

ESSENTIAL REFERENCE PAPER 'C5'

Initial Assessments of Standards Complaints Assessment and Review Criteria

1. Introduction

- 1.1** This paper sets out the criteria which the Assessment Sub-Committee will apply in conducting the initial assessment of allegations of failure by Members to observe the Code of Conduct.
- 1.2** The Council takes all allegations of Members' misconduct extremely seriously and seeks to secure the highest standards of conduct at all times. The initial assessment process determines whether the complaint appears to show that there has been a breach of the Code of Conduct and then whether the complaint should be subject to a formal investigation (either by Standards for England or locally under the direction of the Council's Monitoring Officer), whether the Council's Monitoring Officer should be directed to take appropriate action in respect of the complaint, or whether no action should be taken in respect of the complaint.

2. Local Resolution of Complaints

- 2.1** The Standards Committee is acutely aware that the formal investigation of complaints is costly and time consuming. Whilst formal investigation may be necessary in some cases, many complaints can be dealt with more rapidly and effectively if an early, informal resolution of the matter can be achieved.
- 2.2** The Standards Committee has instructed the Monitoring Officer, where a complaint has been received, to explore the potential for local resolution to the satisfaction of the complainant, to avoid the need for a formal investigation. Any attempt at local resolutions does not take away from the right of the complainant to have his/her complaint of Member misconduct considered by the Sub-Committee.

3. Which Complaints can be considered?

- 3.1** The Assessment Sub-Committee must consider every complaint that a Member of the Council (or of any Town or Parish Council within its area) has failed to comply with the Code of Conduct which that Council has adopted. Accordingly, it has no jurisdiction in respect of any complaint which relates to:
 - a) persons who are not Members of the Council (or a Town or Parish Council in its area)

b) conduct which occurred at a time when the person against whom a complaint was made was not a Member of the Council (or of a Town or Parish Council in its area)

c) conduct which occurred before the relevant Council adopted a Code of Conduct . All Councils were required to adopt a Code of Conduct in 2001. In practice, the Sub-Committee will expect complaints to be made promptly after the events to which they relate (see below).

d) conduct which occurred in the Member's private life, as the Code of Conduct only applies to a Member's conduct as a Member of the Council.

e) conduct which occurred when the Member was acting as a Member of another authority. Where a Member is also a Member of another authority (other than a Town or Parish Council in its area) which has its own Code of Conduct, then the complaint should be addressed directly to that authority.

f) complaints which do not relate to the apparent misconduct of a relevant Member but are, for example, about the policies and priorities of the authority, or are a request for provision of a service by the Council, or are a complaint about an officer of the Council.

Such complaints will not be referred to the Assessment Sub-Committee but will be dealt with by the Monitoring Officer instead who will advise the complainant as to the most appropriate avenue for proper consideration of the complaint or request.

4. Does the complaint appear to show a breach of the Code of Conduct?

4.1 The first assessment which will be undertaken by the Sub-Committee will be to determine whether the complaint appears to show that a breach of the Code of Conduct may have occurred.

4.2 For this purpose, the Sub-Committee will take into account the complaint letter and any other information that is readily available to them. Accordingly, it is the responsibility of the complainant to set out clearly:

a) who the complaint is against

b) what the relevant Member did

c) why the complainant considers that the Member's conduct amounts to a breach of the Code of Conduct, and to provide copies of any documents which the complainant wants the Sub-Committee to consider.

- 4.3** Following receipt of the complaint, the Monitoring Officer will collect any other information which is readily available and which may assist the Sub-Committee in its consideration of the complaint. This will not include conducting interviews with witnesses, but may include providing the Sub-Committee with copies of the agenda, reports and minutes of the Council at which the alleged misconduct occurred, or providing copies of the Member's entry in the register of Member's interests.
- 4.4** The Sub-Committee will then consider whether, on the basis of the complaint and that additional information, there appears to be a breach of the Code of Conduct.

If the Sub-Committee concludes that the evidence does not disclose an apparent breach of the Code, it has no further jurisdiction in respect of the matter.

5. Possible actions where an apparent breach of the Code has occurred?

- 5.1** Where the Sub-Committee concludes that there appears to have been a breach of the Code, it has four options open to it. These are as follows:-

a) direct the Monitoring Officer to secure that the complaint is investigated locally.

A local investigation will normally be appropriate where the alleged conduct is sufficiently serious to merit the imposition of a sanction against the Member, but not so serious that it would merit a greater sanction than the Council's Standard Committee could impose following a formal hearing. In practice, this means that a local investigation would not be appropriate where the appropriate sanction is likely to be suspension as a Member of the relevant authority for a period of more than six months or disqualification as a Member of any local authority. See paragraph 5(b) below for more detailed grounds for referring a complaint to Standards for England.

However, recognising that a formal investigation is an expensive and time-consuming process and can only address the immediate subject matter of the complaint, the Sub-Committee can direct the Monitoring Officer to take other appropriate action short of a formal investigation – see paragraph 5(c) below.

In addition, particularly where the conduct complained of is not sufficiently serious to merit any action or occurred a considerable time ago, the Sub-Committee may determine that no action should be taken in respect of it. For more details see paragraph 5(c) below.

b) refer the matter to Standards for England with a request that they undertake a national investigation into the complaint.

The following factors will be considered by the Sub-Committee to be factors which support referring the complaint to Standards for England for a national investigation:

- i) that the complaint is so serious that, if proven, the conduct complained of merits a sanction in excess of that which could be imposed by the Standards Committee. In practice, this means that the appropriate sanction would be a suspension from the relevant authority for a period of more than six months, or a disqualification from any local authority.
- ii) that the investigation required is so extensive that it would impose an unreasonable burden on the Council and/or that any hearing conducted on the basis of that investigation would be unreasonably complex for the Standards Committee.
- iii) that the status of the Member against whom the complaint has been made is such that either the Council could not conduct a full and impartial investigation and hearing, or that there is likely to be a public perception that the Council could not conduct a full and impartial investigation and hearing.
- iv) that so many Members of the Standards Committee have a conflict of interest in respect to the matter that the Council is going to be in difficulty in organising an impartial hearing for that matter.
- v) where the complaint raises significant or unresolved legal issues where a national ruling would be helpful.
- vi) that the Council itself has an interest in the outcome of the investigation and/or hearing, for example where the report may lead to a judicial review of a decision of the Council.
- vii) that there are other exceptional circumstances which would prevent the Council from securing a timely, full and impartial investigation and/or hearing of the matter, or which are likely to give rise to the perception that the Council cannot secure a timely, full and impartial investigation and/ or hearing of the matter.

c) direct the Monitoring Officer to take other appropriate action short of a formal investigation.

The Assessment Sub-Committee cannot impose a sanction on the Member against whom the complaint has been made without a formal investigation and hearing. But it can direct the Monitoring Officer to take a range of other actions, including providing training for Members,

securing conciliation or mediation between competing interests, or reviewing procedures to minimise conflict.

In some instances, the conduct complained of may be a symptom of wider conflicts. A formal investigation and hearing would only deal with that particular complaint and may not resolve such underlying conflicts.

Such alternative action is therefore most suitable where –

i) the conduct complained of is a symptom of wider underlying conflicts, which, if unresolved, are likely to lead to further misconduct or allegations of misconduct.

ii) the conduct complained of is apparently common to a number of Members of that authority, demonstrating a lack of awareness or recognition of the particular provision of the Code of Conduct.

iii) the conduct complained of is not so serious that it requires a substantive formal sanction such as suspension or disqualification.

iv) the complaint reveals a lack of guidance, protocols and procedures within the Council, for example on the use of resources or the process of decision making.

v) the Member complained of and the person making the complaint are amenable to engaging in such alternative action, as there is no power to require them to participate.

d) decide to take no action in respect of the complaint

The following factors are likely to lead the Sub-Committee to decide to take no action in respect of the matter:

i) the complaint appears to be trivial, vexatious, malicious, politically motivated or tit for tat

ii) the complaint is anonymous. The Sub-Committee can protect confidentiality of the identity of the complainant where that is justified by a real fear of intimidation or victimisation. However, where there is not an obvious risk, the fact that the complainant has not disclosed his / her identity can indicate that the complaint is less serious, is malicious or politically motivated.

iii) a significant period of time has elapsed since the events which are the subject of the complaint. This is both because, where a matter is serious, it would be reasonable to expect the complainant to make a complaint promptly and because the passage of time may make it more difficult to obtain documentary evidence and reliable witness evidence

iv) the complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter. This could be where the matter is such that there is unlikely to be any firm evidence on the matter.

6. Confidentiality

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

- a) the complainant has reasonable grounds for believing that he/ she will be at risk of physical harm if his / her identity is disclosed.
- b) the complainant is an officer who works closely with the Member and the complainant has a real fear of intimidation or victimisation if his / her identity is disclosed.
- c) the complainant suffers from a serious health condition which might be adversely affected if his / her identity was disclosed. The Assessment Sub-Committee may wish to request medical evidence.

7. Withdrawing Complaints

Where the complainant purports to withdraw the complaint before the Assessment Sub-Committee has had the opportunity to take a decision on it, the Sub-Committee will consider whether to accept such withdrawal.

- a) Where the complainant submits further evidence demonstrating that the complaint was ill-founded, it may be appropriate for the Sub-Committee formally to resolve that the complaint as amended shows no evidence of a breach of the Code of Conduct so that the matter is formally concluded.
- b) where the alleged misconduct is simply a matter of alleged failure of the subject Member to treat the complainant with respect and raises no wider issues of public interest, the Sub-Committee will normally accept such withdrawal.
- c) However, where the complaint raises issues of wider public interest, it may be appropriate for the Sub-Committee to ensure that such wider issues are formally investigated and resolved.

8. Review

Where the Assessment Sub-Committee has resolved to take no action in respect of the matter (that is, not to refer the matter to Standards for England for investigation and not to refer the matter to the Monitoring Officer either for investigation or other appropriate action), the complainant may request the Review Sub-Committee to review the decision of the Assessment Sub-Committee.

The process for notifying the respondent Member of the receipt of a request for a review shall be the same as the process for notifying the respondent Member of the receipt of an original complaint.

Such a review shall be conducted in two stages:

a) the Review Sub-Committee will determine whether the original decision of the Assessment Sub-Committee was unreasonable on the basis of the information available to the Assessment Sub-Committee at the time of its decision and in accordance with these approval criteria for assessment. This review shall be conducted on the basis of the original complaint, the Monitoring Officer's report to the Assessment Sub-Committee, the decision notice of the Assessment Sub-Committee and any information contained within the complainant's request for a review of the initial decision, rather than a reconsideration of the matter *de novo*.

b) Secondly, the Review Sub-Committee shall consider whether there is any new evidence which demonstrates that the initial assessment decision is no longer the correct decision. This consideration shall take into account any new information provided by the complaint and / or the Monitoring Officer.

If the Review Sub-Committee determines that the initial decision was unreasonable or that new information now available to the Sub-Committee demonstrates that the original decision is no longer the correct decision, it shall take a new decision in relation to the matter in accordance with these approved criteria.

9. Recording and notification of decisions

a) Notification to the complainant

As soon as practicable after the Assessment of the Review Sub-Committee has taken a decision on a complaint, and in any case within 5 working days of the decision, the Monitoring Officer will notify the complainant in writing of the Sub-Committee's decision together with a summary of the Sub-Committee's reasons for that decision. Where the Assessment Sub-Committee's decision is to take no action, the

Monitoring Officer's notification to the complainant will set out the rights of the complainant to request a review of that decision.

b) Notification to the respondent Member

As soon as practicable after the Assessment of the Review Sub-Committee has taken a decision on a complaint, and in any case within 5 working days of the decision, the Monitoring Officer will notify the respondent Member in writing of the Sub-Committee's decision together with a summary of the Sub-Committee's reasons for that decision. The only circumstances in which such notification shall not be given is where the Sub-Committee has resolved that it would be contrary to the public interest to give such notification at this stage which resolution might be on the basis that notification would be likely to hinder the proper investigation of the complaint as it would give rise to a real risk of destruction of evidence or intimidation of witnesses. Where the Sub-Committee so resolves, the Monitoring Officer shall make such notification as soon as, in his/her opinion, the investigation of the complaint has progressed to such a point where the reasons for deferment of notification no longer apply.

c) Minutes of Sub-Committees consideration of the complaint.