

**Standards Committee
Local Assessment of Complaints Procedure Rules**

Introduction

This procedure is designed to help Members, Officers and members of the public understand the process which the Council uses to assess complaints that a Member may have breached the Code of Conduct.

It details each stage of the process for assessment of complaints and takes into account the guidance issued by the Standards Board for England.

Members and Officers involved in the assessment of complaints must take the guidance issued by the Standards Board into account in the assessment of complaints.

Responsibilities

In order to carry out its functions efficiently and effectively the Standards Committee has established sub-committees to allow the separate handling of cases without conflicts of interest.

These functions are:

- The initial assessment of a complaint received by the Standards Committee "The Assessment Sub Committee"
- Any request from a complainant to review a decision to take no action in relation to a complaint "The Review Sub Committee"

The Assessment Sub-Committee consists of 3 Members and is chaired by an independent Member.

The Review Sub-Committee consists of 3 Members and included and is chaired by an independent Member.

When a complaint relates to a Parish Council a parish representative must be present at each of the Sub-Committees.

Standards Committee Members who have been involved in decision making on the initial assessment of a complaint cannot take part in any review of that decision. This is to ensure fairness for all parties.

Standards Committee Members who have been involved in the initial assessment or review may take part in any hearing conducted by the Standards Committee.

This is because the purpose of the initial assessment and review is simply to decide whether any action should be taken on the complaint. The assessment and review sub-committees make no findings of fact. Therefore, Members may participate in a subsequent hearing because no conflict of interest automatically arises.

Members should note however that the rules relating to bias and predetermination do apply so should be careful to avoid making comments at the assessment stage which would suggest to any party involved in the complaint that they have already reached a conclusion on the matter.

Pre-assessment

The Council has published a notice detailing that complaints must be sent to the Standards Committee at the Council for assessment.

Assessment

Time Scales

Upon receipt of the complaint the Standards Committee will take reasonable steps to provide the Member who is the subject of the complaint with a written summary of the complaint unless the provision of a summary would be contrary to the public interest or prejudice any person's ability to investigate the allegation. The advice of the Monitoring Officer must be considered if a summary is to be withheld. The summary will be provided through the Head of Democratic and Legal Support Services.

The Assessment Sub Committee will meet to determine whether or not a complaint should be investigated further within 20 working days of receipt of the complaint.

Initial Test

The Assessment Sub Committee will apply the same criteria in assessing every new complaint that it considers.

Before it assesses a complaint it will apply the following tests:

- 1) Is the complaint against one or more named members of the Council or a Council covered by the Standards Committee?
- 2) Was the named Member in office at the time of the alleged conduct and was the Code of Conduct in force at the time.
- 3) Would the complaint, if proven, be a breach of the Code under which the Member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code and the complainant will be informed that no further action will be taken in respect of the complaint.

Assessment Criteria

If the complaint satisfies the initial tests the Assessment Sub Committee will assess new complaints against the following criteria. These criteria may be changed by the Standards Committee but will not be changed during an assessment.

- 1) Is there enough information to make an assessment decision?
- 2) Is the complaint too trivial to warrant further action?
- 3) Does the complaint appear motivated by political reasons, is simply malicious or "tit for tat"?
- 4) Has the complaint already been the subject of a previous investigation or other action relating to the Code of Conduct?
- 5) Is the period of time since the alleged conduct occurred such that there would be little benefit in taking action now?
- 6) Is the complaint anonymous and if so is there any supporting evidence with the complaint?

All new complaints will be assessed against these criteria to ensure fairness for both the complainant and the subject Member and to protect the committee Members from accusations of bias.

Assessment Decisions

Following consideration of the complaint the Assessment Sub Committee is required to reach one of the following three conclusions:

- 1) The complaint should be referred to the Monitoring Officer of the Council concerned for investigation or other action
- 2) The complaint should be referred to the Standards Board for England
- 3) No action should be taken in respect of the complaint.

The Monitoring Officer shall notify the complainant and the subject of the complaint of the decision within 5 working days of the meeting.

Where no potential breach of the Code has been found the Sub Committee will explain in its decision notice what the allegation was and why they reached the conclusion that they did.

Where the Sub Committee decide that the complaint should be referred to the Monitoring Officer or to the Standards Board it will send a summary of the complaint to the relevant parties explaining what the allegation was and the decision that was made. In this case the decision notice will not explain the reasons for the decision.

In a case that is to be referred to the Monitoring Officer the Sub Committee does not have to give the subject member a summary of the complaint if it decides that to do so would be against the public interest or would prejudice any future investigation. This would be the case where the Sub Committee believed that witnesses may be intimidated or evidence destroyed.

If the Sub Committee has concerns at providing a summary the advice of the Monitoring Officer must be sought before a decision is made.

Review

If the Assessment Sub Committee decides not to take further action on a complaint then the complainant has a right of review of the decision to Members who did not make the initial assessment.

All relevant parties will be notified when a review request is received.

Time Scales

The Review Sub Committee will aim to hold its review within 20 working days of the initial assessment decision but in any case must carry out its review within three months of the request.

Initial Test and Assessment Criteria

The Review Sub Committee shall be given the original complaint and report and the written request for a review.

The Review Sub Committee will deal with the complaint by applying the same initial test and assessment criteria as the Assessment Sub Committee.

Review of Decisions

The Review Sub Committee has the same range of decisions available to it as the Assessment Sub Committee.

New Information

If new information comes to light relating to the complaint the Review Sub Committee will need to consider if the information is such that complaint has changed in nature or has in fact become a new complaint.

The Review process should be used to deal with cases where a complainant alleges that:

- Not enough emphasis has been given to a particular aspect of a complaint or
- There has been a failure to follow any published criteria or
- There has been an error in procedures.

If the Review Sub Committee take the view that the complaint has changed as a result of new information then it should determine that the review request will not be granted and refer the complaint back to the Assessment Sub Committee for new consideration.

Notification

The same notification requirements that apply to assessments also apply review decisions.

Investigation

If either the Assessment or Review Sub Committee decides that a complaint should be referred to the Monitoring Officer for investigation the Monitoring Officer will make arrangements for an investigation to be undertaken. The investigation may be carried out by the Monitoring Officer, Deputy Monitoring Officer or an independent third party appointed by the Monitoring Officer.

Determination of a Complaint

Within three months of the investigating officer completing his / her investigation and submitting a report to the Monitoring Officer, the Monitoring Officer will arrange for a meeting of the Standards Committee to consider the report. The Committee will meet to decide whether it agrees with the report that there is no breach, whether it should hold a formal hearing to determine whether a breach of the Authority's Code of Conduct has occurred and whether any action should be taken as a consequence or whether the matter should be referred to the Adjudication Panel for determination.

The steps to be taken in the lead up to a hearing and the procedure for the hearing itself are contained in the Standards Committee Hearings Procedure Rules.

Other Issues relating to Assessments

Access to meetings

The work of the Assessments Sub Committee and the Review Sub Committee must be carried out in closed meetings.

These meetings may have to consider unfounded and potentially damaging complaints about Members which it would not be appropriate to make public. The legislation introducing local assessment makes it clear that a Standards Committee undertaking its role in the assessment or review of a complaint is not subject to the following rules that apply to local authority meetings:

- Notice of meetings
- Circulation of agendas and documents
- Public access to meetings
- Rules on the validity of proceedings

Instead regulation 8 sets out alternative requirements following an Assessment or Review Sub Committee meeting which require a written summary to be produced.

The written summary must be available for public inspection at the Council's offices for a period of six years and must also be given to any Town or Parish Council concerned.

Multiple and Vexatious Complaints

If the Council receives a number of complaints that all relate to the same matter a report will be brought to the Assessment Sub Committee dealing with all of the complaints, drawing together all of the relevant information and highlighting any substantive differences or contradictory statements.

Following consideration of this report the Sub Committee will still make a finding in respect of each complaint and the notification process will apply to each individual complaint.

Standards Committees must consider every new complaint that they receive. However if the Committee has already dealt with the same complaint by the same person and the Monitoring Officer does not believe that there is any new evidence then the complaint does not need to be considered by the Committee.

A person may make frequent allegations about Members, most of which may have little or no substance. Despite this new allegations must be considered as they may contain a complaint that requires some action to be taken.

Withdrawal of Complaints

On some occasions a complainant may ask for his or her complaint to be withdrawn prior to the Assessment Sub Committee having made a decision on it.

In these cases the Sub Committee will have to decide:

- a) Whether the public interest in taking action outweighs the complainant's desire to withdraw it.
- b) Whether action can be taken without the complainant's participation
- c) Is there is an identifiable reason behind the request to withdraw such as pressure from the member or an associate of theirs?

Conflicts of Interest

A Member of the Standards Committee who was involved in the following decisions may still take part in any hearing that determines the same complaint:

- The initial assessment
- A referral back for another assessment
- A review of an assessment

The assessment decision only relates to whether a complaint discloses something that needs to be investigated or referred for other action. It does not determine whether or not the conduct took place or was a breach of the code. It is the hearing following the assessment that will consider the evidence and decide if the Code has been breached.

At all stages through the process Members must consider whether due to the identity of the complainant or the member involved whether they have an interest under the Code or a conflict of interest that could lead to an allegation of bias in the proceedings.