with officers. This disagreement might, in the appropriate context, manifest itself in the criticism of the way in which an officer or officers handled particular matters. In the everyday running of a local authority, it is inevitable that members may have disagreements with officers from time to time. It is only where members' conduct is unfair, unreasonable or demeaning that paragraph 2(b) will be relevant.*

During the course of a heated debate, members can sometimes get carried away and resort to name-calling, abusive heckling and other disruptive or disrespectful behaviour. This is inappropriate and unprofessional, and in some cases it will constitute a breach of paragraph 2(b) of the Code of Conduct, which requires members to treat others with respect. It could also potentially bring the member's office as a councillor, or the standing of the authority as a whole, into disrepute.

Standards committees, leaders and senior officers can play an effective role in stopping this kind of inappropriate behaviour and improving the ethical climate of their authorities. Standards committees can help prevent such lapses by setting out clear protocols for members taking part in debates and arranging training for members across the authority. Political parties can encourage their members to concentrate on ideas and arguments rather than attacking individuals. When inappropriate behaviour does occur, firm chairing of meetings is critical to prevent low-level misconduct recurring, or even escalating into more serious incidents.

These sorts of situations are good examples of cases where informal resolution of disputes is highly appropriate. Mediation, informal discussions between the people involved – perhaps including the leader or chair of the council or chair of the standards committee – and additional training, can all be useful means of resolving ill feelings and preventing future misconduct.

Inevitably, some cases will result in allegations of misconduct to The Standards Board for England. We look at a range of issues before deciding whether allegations of disrespectful behaviour should be investigated. Clearly, the allegation must indicate behaviour that, if proven, constitutes a breach of the Code of Conduct. In addition, it must be serious enough to warrant an investigation.

The Standards Board for England's referral criteria are designed to ensure that we only investigate the most serious cases that have the potential to damage the reputation of local government, or that otherwise warrant sanctions by The Adjudication Panel for England or the relevant standards committee.

Members must expect to encounter occasional ill-considered or rude commentary in the course of their duties. As fellow politicians, they have a public platform on which to defend themselves and their ideas, and have the opportunity to respond in the appropriate forums. Allegations to The Standards Board for England about disrespectful comments made in the course of political debate are only likely to be referred for investigation where there is clear and excessive abuse of people rather than ideas. Allegations of simple name-calling, political point-scoring or mild rude and inappropriate language would not be serious enough to refer for investigation by an ethical standards officer. The Standards Board for England believes such behaviour should be controlled by the chair of a meeting.

However, in some cases, disrespectful behaviour will be serious enough to warrant investigation. In particular, this may happen if the abuse is malicious, persistent, disruptive, accompanied by threats of violence, or if a member abuses officers or members of the public who do not have the same platform to defend themselves as councillors do. The public should not be expected to put up with such behaviour from their representatives.

A complaint may also warrant investigation if it is about a clear pattern of misconduct that is damaging the authority, where there is no other avenue left to deal with it.

It is important to note that the Code of Conduct is not a substitute for legal action in cases where such action would be more appropriate. For instance, The Standards Board for England will not refer a case simply because it involves allegedly defamatory remarks, and cannot rule on whether a member has been defamed. The Standards Board for England is not there to replace the court system and will only refer allegations that disclose a breach of the Code of Conduct and warrant investigation on those grounds.

## Crossing the line

In case SBE6763.04, a member was alleged to have used offensive language towards another member during part of a debate. The member allegedly responded to an argument by saying “that’s a load of crap”. The Standards Board for England decided not to refer the matter for investigation on the grounds that the remarks, if indeed they had been made, appeared intended to attack an idea rather than another member personally.

After this ruling, the member allegedly used extreme foul and abusive language towards all the members of an opposing party and boasted that he could make such comments with impunity because The Standards Board for England had not referred the previous complaint. The complainant said that he had never witnessed such foul and abusive language and conduct in the council chamber in 25 years of being a councillor. This new complaint was referred for investigation because the alleged abuse was extreme and deliberately offensive to other members, rather than part of a legitimate debate.



## Personal or political?

In case SBE255.02 (APE0104), The Adjudication Panel for England distinguished between the effects of comments on fellow councillors and officers of the council.

The complainant alleged that a member brought his authority into disrepute by publishing untrue statements about members of the authority and the clerk. The member had publicly accused members and the clerk of financial impropriety. The complainant also alleged that the member accused the council of being intolerant of difference and repeatedly accused other members of being racist.

The Adjudication Panel for England tribunal considered that a distinction should be made between the accusations against the other members and those made against the clerk because the former have a public political platform on which to defend themselves. Although the member had sometimes used extreme language, the tribunal did not consider the allegations of mismanagement to be malicious, and these could be considered part of the cut and thrust of political debate.

However, the tribunal took a different view of the comments concerning the clerk, who in their view would have no way to defend himself without recourse to the courts. The tribunal therefore decided that the member had failed to treat the clerk with respect and brought his office and authority into disrepute.

The tribunal found that general criticism of intolerant practices by the council was a reasonable ground for public debate. However, it found that the member had gone far beyond that by making personalised allegations of racism against individual members for which there was no supporting evidence. These accusations were not reasonable even in the context of political debate.

The tribunal found that the member used extreme language intended to deliberately offend, causing considerable distress to the members concerned and demeaned them in the eyes of friends and colleagues. In doing so, the member brought both his office and authority into disrepute and failed to treat his fellow members with respect.

The member was disqualified for 18 months.

## Degrees of disrespect

Different kinds of disrespectful behaviour may be handled in different ways, particularly in relation to the extremity of language involved, the identity of the people involved, and the context and intent of remarks.

In case SBE332.02, SBE371.02 and SBE539.02, several complainants alleged that a member failed to treat others with respect, brought his authority into disrepute and used his position to improperly secure a disadvantage for a person in a series of incidents of misconduct. These complaints related to a number of issues that were handled separately.

In the first part, the complainant alleged that the member had insulted and threatened another member during a public council meeting, calling him a “bald headed git” and saying “I’ll wait for you outside”. The matter was referred to the council’s standards committee, which found that the member had failed to treat the other member with respect and brought his office or authority into disrepute. It considered this a serious breach of the Code of Conduct and censured the member — the maximum penalty available, because the member had already been disqualified and was no longer serving on the council.

In the second part, the complainants alleged a series of incidents of misconduct, including bringing the authority into disrepute by constantly criticising the authority in the press, at council meetings and in personal letters, particularly criticising the procedures followed for setting a precept. He was also allegedly rude and hostile to staff of the civic centre and external bodies who advised the council. The ethical standards officer considered that, although the member was entitled to criticise the council’s policies, he occasionally used inappropriate language in letters, meetings and the press that undermined the council. The ethical standards officer also considered that the member had failed to treat the civic centre staff and the external adviser with respect by making derogatory remarks about them. However, he did not make these remarks directly to those people and made the comments because he was unhappy with aspects of their own behaviour. Considering all these factors, the ethical standards officer found that no action needed to be taken.

Other aspects of this case are discussed in chapter 5 on page 46.

## The poison pen

Published information is subject to the same criteria as verbal discussion. Members have the same latitude to engage in political debate on their websites, in their campaign leaflets, in advertising and so on, as they have when speaking in public, but The Standards Board for England treats written abusive personal attacks and threats equally seriously.

In case SBE68.02, SBE82.02, SBE83.02, SBE 134.02 and SBE401.02 (APE 0105, APE0106 and APE0107), several complainants made a range of allegations against a member, including that he had published false allegations in a party political leaflet. The member's leaflet claimed that the authority was investigating a leaflet issued by another party which had accused his own party of mishandling the clean-up of an estate, as well as allegations that two members of the other party had intimidated a council officer into delaying the clean-up. The Adjudication Panel for England tribunal found that the member knew these accusations were false when he made them, that he had misled officers of the authority and the ethical standards officer in their attempts to investigate the matter, and lied about the existence of evidence. Taken together with other misconduct, involving bullying and abuse of employees and a member of the public, the member was disqualified for three years. You can read more about this case in chapter 5 on page 46.