

EAST HERTS COUNCIL

STANDARDS COMMITTEE - 1 APRIL 2009

REPORT BY THE MONITORING OFFICER

5. LOCAL ASSESSMENT REVIEW

WARD(S) AFFECTED: ALL

'D' RECOMMENDATION – that the report be noted.

1.0 Purpose/Summary of Report

1.1 To advise the Committee on the cases considered since local assessment was introduced and to inform the Committee of information from the Standards Board on local assessments.

2.0 Contribution to the Council's Corporate Priorities/Objectives

2.1 **Fit for purpose, services fit for you**

Deliver customer focused services by maintaining and developing a well managed and publicly accountable organisation.

Leading the way, working together

Deliver responsible community leadership that engages with our partners and the public.

3.0 Background

3.1 Local assessments have been in place for about ten months. The report looks at the Committee's case load and advice from the Standards Board on other action which is one of the options open to Assessment Sub-Committees when considering cases.

4.0 Report

4.1 The Standards Board has published an analysis of data submitted by Councils for the first three quarters of the local assessment system.

4.2 Standards committees

Quarterly returns indicate that:

- a typical Standards Committee in an authority without parishes has **nine** Members, including **four** independent Members
- a typical Standards Committee in an authority with parishes is slightly larger with **11** Members, including **four** independent Members and **three** parish representatives
- on average, District and Metropolitan Councils have the largest Standards Committees and police authorities have the smallest

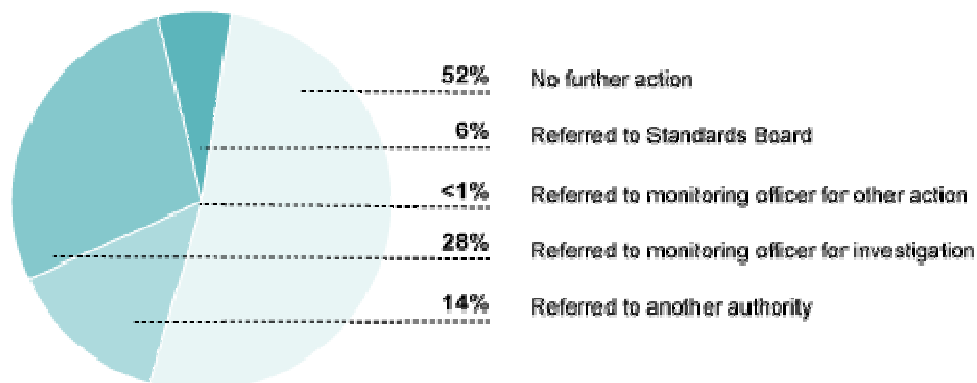
4.3 Case handling

A total of **2,030** cases have been recorded on quarterly returns so far. This covers the time period 8 May to 31 December 2008. Some **69%** of authorities have dealt with at least one case during the first three quarters. Of all the authorities with cases, the average recorded is **two** per quarter, a total of **six**. Generally there are fewer cases recorded now than under the old arrangements, but it is important to note that the first quarter started late due to the legislation not being introduced until 8 May 2008.

Of the complaints recorded, **56%** are from members of the public and **34%** are from Council Members. The remaining **10%** are from a combination of officers, parish or town clerks, MPs, monitoring officers, and those completing the form as 'other'.

4.4 Initial assessment

No further action is taken in **52%** of the cases recorded. The breakdown of initial assessment decisions is as follows:



A total of **344** requests for a review of 'no further action' decisions are recorded through quarterly returns. Of the **264** of these that are completed, **95%** of decisions remain at 'no further action'. The other

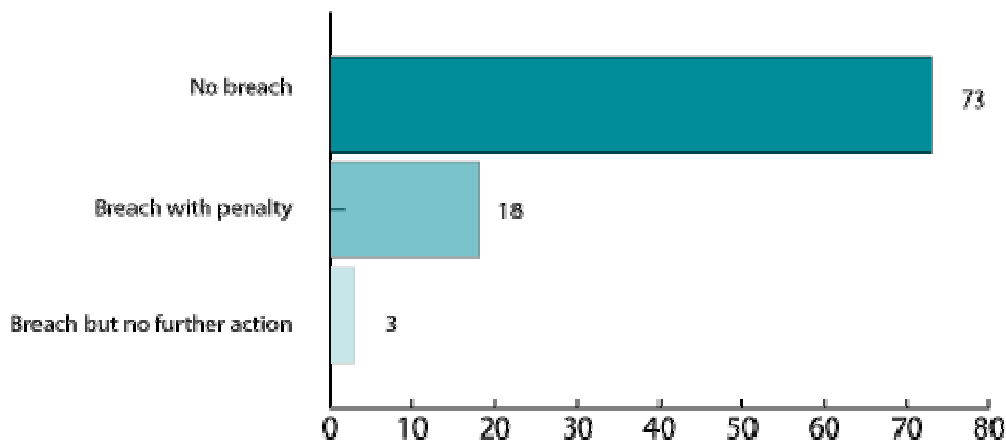
6% are either referred for investigation or referred to the Standards Board.

4.5 Investigations

There are 98 cases referred for investigation that have Standards Committee determination meeting dates recorded on quarterly returns.

The average length of time between the date of the decision to investigate and the date of the determination meeting is 80 working days. This figure discounts cases that are recorded as 1 day or less from decision to determination.

There are 94 cases with investigation outcomes recorded on quarterly returns. The breakdown of these is:



Percentages are:

Percentage	Outcome
78%	no breach of the Code
19%	breach with no penalty
3%	breach but no further action.

There are 39 breaches of the Code recorded under the 21 cases that were either breach with penalty or breach but no further action.

Parts of the Code that breaches are recorded against are listed below, sorted in descending order of number of occurrences. Failure to disclose a personal interest is the most common part of the Code that is breached.

Part of the code	Number of occurrences	Code description
Part 2 9(1)	8	Where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
Part 1 3(1)	7	You must treat others with respect
Part 1 5	7	You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute
Part 2 12(1)(a)	6	Where you have a prejudicial interest in any business of your authority you must withdraw from the room or chamber where a meeting considering the business is being held
Part 1 4(a)	3	You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature

Part 1 6(a)	2	You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage
Part 1 3(2)(b)	1	You must not bully any person
Part 1 6(b)	1	You must, when using or authorising the use by others of the resources of your authority, act in accordance with your authority's reasonable requirements, ensure that such resources are not used improperly for political purposes (including party political purposes); and have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986(15).
Part 2 12(1)(c)	1	Where you have a prejudicial interest in any business of your authority you must not seek improperly to influence a decision about that business

Part 2 12(2)	1	Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.
Part 3 13(1)	1	You must register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.
Other (please specify)	1	Also Principle 2 - honesty and integrity

5.0 East Herts Caseload

Quarter	Case Details	Date received by EH	Source of complaint	Referral Decision	Date of decision whether to refer
	EHDC/1/08	14/10/08	Parish / Town Clerk	Referred to MO for investigation	30/10/08

2008 4 th Quarter	EHDC/2/08	14/10/08	Member	Referred to MO for alt. measure – apology	30/10/08
	EHDC/3/08	03/12/08	Council Officer	Referred to MO for investigation	22/12/08
	EHDC/4/08	03/12/08	Council Officer	Referred to MO for investigation	22/12/08
Quarter	Case Details	Date received by EH	Source of complaint	Referral Decision	Date of decision whether to refer
2009 1 st Quarter	EHDC/01/09	20/01/09	Public	Referred to MO for investigation	25/02/09
	EHDC/02/09		Public	Referred to MO for investigation	25/02/09
	BSTC/01/2009	02/02/09	Town Councillor	No Action	06/03/09

6.0 Local Assessment Decisions Involving Other Action

Referral to a monitoring officer for alternative action (or other action) is an option open to an Assessment Sub-Committee when considering a new complaint or complaints – though it must consult its monitoring officer before doing this.

Alternative action is a useful tool in specific circumstances where the allegations being made may be symptomatic of systemic problems within the Council, which are more significant than the allegations in themselves.

In such cases, the Assessment Sub-Committee needs to be satisfied that even if the specific allegation had occurred as alleged, it would not be in the public interest to investigate with a view to sanctioning. The Assessment Sub-Committee must also be satisfied that other action could assist the proper functioning of the Council. If alternative action is used, there is no investigation, no findings of fact and consequently there should be no conclusions drawn about whether members have complied with the Code of Conduct.

Examples of situations where alternative action might be appropriate include where there is evidence of poor understanding of the Code. They also included situations where there has been a breakdown of relationships within a Council to such an extent that it becomes difficult to conduct the business of the Council.

All involved in the process will need to understand that the purpose of alternative action is not to find out whether the Member breached the Code. The decision is made as an alternative to investigation. In addition, the purpose of using alternative action should be made clear, as should the time when the action is concluded.

Once alternative action is initiated, they cannot go back and ask the monitoring officer to conduct an investigation. Furthermore, it should be seen as a way of moving forward constructively, rather than reiterating issues that have caused conflicts in the past.

There are potential limitations to using alternative action – especially that it should not be seen as a ‘quick fix’. It is not always a cheaper substitute for investigation and requires resources for training, mediation and other steps that could be carried out.

In *Bulletin 40* issued by the Standards Board an article considered the possibility of adjourning local assessment decisions to seek

cooperation with other action from the subject Member. The Board invited views on what Councils thought should constitute the most appropriate practice. A total of 29 authorities responded. Of the responses received, 14 were strongly against adjournment and eight were in favour. In addition, three authorities felt that the alternative suggested in the article would be preferable. The alternative suggested was that when the Standards Committee sends the case for investigation, it lets the monitoring officer know that it might not consider the case to be as serious, if the Member is willing to comply with other action. This would mean that if the Member indicated they would comply with other action, then the monitoring officer should feel free to ask that the case be returned to the Standards Committee.

The remaining four responses expressed the view that either adjournment of the assessment decision or this alternative approach would be acceptable.

Feedback from the responses received indicated that the concerns stated in the article about adjourning a local assessment decision far outweighed the advantages. For those against adjournment, the main concerns were:

- There is a danger that contacting the subject Member before a decision has been made could ultimately suggest that the Member has breached the Code, without there being a finding of fact.
- A Member who refuses to engage with proposed alternative action could undermine confidence in the Standards Committee and public perceptions of justice.
- Adjournment would risk not meeting the 20 working day target for decision.
- Significant costs could be involved even if the matter was relatively trivial.

Those in favour of adjourning before making a decision gave the following reasons:

- The Member may be more likely to cooperate if they were made aware of the options available.
- The Standards Committee would be more confident when making a decision in the knowledge that the Member would/would not engage in other action.

- Other action allows the monitoring officer to seek resolution locally without a formal investigation or public hearing and may therefore prove more cost effective.
- Adjourning an assessment decision to seek cooperation from the subject Member may increase the chances of other action succeeding.

The Standards Board intend to issue further guidance on other action in 2009, incorporating the issue of adjournment.

7.0 Consultation

7.1 There has not been any consultation.

8.0 Legal Implications

8.1 Investigations at a local level are currently manageable however they are time consuming and any increase in the number referred for investigation could result in unacceptable delays. Further advice on appropriate procedure when 'other' action is to be considered is urgently needed to ensure natural justice requirements are met and Members are not made to feel 'guilty' without a proper investigation of the issue.

9.0 Financial Implications

9.1 It is envisaged that any costs will be contained within existing budgets.

10.0 Human Resource Implications

10.1 As detailed in the report.

11.0 Risk Management Implications

11.1 Effective and efficient determination of complaints is important to maintain confidence in the local assessment process and to meet the needs of both complainants and Members.

Background Papers

Statistics and advice from the Standards Board

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