

DECISION NOTICE: REFERRAL TO THE STANDARDS BOARD FOR ENGLAND

Reference ADC 2009-08 (c)

Complaint

On 19th May, 2009, the Standards Assessment Sub Committee of this Authority considered a complaint from Mr. J.R. Christopher, Deputy Chief Executive, Inward Focus and Monitoring Officer concerning the alleged conduct of Councillor J.M. Bulmer a Member of Ashfield District Council.

We have set out a general summary of the complaint below:

It is alleged by the Complainant that Councillor J.M. Bulmer breached the following section of the Members' Code of Conduct:

- Paragraph 3(2) (a) – you must not do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006).

Briefly, at the meeting of the Council on 23rd March 2009 the Council was asked to consider the retirement of Mr. A.G. Mellor from the position of Chief Executive and the consequential appointment of an Interim Chief Executive. As part of this Mr. P.G. Marshall and the Complainant both put themselves forward as candidates for the interim post. They were both required to give presentations to the Council and answer questions.

It is alleged that prior to the Council meeting on 23rd March, Councillor Bulmer tried to convince as many fellow Members as would listen not to appoint the Complainant as the Interim Chief Executive on the grounds of the Complainant's heart trouble. It is alleged that Councillors Mrs. Harvey and Zdrozny have both confirmed to the Complainant that this was the case.

Decision

In accordance with Section 57A(2)(b) of the Local Government Act 2000, as amended, the Standards Assessment Sub Committee of the Standards Committee decided to refer the allegation to the Standards Board for England, for the following reason:-

- The Standards Assessment Sub Committee believes that the number of members involved would make it difficult for the authority to deal with the complaint.

- The Standards Assessment Sub Committee believes that the status of the complainant would make it difficult for the authority to deal with the complaint.
- The Standards Assessment Sub Committee believes that there is a potential conflict of interest for so many members of the standards committee that it could not deal with the hearing of this allegation following an investigation.
- The Standards Assessment Sub Committee believes that there is a potential conflict of interest for the Monitoring Officer or other officers and that suitable alternative arrangements cannot be put in place to address the conflict.

This decision notice is sent to the person or persons making the allegation, the member against whom the allegation was made and the Standards Board for England.

What happens now?

The Standards Board for England will now decide whether to investigate this allegation itself. It is not bound to take charge of the case, and has the discretion to refer the matter back to the Standards Assessment Sub Committee, or to decide to take no further action in respect of the allegation. The Standards Board aims to make its decision within ten working days, and will write to the Standards Assessment Sub Committee when it has done so.

Terms of reference

Article 12 of the Council's Constitution sets out in full the role and responsibility of the Standards Committee. Paragraph 9.03(i) reads as follows:-

To determine appropriate action on all matters of complaint regarding breaches of the Code of Conduct. The determination of such matters shall where appropriate include the formation of sub committees. In these instances the Monitoring Officer, in consultation with the Chairman of the Committee, will be responsible for selecting three members from the membership of the Standards Committee to deal with any initial assessment, review and hearing. Where the matter involves a Parish Council Member, it will be a pre-requisite that one of the Parish Council representatives will be appointed (paragraph 9.02(c) refers).

The assessment criteria for dealing with complaints as approved by the Standards Committee is as follows:-

1. Initial Tests

Before assessment of a complaint begins, the Standards Assessment Sub Committee must be satisfied that the complaint meets the following tests:

a) *Is the complaint about the conduct of a member?*

The complaint must relate to one or more named elected or co-opted members of the district or parish councils covered by the Standards Committee.

b) *Was the named member in office at the time the alleged misconduct took place?*

c) *Was the Code of Conduct in force at the time the alleged misconduct took place?*

d) *If the complaint is proven, would there be a breach of the Code of Conduct which was operating at the time of the alleged misconduct?*

If the complaint fails one or more of these tests the complaint cannot be investigated and no further action will be taken.

2. Sufficiency of Information

The complainant must provide sufficient information to enable the Standards Assessment Sub Committee to conclude that there is prima facie evidence of a breach of the Code of Conduct. If insufficient information is available, the Standards Assessment Sub Committee will not normally refer the complaint for investigation or other action.

3. Seriousness of the Complaint

The Standards Assessment Sub Committee will not normally refer a matter for investigation or other action where the complaint appears to be trivial, vexatious, malicious, politically motivated or tit-for-tat.

4. Length of Time Which Has Elapsed Since the Alleged Misconduct

The Standards Assessment Sub Committee will take into account the length of time which has elapsed since the alleged misconduct took place. It will not normally refer the complaint for investigation or other action where

- (i) the alleged misconduct took place more than 6 months prior to the complaint being submitted, or
- (ii) the complainant became aware of the alleged misconduct more than 6 months prior to the complaint being submitted

unless there are exceptional circumstances such as a where conduct relates to a pattern of behaviour which has recently been repeated.

5. Public Interest

The Standards Assessment Sub Committee will determine whether the public interest would be served by referring a complaint for investigation or other action. They may consider that the public interest would not be served where a member has died, resigned or is seriously ill. Similarly if a member has offered an apology or other remedial action they may decide that no further action should be taken.

If the complaint has already been the subject of an investigation or other action relating to the Code of Conduct, or the subject of an investigation by other regulatory authorities, it is unlikely that it will be referred for investigation or other action unless it is evident that the public interest will be served by further action being taken.

6. Anonymous Complaints

Anonymous complaints will not normally be referred for investigation or some other action unless evidence is submitted to support the complaint which indicates a serious or significant matter.

7. Confidentiality

As a matter of fairness and natural justice, a Member should usually be told who has complained about them. There may be occasions where the complainant requests that their identity is withheld. Such a request should only be granted in circumstances that the Standards Assessment Sub Committee consider being exceptional. For example:

- a) The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed.
- b) The complainant is an officer who works closely with the member and they are afraid of the consequences to their employment if their identity is disclosed.
- c) The complainant suffers from a serious health condition which might be adversely affected if their identity is disclosed. The Standards Assessment Sub Committee may wish to request medical evidence.

8. Multiple Complaints

It is possible that complaints about the same or similar issue may be received from a number of different complainants. Whenever possible, all the complaints will be considered by the same meeting of the Standards Assessment Sub Committee. The Sub-Committee must still reach a decision in respect of each individual complaint.

9. Withdrawing Complaints

A complainant may ask to withdraw their complaint before the Standards Assessment Sub Committee has made a decision on it. The Sub Committee will have to decide whether to grant the request. For example, the Sub Committee may consider the following:

- a) Does the public interest in taking some action outweigh the complainant's request to withdraw the complaint?
- b) Could action, such as an investigation, be carried out without the complainant's participation?
- c) Is there a reason why the complainant has asked to withdraw the complaint? For example, have they been pressurised by the subject matter?

Additional Help

If you need additional support in relation to this or future contact with us, please let us know as soon as possible. If you have difficulty reading this notice we can make reasonable adjustments to assist you, in line with the requirements of the Disability Discrimination Act, 2000.

We can also help if English is not your first language you should contact the Monitoring Officer.

Signed **Date 20th May, 2009.**

Ian MacKay
Chair of the Standards Assessment Sub Committee.