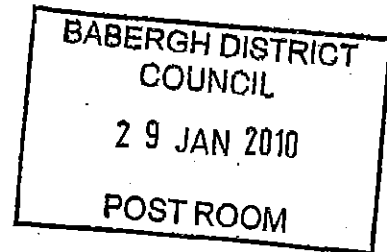


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Paper J217
Standards
for England

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27 January 2010

Dear Ms Saward

Feedback from the Annual Suffolk Standards Conference

Thank you for your letter of 24 December 2009. Your letter appears to have taken some time to reach us and so I apologise for the delay in responding.

1) Investigations and other forms of action are costly for authorities

Currently, as you will know, the cost of local investigations and any other action rests with the responsible authority. That is, the cost rests with the authority to which the relevant standards committee belongs.

Monitoring officers may require any authority, other than parish councils, to meet the reasonable cost of any advice and assistance they provide as part of an investigation. If a parish council incurs any costs as a result of assisting with an investigation then the monitoring officer can require the responsible authority to meet these costs. With the proviso that any costs incurred are reasonable.

Currently, Standards for England does not plan to propose changes to the present system for meeting the cost of investigations or other action.

Responsible authorities that have a large number of parish council within their area will often receive a higher proportion of complaints about members than authorities of a similar size. We recognise that this may place a financial burden on these authorities and this may be something you wish to raise directly with the Department for Communities and Local Government (CLG).

We would encourage standards committees to take a proactive approach if they feel that parish council members, within their jurisdiction, lack awareness of the Code. We appreciate that this can be difficult where there are a large number of parish councils in the area, and/or a large number of complaints to deal with. However, proactive

engagement with parish councils and promotion of the Code is likely to improve the conduct of members and reduce the number of complaints received. We are considering producing guidance in the future to help standards committees understand their wider role in promoting ethical standards of conduct.

2) Provision is needed to allow investigation of complaints if 'other action' fails

As well as being set out in statute, we believe there are sound reasons why complaints which have been referred for other action should not then be investigated.

Firstly, there are difficulties in determining if and why the action has 'failed' and may necessitate an investigation. This subjective judgement has the potential to increase dissatisfaction with the process for one or both parties and, in some circumstances, may risk deliberate non co-operation with the action prescribed in order to secure an investigation.

When an assessment sub-committee makes its decision to refer a matter for other action, this should be the course of action that is considered to be most appropriate for the case, and the system must support this decision as a valid alternative to investigation. There is a risk that other action will not be taken seriously if it is seen merely as a precursor to an investigation.

The issue of timeliness is also key for all parties when dealing with an allegation of misconduct. It is questionable as to how fair the process would be, for both the subject member and complainant, if it is extended for the duration of the other action taking place and the investigation that follows it.

As you have highlighted, there is also the risk that the case will be prejudiced where other action is undertaken before an investigation. Witnesses may become prejudiced, there may be problems obtaining evidence, and an investigation may be jeopardised if the issues are discussed in detail as part of a mediation process.

It is for all of these reasons that we believe it is appropriate that the decision to take other action closes the opportunity to investigate.

In some cases, other action may produce a more effective result than investigation. Examples of this may include where the authority to which the subject member belongs appears to have a poor understanding of the Code of Conduct and authority procedures, or where a breakdown in relationships within the authority is apparent. If, for example, there has been a pattern of allegations of disrespect or harassment, there are factionalised groupings within the authority, or there are ongoing employment issues apparent then an investigation may not be appropriate and it is important that all parties are clear about this.

When a monitoring officer has been given a direction to carry out other action, they should report back to the standards committee or ethical standards officer within three months on the outcome of their actions or with details of their proposed actions.

If the standards committee is not satisfied with the action specified in the report they can give the monitoring officer further directions about how to deal with the case but this cannot include a direction to carry out an investigation.

We also think, depending on the circumstances, that a member, having promised to do so, who does not co-operate with a direction of the standards committee to the monitoring officer may be in breach of the Code of Conduct, which could lead to a further complaint. Although we appreciate that this is not an ideal solution.

3) Provision is required to enable the Monitoring Officer to facilitate a solution to a complaint

Flexibility with complainants is restricted by s.57a of the 2000 Act which states that if an allegation is in writing; about a person who was a member at the time of the alleged event; and identifies a breach or potential breach of the Code, then the standards committee has to consider it.

Not all complaints meeting the test above need automatically go before the sub-committee, for example:

- If the same complainant is repeating or repackaging a complaint that has already been considered by the standards committee or previously by Standards for England
- If the complaint is really about a local authority service, decision or officer and should be fed into the corporate complaints procedure

Authorities may also adopt criteria to guide assessment sub-committees, so that even where a decision legally has to go before them, they have reasons to reject it without a lot of deliberation. These could be modelled on the criteria Standards for England used itself:

- the assessment sub-committee believe it to be malicious, relatively minor, or tit-for-tat
- the same, or substantially similar, issue has already been the subject of an allegation and there is nothing further to be gained
- the complaint concerns acts carried out in the member's private life
- it appears that the complaint is really about dissatisfaction with a council decision
- there is not enough information currently available to justify a decision to refer the matter for investigation
- except in the most serious cases, the complaint is more than two years after the alleged event.

Some monitoring officers ask complainants to confirm whether they are making a "formal" complaint, or what sort of redress they are seeking. This may be to arrange an apology without recourse to an investigation, especially where the member is willing to say sorry. Standards for England is listening to monitoring officers' experiences of using these avenues, although our advice is always that the complainant should be

made aware that a formal route exists, and that if they wish to go down it, that wish must be respected.

We are aware that some authorities have received complaints which can reasonably be regarded as 'vexatious' and that there are a handful of persistent complainants who use a range of different complaints procedures to press essentially the same point. We are concerned that the assessment of such complaints is not a good use of standards committee members' time or local authority resources.

We note the negative effect one individual might have on local democracy through making complaints of this kind and suggest that vexatious complaints may decrease public confidence and support for the standards framework. However, the framework at present does not allow leeway for standards committees not to deal with complaints so all such complaints have to go through the formal process at present.

We have asked CLG to consider including a provision in any revision of the regulations that a standards committee should set out criteria for these complaints. Such a provision could allow for delegation to the monitoring officer to deal with them (or to the chair of the standards committee if CLG are minded to introduce powers for the chair to exercise a pre-assessment role). In other legislation, such as the Freedom of Information Act, dealing with vexatious complaints is the responsibility of a single officer.

We also believe that further guidance on this issue would assist standards committees in making assessment decisions, and propose to develop our thinking further in this area, and issue revised guidance on this in the future. We intend to take views from the standards community on the types of complaints they consider may reasonably be regarded as vexatious or unreasonable and consider other organisations' approaches.

In our latest DVD, 'Assessment made clear', we include a scenario where the monitoring officer seeks to resolve a problem informally before a formal complaint is received in writing.

We believe that monitoring officers have the discretion to sort out disagreements in order to avoid the need for a formal complaint - but the nature of the potential complaint needs to be taken into account. This can only happen with the full agreement of the parties concerned, and no pressure should be applied on a potential complainant to deal with matters informally. Monitoring officers should not filter out valid complaints that have already been formally made.

We would like to thank you for taking the time to write to us with your comments on how the current framework is operating and views on how it could be improved. We are currently undertaking a review of the local standards framework and your views will feed into this process. Following the review we intend to write to CLG in March to recommend a number of changes we think they should consider making to the legislation that underpins the framework.

You may or may not be aware of the Standards Forum. The Standards Forum is an online community where council officers and standards committee members can network, ask questions, share good practice, make recommendations and discuss topics relating to the local standards framework.

We would encourage you to post some of the issues you have raised on the Forum and see whether other members of the standards community agree with the suggestions made.

The Forum currently has almost 1,000 registered users and this number is increasing every day. The Forum is for registered users only. If you or any of your members would like to register, please contact us at the email below.
forum@standardsforengland.gov.uk

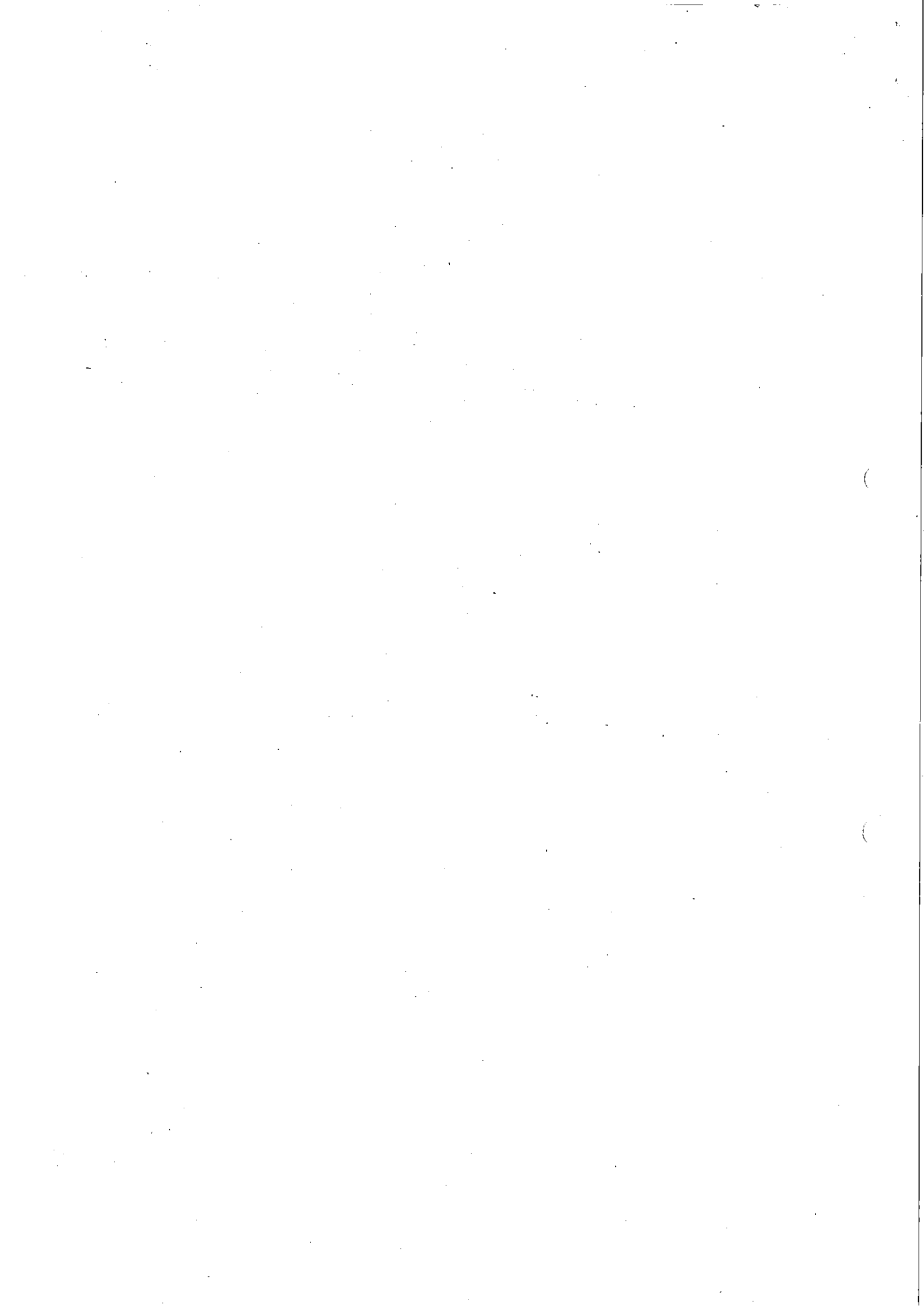
You can access the Forum via our website at
<http://www.standardsforengland.gov.uk/resources/TheStandardsForum/>

I hope this information has been of assistance. If you have any further comments or queries please do not hesitate to contact me.

Yours sincerely

J. Baldwin

James Baldwin
Guidance and Information Adviser





2004-2005
Supporting People
2006-2007
Waste and Recycling
2006-2007
Culture and Sport for
Hard to Reach Groups

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24 December 2009

Dear Sirs,

FEEDBACK FROM THE ANNUAL SUFFOLK STANDARDS CONFERENCE

The Suffolk Monitoring Officers Group organises an annual conference for the standards committees of the eight local authorities in Suffolk.

This years' event was held on 4 November 2009. It was attended by committee members from all of the Suffolk authorities and included interactive discussion between the committee members and Monitoring Officers on current topics.

During the course of the conference, a number of significant points were identified by members. Some of these points are being investigated and addressed by the Monitoring Officers. However, there were specific issues on which there was strong feeling and consensus that the collective views of committee members should be communicated to Standards For England for appropriate action to be taken.

On behalf of those representatives at the Annual Conference, I have set out below the key points:-

(1) Investigations and other forms of action (e.g. mediations), are costly for authorities

Since local assessment, there has been an increase in complaints and members are concerned at the resource implications to their authorities of conducting investigations. Increasingly, investigations need to be out-sourced due to lack of in-house capacity giving rise to direct costs implications. Moreover, most Monitoring Officers are not mediators and a mediation almost inevitably needs to be out-sourced, usually at a minimum cost of £500.

The majority of complaints concern town/parish councillors and whilst it is recognised that authorities are currently prevented from seeking reimbursement of their costs from town/parish councils, the position ought to be changed to allow authorities discretion to charge.

(2) Provision is needed to allow investigation of complaints if 'other action' fails

There is widespread dissatisfaction among members and complainants that a complaint cannot subsequently be investigated if action other than investigation proves to be unsuccessful. The reasoning provided by SFE that the investigation of the complaint may have become prejudiced is understood, yet there is still no facility for an investigation even if it is clear that no prejudice has arisen through the 'other action'. For example, if a councillor agrees to mediate, but then fails to attend or abandons the process early on.

The solution appears to be for the complaint to be re-submitted, but this is time consuming, has resource implications and public confidence in the system is already diminished.

The position needs to be corrected by amendment to the 2008 regulations rather than continuing attempts to work around what appears to be a flaw in the process.

(3) Provision is required to enable the Monitoring Officer to facilitate a solution to a complaint

Whilst various sources have suggested that the Monitoring Officer should seek to informally resolve less serious complaints, the Suffolk Monitoring Officers consider this approach to be of dubious legality. It is clear from section 57A(2) of the Local Government Act 2000 that once a complaint is received by the standards committee it must be actioned by the committee. There is no authority for the Monitoring Officer to intervene.

Notwithstanding this, the Suffolk Monitoring Officers were all in agreement at our last meeting that there is an inherent duty upon the Monitoring Officer to attempt to secure a solution where appropriate. However, different methods are being applied to circumvent the difficulties presented by the legislation. It was noted by the Group that the well-publicised idea of providing a "window of resolution opportunity" before formalisation of the complaint against a councillor in a council's complaint system does not appear to have been officially refuted or approved by SFE.

Indeed standards committees would welcome the facility for the Monitoring Officer to seek to resolve a complaint informally in appropriate circumstances with the complaint being referred to the Assessment Sub-Committee if a solution cannot be found. This approach appears to have been supported by the Adjudication Panel for England (in APE 0456, dated 15.10.09), but clear statutory authority is needed.

I should be pleased to receive details of how the matters identified in (1)-(3) above will be addressed. It is the expectation of each of the standards committees that their Monitoring Officer will report on the response to their points and an early reply would therefore be appreciated.

Yours faithfully,

Kathryn Seward
Monitoring Officer