



## Standards Committee

### Local Assessment of Complaints and Review Procedures

*Procedures to be followed on allegations that a District or Parish Councillor has breached the Members' Code of Conduct: compiled in relation to s.57A(1) of the Local Government and Public Involvement in Health Act, 2007, Regulation 10(3) of SI 2008 No. 1085 and SBE Guidance.*

- Subject Member: the Councillor who is the subject of an allegation.
- Independent Member: a person who is not a Councillor or officer of Warwick District Council or any other relevant authority who is appointed to Warwick District Council's Standards Committee.
- Assessment Sub-Committee: a sub-committee which is responsible for the initial assessment of complaints that a Councillor may have breached the Code.
- Review Sub-Committee: a sub-committee which is responsible for reviewing the Assessment Sub-committee's decision where it decided to take no further action on a complaint.
- Standards Committee: the committee responsible for undertaking hearings into alleged breaches of the Code of Conduct following an investigation.

#### **1. The Initial Complaint**

Warwick District Council's Standards Committee deals with complaints against Warwick District Council elected or co-opted members and complaints against town or parish councillors of any town or parish council in the Warwick District.

Any person may make a complaint in writing that a Warwick District Councillor or a town/parish councillor has breached the Code of Conduct for the councillor's authority. A complaint can be made via the statutory Complaints Procedures set up under the Local Government Act 2000 and related legislation.

Under the formal statutory procedures, complaints must be submitted in writing. This includes fax and electronic submissions. However, the requirement for complaints to be submitted in writing must be read in conjunction with the Disability Discrimination Act 2000 and the requirement to make reasonable adjustments. An example of this would be in assisting a complainant who has a disability that prevents them from making their complaint in writing. In such cases, Warwick District officers may need to transcribe a verbal complaint and then produce a written copy for approval by the complainant or the complainant's representative.

The Council will also make available support to complainants where English is not the complainant's first language.

Complaints should include the following information:

- the complainant's name, address and other contact details
- complainant status, for example, member of the public, fellow member or officer
- who the complaint is about and the authority or authorities that the member belongs to
- details of the alleged misconduct including, where possible, dates, witness details and other supporting information
- equality monitoring data if applicable, for example nationality of the complainant.

If the initial complaint does not include all the required information, the complainant will be asked to provide further information.

Complainants are warned that the complainant's identity will normally be disclosed to the subject member. In exceptional circumstances, if it meets relevant criteria and at the discretion of the Standards Committee, this information may be withheld. (See further on this below). The receipt of a written complaint will be acknowledged.

It will be normal practice for the Subject Member to be informed of the complaint. Only in exceptional circumstances (e.g. where the assessment of the complaint might be prejudiced) will the Subject Member not be informed; a decision not to inform them will be taken by the Monitoring Officer in consultation with the Chairman of the Standards Committee

## **2. Assessment of a Complaint**

The complaint will be reported to the Assessment Sub-Committee. Before assessment of a complaint begins, the Assessment Sub-Committee must be satisfied that the complaint meets the following tests:

- (a) it is a complaint against one or more named members of the authority or an authority covered by the Standards Committee
- (b) the named member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time
- (c) the complaint, if proven, would be a breach of the Code of Conduct 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.

The criteria which the Sub-Committee will use in assessing a complaint are set out in Appendix A: "Criteria for Accepting Complaints"

## **3. Initial Assessment Decisions**

The Assessment Sub-Committee will aim to complete its initial assessment of an allegation within an average of 20 working days, to reach a decision on what should happen with the complaint.

The Assessment Sub-Committee is required to reach one of the three following decisions on a complaint about a member's actions in relation to the Code of Conduct:

- (a) referral of the complaint to the Monitoring Officer of the authority concerned, which under section 57A(3) of the Local Government Act 2000, as amended, may be another authority
- (b) referral of the complaint to the Standards Board for England
- (c) no action should be taken in respect of the complaint.

The Monitoring Officer will write to the relevant parties informing them of the decision and, if appropriate, advising who will be responsible for conducting the investigation.

#### **4. Referral for local investigation**

When the Assessment Sub-Committee considers a new complaint, it can decide that it should be referred to the Monitoring Officer for investigation. The Monitoring Officer will write to the relevant parties informing them of the decision and, if appropriate, advising who will be responsible for conducting the investigation.

#### **5. Referral to the Standards Board for England**

In most cases, authorities will be able to deal with the investigation of complaints concerning members of their authorities and, where relevant, the parish and town councils they are responsible for. However, there will sometimes be issues in a case, or public interest considerations, which make it difficult for the authority to deal with the case fairly and speedily. In such cases, the Assessment Sub-Committee may wish to refer a complaint to the Standards Board to be investigated by an ethical standards officer.

#### **6. Referral for other action**

When the Assessment Sub-Committee considers a new complaint, it can decide that other action to an investigation should be taken and it can refer the matter to the Monitoring Officer to carry this out.

It may not always be in the interests of good governance to undertake or complete an investigation into an allegation of misconduct. The Assessment Sub-Committee must consult the Monitoring Officer before reaching a decision to take other action. The suitability of other action is dependent on the nature of the complaint. Certain complaints that a member has breached the Code of Conduct will lend themselves to being resolved in this way. They can also indicate a wider problem at the authority concerned.

Deciding to deal pro-actively with a matter in a positive way that does not involve an investigation can be a good way to resolve matters that are less serious. Other action can be the simplest and most cost effective way of getting the matter resolved, helping the authority to work more effectively, and of avoiding similar complaints in the future.

Everyone involved in the process will need to understand that the purpose of other action is not to find out whether the member breached the Code - the decision is made as an alternative to investigation. Complaints that have been referred to the Monitoring Officer for other action will not then be referred back to the Standards Committee if the other action is perceived to have failed. There will be a requirement that the parties involved confirm in writing that they will co-operate with the process of other action proposed.

The following are some examples of alternatives to investigation:

- (a) arranging for the subject member to attend a training course
- (b) arranging for that member and the complainant to engage in a process of conciliation
- (c) instituting changes to the procedures of the authority if they have given rise to the complaint.

## **7. Decision to take no action**

The Assessment Sub-Committee can decide that no action is required in respect of a complaint. For example, this could be because the Assessment Sub-Committee does not consider the complaint to be sufficiently serious to warrant any action. Alternatively, it could be due to the length of time that has elapsed since the alleged conduct took place and the complaint was made.

### **Notification requirements – local assessment decisions**

If the Assessment Sub-Committee decides to take no action over a complaint then, as soon as possible after making the decision, it will give notice in writing of the decision and set out the reasons for that decision.

Where no potential breach of the Code is disclosed, the Assessment Sub-Committee will explain in the decision notice what the allegation was and why they believe this to be the case. This notice will be given to the relevant parties, ie the complainant and the subject member. The Standards Committee will aim to send out its decision notice within five working days of the decision being made.

If the Assessment Sub-Committee decides that the complaint should be referred to the Monitoring Officer or to the Standards Board for England, it will send a summary of the complaint to the relevant parties. It will state what the allegation was and what type of referral it made, for example whether it referred the complaint to the Monitoring Officer or to the Standards Board for investigation. The decision notice will not explain why a particular referral decision has been made.

After it has made its decision, the Assessment Sub-Committee does not have to give the subject member a summary of the complaint, if it decides that doing so would be against the public interest or would prejudice any future investigation. The Assessment Sub-Committee can use its discretion to give limited information to the subject member if it decides this would not be against the public interest or prejudice any investigation. Any decision to withhold the summary will be kept under review as circumstances change.

## **8. Reviews of ‘no further action’ decisions**

If the Assessment Sub-Committee decides not to take any action on a complaint, then the complainant has a right of review over that decision. The Review Sub-Committee will carry out its review within a maximum of three months of receiving the request.

The Review Sub-Committee will aim to undertake the review within the same timescale as the initial assessment - that is, to complete the review within an average of 20 working days. The review must be, and must be seen to be, independent of the original decision.

Members of the Assessment Sub-Committee who made the original decision must not take part in the review of that decision. A separate Review Sub-Committee, made up of members of the Standards Committee, will consider the review. The Review Sub-Committee will apply the same criteria used for initial assessment. The Review Sub-Committee has the same decisions available to it as the Assessment Sub-Committee.

There may be cases where further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint. In such cases, the Review Sub-Committee will consider carefully if it is more appropriate to pass this to the Assessment Sub-Committee to be handled as a new complaint. In this instance, the Review Sub-Committee will still need to make a formal decision that the review request will not be granted.

For example, a review may be more appropriate if a complainant wishes to challenge that:

- (a) not enough emphasis has been given to a particular aspect of the complaint
- (b) there has been a failure to follow any published criteria
- (c) there has been an error in procedures.

However, if more information or new information of any significance is available, and this information is not merely a repeat complaint, then a new complaint rather than a request for review may be more suitable.

#### Notification requirements – reviews of local assessment decisions

If the Standards Committee receives a review request from the complainant, it will notify the subject member and other relevant parties that it has received the request.

When the Review Sub-Committee reviews the Assessment Sub-Committee's decision it has the same decisions available to it that the Assessment Sub-Committee had. It could be decided that no action should be taken on the complaint. In this case, the Review Sub-Committee must, as soon as possible after making the decision, give the complainant and the subject member notice in writing of both the decision and the reasons for the decision.

If it is decided that the complaint should be referred to the Monitoring Officer or to the Standards Board for England, the relevant parties should be advised and letting them have a summary of the complaint. The decision notice will not explain why that particular referral decision has been made as it might prejudice the investigation or other action.

The Review Sub-Committee will aim to send out its decision notice within five working days of the decision being made.

### **9. Consideration of reports by the Standards Committee**

If a complaint is referred for investigation the Standards Committee must meet, following the completion of an investigation, to decide:

- (a) if it accepts the findings in the report that there has been no breach of the Code - a finding of Acceptance; or
- (b) that the matter should be considered at a hearing of the Standards Committee; or
- (c) that the matter should be referred to the Standards Board Adjudication Panel for

determination - if the matter is serious and the sanctions available to the Standards Committee are unlikely to be sufficient.

This is an additional step in the process prior to the hearing itself which could be conducted by a sub-committee rather than the whole of the Committee.

#### **10. Hearings by the Standards Committee**

Hearings must be conducted within 3 months of completion of the Monitoring Officer's report. The hearing can be conducted by a sub-committee rather than the whole of the Standards Committee.

The Standards Board has advised that there is no difficulty in the same members participating in the initial assessment and the hearing or in the review and the hearing (but not in both the initial assessment and review).

The Standards Committee is required to make findings in accordance with Regulation 19:

- (a) that the member who was the subject of the hearing had not failed to comply with the Code of Conduct, or
- (b) that the member had failed to comply with the Code of Conduct but that no action needs to be taken, or
- (c) that the member had failed to comply with the Code of Conduct and that a sanction should be imposed.

The Standards Committee shall also exercise all other powers conferred by Regulation 19 including the imposition of any sanctions available under the Regulations where it considers it appropriate.

### **OTHER ISSUES**

#### **11. Access to meetings and decision making**

Initial assessment decisions, and any subsequent review of decisions to take no further action on a complaint, must be conducted in closed meetings. These are not subject to the notice and publicity requirements under Part 5 of the Local Government Act 1972.

Such meetings may have to consider unfounded and potentially damaging complaints about members, which it would not be appropriate to make public. As such, a Standards Committee undertaking its role in the assessment or review of a complaint is not subject to the following rules:

- (a) rules regarding notices of meetings
- (b) rules on the circulation of agendas and documents
- (c) rules over public access to meetings
- (d) rules on the validity of proceedings

Instead, Regulation 8 of the regulations sets out what must be done after the Assessment or Review Sub-Committee has considered a complaint. The new rules require a written summary to be produced which will include:

- (a) the main points considered
- (b) the conclusions on the complaint
- (c) the reasons for the conclusion

The summary may give the name of the subject member unless doing so is not in the public interest or would prejudice any subsequent investigation. The written summary must be made available for the public to inspect at the authority's offices for six years and given to any parish or town council concerned. The summary does not have to be available for inspection or sent to the parish or town council until the subject member has been sent the summary.

In limited situations, the Standards Committee can decide not to give the written summary to the subject member when a referral decision has been made and, if this is the case, arrangements will be put in place which deal with when public inspection and parish or town council notifications will occur. This will usually be when the written summary is eventually given to the subject member during the investigation process. (Please see the sections on Notification Requirements in sections 7. and 8. for further information).

A review of a decision to take no further action on a complaint is not subject to access to information rules in respect of local government committees. In addition, the Council will have regard to the requirements under Freedom of Information and Data Protection legislation.

## **12. Withdrawing complaints**

There may be occasions when the complainant asks to withdraw their complaint prior to the Assessment Sub-Committee having made a decision on it. In these circumstances, the Assessment Sub-Committee will need to decide whether to grant the request. The following considerations will be applied:

- (a) Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
- (b) Is the complaint such that action can be taken on it, for example an investigation, without the complainant's participation?
- (c) Is there an identifiable underlying reason for the request to withdraw the complaint? For example, is there information to suggest that the complainant may have been pressured by the subject member, or an associate of theirs, to withdraw the complaint?

## **13. Multiple and vexatious complaints**

The Council may receive a number of complaints from different complainants about the same matter. A number of complaints about the same matter may be considered by the Assessment Sub-Committee at the same meeting. If so, an officer should be asked to present one report and recommendation that draws together all the relevant information and highlights any substantively different or contradictory information. However, the Assessment Sub-Committee must still reach a decision on each individual complaint and follow the notification procedure for each complaint.

Unfortunately, a small number of people abuse the complaints process. The Council reserves the right to take appropriate action in these cases, for example, limiting an individual's contact with the authority.

However, the Standards Committee must consider every new complaint that it receives in relation to the Code of Conduct. If the Standards 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 a complaint will not be considered. A person may make frequent allegations about members, most of which may not have any substance. Despite this, new allegations will be considered if they contain a complaint that requires some action to be taken. Vexatious or persistent complaints or complainants can usually be identified through the following patterns of behaviour, which may become apparent in the complaints process:

- (a) repeated complaints making the same, or broadly similar, complaints against the same member or members about the same alleged incident
- (b) use of aggressive or repetitive language of an obsessive nature
- (c) repeated complaints that disclose no potential breach of the Code where it seems clear that there is an ulterior motive for a complaint or complaints
- (d) where a complainant refuses to let the matter rest once the complaints process (including the review stage) has been exhausted.

Malicious or tit-for-tat complaints are unlikely to be investigated unless they also raise serious matters.

#### **14. Case history**

Documents that relate to complaints that the Assessment Sub-Committee decided not to investigate will be kept for a minimum of 12 months after the outcome of any review that has been concluded. This is in case of legal challenges, and also in order to meet the Standards Board for England's monitoring requirements.

Documents that relate to complaints which are the subject of any hearing or further action will be retained in accordance with the authority's file retention policy and in accordance with the principles of data protection. Old cases may be relevant to future complaints if they show a pattern of behaviour. The Council will identify complaints about the same matter that have already been considered by the Standards Committee.

#### **15. Confidentiality**

As a matter of fairness and natural justice, a member should usually be told who has complained about them. However, there may be instances where the complainant asks for their identity to be withheld. Such requests should only be granted in exceptional circumstances and at the discretion of the Assessment Sub-Committee.

The Assessment Sub-Committee will consider the request for confidentiality alongside the substance of the complaint itself.

The criteria by which the Assessment Sub-Committee will consider requests for confidentiality are set out in the attached form "Criteria for considering requests for confidentiality":

In certain cases, such as allegations of bullying, revealing the identity of the complainant may be necessary for investigation of the complaint. In such cases the complainant may also be given the option of requesting a withdrawal of their complaint.

When considering requests for confidentiality, the Assessment Sub-Committee will also consider whether it is possible to investigate the complaint without making the complainant's identity known. If the Assessment Sub-Committee decides to refuse a request by a complainant for confidentiality, it may wish to offer the complainant the option to withdraw, rather than proceed with their identity being disclosed.

In certain circumstances, the public interest in proceeding with an investigation may outweigh the complainant's wish to have their identity withheld from the subject member. The Assessment Sub-Committee will decide where the balance lies in the particular circumstances of each complaint.

#### **16. Anonymous complaints**

Anonymous complaints will be dealt with on their merits, but will not normally be proceeded with unless the complaint includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

#### **17. Members with conflicts of interest**

A member of the Standards Committee who was involved in any of the following decisions can be a member of the Committee that hears and determines the complaint at the conclusion of an investigation:

- (a) the initial assessment decision
- (b) a referral back for another assessment decision
- (c) a review of an assessment decision

The assessment decision relates only to whether the complaint discloses something that needs to be investigated or referred for other action. It does not determine whether the conduct took place or whether it was a breach of the Code. The Standards Committee hearing the case will decide on the evidence before it as to whether the Code of Conduct has been breached and, if so, if any sanction should apply. The assessment process will be conducted with impartiality and fairness.

#### **18. Complaints about members of more than one authority**

The introduction of the local assessment of complaints may raise an issue relating to what should happen if a complaint is made against an individual who is a member of more than one authority – often known as a dual-hatted member. In such cases, the member may have failed to comply with more than one authority's Code of Conduct.

Where a complaint is received about a dual-hatted member, the Monitoring Officer of the authority will check if a similar allegation has been made to the other authority, or authorities, on which the member serves.

Decisions on which Standards Committee should deal with a particular complaint will then be taken by the Standards Committees itself. It may take advice as necessary from the Standards Board for England.

**STANDARDS COMMITTEE ASSESSMENT & REVIEW OF COMPLAINTS**

**Criteria for accepting Complaints**

1. Is the complaint sufficiently serious to warrant further action?
2. Is the complaint about something that happened so long ago that there would be little benefit in taking action now?
3. Does the complaint appear to be malicious, politically motivated or tit-for-tat?
4. Has the complaint been the subject of an investigation or inquiry either relating to the Code of Conduct or by other regulatory authorities including police prosecutions and previous consideration by the Standards Board for England or the standards committee of another authority?
5. Has the complainant submitted enough information to satisfy the Assessment Sub-Committee that the complaint should be referred for investigation or other positive action?

[The Assessment Sub-Committee may wish to invite the complainant to submit further information in support of the complaints.]

6. Is the complaint about someone who is no longer a member or co-opted member of the authority but is a member or co-opted member of another authority?

If so, does the assessment sub-committee wish to refer the complaint to the monitoring officer of that other authority?

**Criteria for considering Requests for Confidentiality**

1. Does the complainant have reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed?
2. Is the complainant an officer who works closely with the subject member and who has reasonable grounds to be afraid of suffering a disadvantage to their employment or of losing their job if their identity is disclosed?
3. Does the complainant suffer from a serious health condition leading to medical risks associated with their identity being disclosed?

## **MONITORING OFFICER PROTOCOL**

### **Receipt of Allegations**

The Monitoring Officer shall set up arrangements with the Council to secure that any allegation made in writing that a member of the Council has or may have failed to comply with the Council's Code of Conduct is referred to him/her immediately upon receipt by the Council.

The Monitoring Officer shall maintain a register of such allegations to ensure that the Council can comply with its obligations under the relevant legislation.

Complaints shall only be entertained where they are signed by the complainant, but the Monitoring Officer is authorised to maintain the confidentiality of the identity of the complainant where and for so long as in his/her opinion that would be in the public interest.

### **Notification of Receipt of Allegations**

All relevant allegations must be assessed by the Assessment Sub-Committee, and so the Monitoring Officer has no authority to deal with an allegation which appears to be an allegation of failure by a relevant member to observe the Code of Conduct other than by reporting it to the Assessment Sub-Committee.

The Monitoring Officer shall therefore determine whether the allegation appears to be a substantive allegation of misconduct. Where it appears not to be, he/she shall ensure that the matter is dealt with under a more appropriate procedure, for example where it is really a request for service from the Council, a statement of policy disagreement, a legal claim against the Council or a complaint against an officer.

Following receipt of the allegation, and where the allegation does appear to be a complaint of misconduct against a relevant member, the Monitoring Officer will promptly and in any case in advance of the relevant meeting:

- (a) acknowledge to the complainant receipt of the allegation and confirm that the allegation will be assessed by the Assessment Sub-Committee at its next convenient meeting;
- (b) notify the member against whom the allegation is made of receipt of the complaint, together with a written summary of the allegation, and state that the allegation will be assessed at the next convenient meeting of the Assessment Sub-Committee. However, where the Monitoring Officer is of the opinion that such notification would be contrary to the public interest or would prejudice any person's ability to investigate the allegation, he/she shall consult the Chairman of the Standards Committee [or in his/her absence the Vice-Chairman] and may then decide that no such advance notification shall be given;
- (c) collect such information as is readily available and would assist the Assessment Sub-Committee in its function of assessing the allegation;
- (d) seek local resolution of the matter where practicable;

Where the Monitoring Officer is of the opinion that there is the potential for local resolution, he/she shall approach the member against whom the allegation has been made and ask whether he/she is prepared to acknowledge that his/her conduct was inappropriate, and whether he/she would be prepared to offer an apology or undertake other appropriate remedial action.

With the consent of the member concerned, the Monitoring Officer may then approach the complainant and ask whether the complainant is satisfied by such apology or other remedial action. The Monitoring Officer should then report to the Assessment Sub-Committee as required, and at the same time report the response of the member concerned and of the complainant.

Where the member has acknowledged that his/her conduct was inappropriate, and particularly where the complainant is satisfied with the proffered apology or remedial action, the Assessment Sub-Committee might take that into account when considering whether the matter merits investigation.

#### Local Investigation

It is possible that the Monitoring Officer shall not personally conduct a formal local investigation. However, it will be for the Monitoring Officer at his/her own discretion, to determine who to instruct to conduct a formal local investigation, and this may include another senior officer of the Council, a senior officer of another authority or an appropriately experienced consultant or external body.