

LOCAL ASSESSMENT OF COMPLAINTS PROCEDURE

Introduction

Anyone who considers that a Member (or co-opted Member) may have breached the Code of Conduct may make a complaint to the County Council's Standards Committee. Each complaint must then be assessed to see if it falls within the County Council's legal jurisdiction. A decision must then be made on whether some action should be taken, either as an investigation or some other form of action.

When a matter is referred for investigation or other action, it does not mean that the committee assessing the complaint has made up its mind about the allegation. It simply means that the committee believes the alleged conduct, if proven, may amount to a failure to comply with the Members' Code of Conduct and that some action should be taken in response to the complaint.

The Standards Board for England's guidance, "Local Assessment of Complaints" has been taken into account in the development of this procedure. In this Procedure, where a Member (Councillor) is the subject of an allegation that Member is referred to as the 'Subject Member'.

Procedure Overview

- Submission of complaint
- Initial review by Monitoring Officer
 - Complaint may be resolved informally if complainant decides not to submit a formal written complaint
 - Assess whether the complaint concerns Member conduct as procedure only applies to Member conduct complaints
- Formally record complaint
 - Acknowledge receipt of complaint within **5 working days** of receipt
 - Advise the Subject Member that a complaint has been received
 - Pre-assessment report and enquiries
 - Referral to Standards Committee's Assessment Sub-Committee
- Initial assessment by Assessment Sub-Committee within **20 working days** of receipt of complaint
 - Refer to Monitoring Officer for investigation and Standards Committee hearing or
 - Refer to Monitoring Officer for other action or
 - Refer to Standards Board for England or
 - No further action
- Advise complainant and Subject Member of the decision (in most cases decision will be made publicly available)
- If 'no further action' the complainant has **30 working days** from the date of the decision to request a review
 - Referral to Standards Committee's Review Sub-Committee

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Making a Complaint

Complaints must be submitted in writing. This includes fax and electronic submissions.

The Council may make reasonable adjustments to this requirement if necessary, for example in assisting a complainant who has a disability that prevents them from making their complaint in writing, or where English is not the complainant's first language.

The Council has published a complaints form to assist complainants.

Initial Action

The Council's Monitoring Officer will review the complaint and determine whether it should be directed to the Assessment Sub-Committee or whether another course of action is appropriate. Where possible the Monitoring Officer will endeavour to achieve early informal resolution of the complaint unless the complainant has indicated that they do not wish this option to be pursued.

If the complaint is clearly not about member conduct, then the Monitoring Officer does not have to pass it to the Assessment Sub-Committee, a sub-committee of Standards Committee.

If a verbal complaint is received by the Monitoring Officer, the Monitoring Officer should ask the complainant whether they want to formally put the matter in writing. If the complainant does not, then the Monitoring Officer should consider the options for informal resolution to satisfy the complainant.

Acknowledging receipt of a complaint

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receipt.

The Monitoring Officer may advise the Subject Member:

- That a complaint has been made about them
- The name of the complainant (unless the complainant has requested confidentiality and the Standards Committee has not yet considered whether or not to grant it)
- The relevant paragraphs of the Code of Conduct that may have been breached
- That a written summary of the allegation will only be provided once the Assessment Sub-Committee has met to consider the complaint but that the Sub-Committee does not have to provide a summary of the complaint if it considers that doing so would be against the public interest or would prejudice any further investigation
- The date of the Sub-Committee meeting, if known

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Before advising the Subject Member the Monitoring Officer should check the legal power to disclose the information, in particular with reference to Section 63 of the Local Government Act 2000 and the Data Protection Act 1998.

Pre-assessment reports and enquiries

The Monitoring Officer will prepare a short summary of the complaint, to be circulated to Members of the Sub-Committee in advance of the meeting, for the Assessment Sub-Committee to consider.

The Monitoring Officer may also contact the complainant for clarification of the complaint if they are unable to understand the document submitted.

Pre-assessment enquiries will not be carried out in such a way as to amount to an investigation. No interviews will be carried out at this stage, and no opinions on the matter will be sought.

The report will not influence improperly the assessment sub-committee's decision or make the decision for it.

Initial tests by the Assessment Sub-Committee

Before assessment of a complaint begins, the Sub-Committee should be satisfied that the complaint meets the following tests:

- It is a complaint against one or more named Members of the County Council
- The named Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time
- 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 under this procedure and the complainant will be informed that no further action will be taken in respect of the complaint.

Assessment Criteria

The Assessment Sub-Committee will use assessment criteria suggested by the Standards Board for England to assess complaints and decide what action, if any, to take.

The assessment criteria can be reviewed and amended as necessary but this will not be done during consideration of a matter.

The Initial Assessment Decision

The Assessment Sub-Committee will, where possible, reach a decision on what should happen with the complaint within **20 working days** of receipt of the complaint.

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The meeting of the Sub-Committee will be a closed meeting. This means that the general public will not be given notice of the meeting or access to it or any of the papers associated with it. Only those Members who are appointed to the Sub-Committee and County Council Officers whose attendance is necessary will be entitled to attend the meeting and to have access to papers associated with it.

The decision will be one of the following:

- Referral of the complaint to the County Council's Monitoring Officer for investigation or other action
- Referral of the complaint to the Standards Board for England
- No action

A written summary of the decision will be produced, which will include:

- The main points considered
- The conclusions on the complaint
- The reasons for the conclusion
- The name of the Subject Member may be included unless doing so is considered not to be in the public interest or would prejudice any subsequent investigation

A letter and decision notice will be sent to the complainant and the Subject Member. Wherever possible the decision notice will be sent out within **5 working days** of the decision being made.

After the Subject Member has been sent the summary, it will be made available to the public to inspect at the County Council's offices for six years following the date of the decision.

In limited situations, the Assessment Sub-Committee may decide, following advice from the Monitoring Officer, not to give the written summary to the Subject Member. If this happens, the report will not be made available to the public until such time as it is eventually released to the Member (the decision will be kept under review as circumstances change). If the County Council receives a request for the written summary before it is made available to the public, it will consider its obligations under the Freedom of Information Act 2000 and the Data Protection Act 1998.

Referral to the Monitoring Officer for investigation or other action

If the Assessment Sub-Committee decides that the matter 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.

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 certain matters. It can be the simplest and most cost-effective way of getting the matter resolved, helping the Council to work more effectively, and to avoid similar complaints in the future.

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The Assessment Sub-Committee must consult with the Monitoring Officer before reaching a decision to take further action. If the Monitoring Officer embarks on a course of other action this will mean that no conclusion has been reached on whether the Subject Member has breached the Code of Conduct. The Monitoring Officer should emphasize this to the parties concerned.

If other action is perceived to have failed the matter will not be referred back to the Standards Committee. The opportunity to investigate is closed by the decision to pursue other action. The Assessment Sub-Committee should emphasize this to all the parties.

Examples of other action include:

- Arranging for the Subject Member (or if appropriate all Members) to attend a training course
- Arranging for the Subject Member to engage in a process of conciliation
- Instituting changes to the procedures of the County Council if they have given rise to the complaint

The Assessment Sub-Committee may require the parties involved to confirm in writing that they will co-operate with the process of other action proposed. An example of this would be writing to the relevant parties outlining what is being proposed, why it is being proposed, why they should co-operate and what the Standards Committee hopes to achieve.

Referral to the Standards Board for England

There will sometimes be issues in a case, or public interest considerations, which make it difficult for the Council to deal with a case fairly and speedily

If the Assessment Sub-Committee decides, following consideration of the Standards Board's suggested criteria, that the matter should be referred to the Standards Board for England; it will be referred as soon as possible.

In the event the Standards Board for England declines to investigate the complaint the Assessment Sub-Committee will re-consider the matter. If the circumstances of the complaint have changed since the Assessment Sub-Committee's original decision, this can be taken into account. The decision will be communicated to the complainant and the Subject Member in the same way as the original decision was.

Decision to take no action

If the decision is that no action is to be taken the complainant will be advised of their right to ask for a review of the decision.

A review request should be received by the County Council's Standards Committee within 30 working days from the date of the initial assessment decision notice.

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Reviews of 'no further action' decisions

The Review Sub-Committee will aim to carry out its review within **20 working days** of receiving the request, and in any event must carry out its review within a maximum of three months of receiving the request.

The Subject Member will be notified that a review request has been received.

The meeting of the Sub-Committee will be a closed meeting. This means that the general public will not be given notice of the meeting or access to it or any of the papers associated with it. Only those Members who are appointed to the Sub-Committee and County Council Officers whose attendance is necessary will be entitled to attend the meeting and to have access to papers associated with it.

Members of the Assessment Sub-Committee who made the original decision will not take part in the review of that decision.

The Review Sub-Committee will apply the same criteria used for the initial assessment of the complaint. It has the same decisions available to it as the Assessment Sub-Committee.

In some circumstances, for example if further information becomes available that changes the nature of the original complaint, the Review Sub-Committee may decide that it is more appropriate to treat the complaint as a new complaint. The Review Sub-Committee will still need to make a formal decision that the review request will not be granted.

A letter and decision notice will be sent to the complainant and the Subject Member. Wherever possible the decision notice will be sent out within **5 working days** of the decision being made.

In limited situations, the Assessment Sub-Committee may decide, following advice from the Monitoring Officer, not to give the written summary to the Subject Member. If this happens, the report will not be made available to the public until such time as it is eventually released to the Member (the decision will be kept under review as circumstances change). If the County Council receives a request for the written summary before it is made available to the public, it will consider its obligations under the Freedom of Information Act 2000 and the Data Protection Act 1998.

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 Sub-Committee will decide whether to grant the request. In order to make this decision the Sub-Committee will consider the criteria set out in the Standards Board's guidance.

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Multiple and vexatious requests

A number of complaints about the same matter may be considered by the Assessment Sub-Committee at the same meeting, although a decision will be reached on each complaint individually.

Every new complaint received in relation to the Member Code of Conduct will be considered. 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 does not need to be considered.

If it is considered that a complainant is abusing the complaints procedure the Council may take action to limit that individual's contact with the County Council, for example by allowing that person only to communicate with one named officer, or refusing email communication.

Case History

The Monitoring Officer will maintain a corporate register containing all complaints.

The Monitoring Officer will review the corporate register and produce an annual report for the Chief Executive and the Standards Committee and will report to the Standards Board for England as required.

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 will only be granted in exceptional circumstances and at the discretion of the Assessment Sub-Committee.

In exercising its discretion the Assessment Sub-Committee will have reference to the criteria suggested by the Standards Board for England.

Anonymous Complaints

Anonymous complaints will normally only be referred for investigation or some other action if it includes evidence indicating an exceptionally serious or significant matter.

Conflicts of Interest

The Standards Committee is of sufficient size that in most cases the procedure will be able to operate effectively in the event a Member is unable to participate for reasons of conflict of interest. A Member should seek advice from the Monitoring Officer straight away if they have reason to believe they have a conflict of interest or a personal or prejudicial interest in a matter.

To avoid personal conflicts of interest Members should not discuss complaints with others who are not Members of the committee that deals with the assessment or review. Discussions between Members should only take place at official meetings.

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Officers who have previously advised the complainant or the Subject Member, about the issues giving rise to the complaint, should consider whether they can take part in the assessment process.

If an officer has taken part in the assessment or hearing process then they should not be involved in the investigation of that matter.

The Monitoring Officer should act as the main advisor to the Standards Committee. If there is a potential conflict of interest the advisory role should be delegated to another appropriate officer such as the Deputy Monitoring Officer.

No officer or Member should take part in the assessment of a complaint where they have a personal interest. In assessing whether they have a personal interest reference should be made to the criteria suggested by the Standards Board for England.

Complaints about Members of more than one authority (dual-hatted Members)

Where a complaint is received about a dual-hatted Member, the County Council's Monitoring Officer 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 must then be taken by the Standards Committees themselves, following discussion with each other, and the Standards Board for England as necessary.