



# PROCEDURE FOR LOCAL ASSESSMENT, INVESTIGATION AND DETERMINATION OF COMPLAINTS

## CONTENTS

LOCAL ASSESSMENT	PAGE 2
INVESTIGATIONS	PAGE 10
HEARINGS (DETERMINATION)	PAGE 12



# PROCEDURE FOR LOCAL ASSESSMENT, INVESTIGATION AND DETERMINATION OF COMPLAINTS

## LOCAL ASSESSMENT

### 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. Standards 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'.

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.

### 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 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



## **PROCEDURE FOR LOCAL ASSESSMENT, INVESTIGATION AND DETERMINATION OF COMPLAINTS**

### **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



## PROCEDURE FOR LOCAL ASSESSMENT, INVESTIGATION AND DETERMINATION OF COMPLAINTS

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 Standards 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.



## PROCEDURE FOR LOCAL ASSESSMENT, INVESTIGATION AND DETERMINATION OF COMPLAINTS

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 Standards 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.



## **PROCEDURE FOR LOCAL ASSESSMENT, INVESTIGATION AND DETERMINATION OF COMPLAINTS**

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.

In cases where the Monitoring Officer has been given a direction to carry out other action, they should report back to the Standards Committee within 3 months on the outcome of the action or with details of proposed actions. This gives the Standards Committee an opportunity to notify the relevant parties that it is satisfied or to give further directions.

### **Referral to Standards 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 Standards for England's suggested criteria, that the matter should be referred to Standards for England; it will be referred as soon as possible.

In the event Standards 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.



## PROCEDURE FOR LOCAL ASSESSMENT, INVESTIGATION AND DETERMINATION OF COMPLAINTS

### 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.

### 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.



## **PROCEDURE FOR LOCAL ASSESSMENT, INVESTIGATION AND DETERMINATION OF COMPLAINTS**

### **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 Standards for England's guidance.

### **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 Standards 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 Standards 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.



## PROCEDURE FOR LOCAL ASSESSMENT, INVESTIGATION AND DETERMINATION OF COMPLAINTS

### **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.

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 Standards 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 Standards for England as necessary.



## **PROCEDURE FOR LOCAL ASSESSMENT, INVESTIGATION AND DETERMINATION OF COMPLAINTS**

### **INVESTIGATIONS**

If a complaint is referred to the Monitoring Officer for investigation, the investigation will be conducted with reference to Standards for England's guidance which reflects the requirements of the relevant legislation (Standards Committee (England) Regulations 2008). The main provisions are summarised below.

#### **Timescales**

Where possible investigations will be carried out, and a report on the investigation completed, within 6 months of the original complaint being assessed by the initial Assessment Sub-Committee.

An investigation is considered completed when the final report is written and dated by the Monitoring Officer.

#### **Referral and Deferral**

During the course of an investigation circumstances may arise that prompt the Monitoring Officer to refer the case back to the Standards Committee (or back to Standards for England if the complaint was referred by the organisation). The Standards Committee should deal with the referral as it would deal with an initial complaint.

An investigation should be deferred in certain circumstances, for example where there are ongoing criminal proceedings or a police investigation into the Member's conduct, where another investigation would be prejudiced, where a key party is seriously ill, or due to genuine unavailability of a key party. The Monitoring Officer will take the final decision regarding whether an investigation should be deferred.

#### **Confidentiality**

Information gathered through the investigation process will be treated as confidential, and all individuals interviewed during the course of the investigation should be asked to maintain confidentiality. In some circumstances the Monitoring Officer may be justified in disclosing information, for example where required to by a court or similar body. Draft reports issued on the outcome of an investigation should also be marked as confidential.



## PROCEDURE FOR LOCAL ASSESSMENT, INVESTIGATION AND DETERMINATION OF COMPLAINTS

### Draft Report and Final Report

It may be appropriate to issue a draft report for review and comment by the complainant and the Subject Member. Factors to take into account include whether the facts are complex or ambiguous, whether the facts are disputed and whether the parties expect to receive a draft for comment. In some circumstances it may be appropriate to issue a second draft or to carry out further investigation.

The final report will be sent to the Subject Member and the Standards Committee. A copy may also be made available to the complainant as part of the hearing process.

The report must make one of the following findings:

- That there has been a failure to comply with the Code of Conduct (a finding of failure)
- That there has not been a failure to comply with the Code of Conduct (a finding of no failure)

### The Consideration Stage

The Standards Committee has appointed a Consideration and Hearing Sub-Committee to consider investigation reports and to hold determination hearings.

The Consideration and Hearing Sub-Committee will be convened to consider final investigation reports. It may consider the matter in private, but to do so must be satisfied that the public interest in maintaining privacy outweighs the public interest in disclosing the information. Standards for England's guidance states that in most cases the public interest in transparent decision-making will outweigh the Subject Member's interest in limiting publication of an unproven allegation that has not yet been determined.

If the report makes a finding of failure the case will be referred by the Sub-Committee for a determination hearing, or to the General Regulatory Chamber of the First-Tier Tribunal (Local Government Standards in England).

If the report makes a finding of no failure the Sub-Committee must decide if it agrees with this. The Committee will only consider the report; it will not seek to interview witnesses or take representations from the parties. If the Standards Committee disagrees with the finding and decides there is a case to answer, there will be a determination hearing, or a referral to the General Regulatory Chamber of the First-Tier Tribunal (Local Government Standards for England). If the Sub-Committee agrees with the finding it must notify the relevant parties and arrange for a notice to be published in a local newspaper, unless the Subject Member does not want a notice to be published.

The Members of the Consideration and Hearing Sub-Committee may consider the investigation report and then participate the final determination hearing.



## PROCEDURE FOR LOCAL ASSESSMENT, INVESTIGATION AND DETERMINATION OF COMPLAINTS

### HEARINGS

If a complaint is referred for a determination hearing, the hearing will be conducted with reference to Standards for England's guidance which reflects the requirements of the relevant legislation (Standards Committee (England) Regulations 2008).

The Consideration and Hearing Sub-Committee will conduct determination hearings.

### Timescale

The determination hearing should take place within 3 months of the date on which the Monitoring Officer's report was completed or as soon as possible after 3 months, and at least 14 days after the Subject Member received a copy of the report from the Monitoring Officer.

### Pre-Hearing Process

A pre-hearing process will be carried out, as far as possible, in writing. Other than in very straightforward cases, the process can be used to identify whether there is any disagreement on findings of fact, whether any parts of the hearing should be held in private, and whether any parts of the investigation report should be withheld from the public on the grounds they contain 'exempt' material.

In most cases all parties will agree that the hearing should take place in public, but the views of the relevant parties will be sought as early as possible in the process. Standards for England's guidance states that in most cases the public interest in transparent decision-making will outweigh the Subject Member's interest in limiting publication of an unproven allegation that has not yet been determined.

There will be consultation with the Subject Member regarding the above issues, the date for the hearing, and other arrangements. For example, the Subject Member will also be asked to advise whether they will be represented at the hearing, whether they want to give evidence verbally or in writing, and whether they want to call witnesses.

Unless the Subject Member complies with the pre-hearing procedure the Consideration and Hearing Sub-Committee may rule that it will not allow new evidence to be presented at the determination hearing. It will only be in exceptional circumstances that new disagreements over factual matters in the investigation report can be raised at the hearing.

A pre-hearing process summary should be sent to everyone involved in the complaint at least two weeks before the hearing.



## PROCEDURE FOR LOCAL ASSESSMENT, INVESTIGATION AND DETERMINATION OF COMPLAINTS

### Determination Hearings

A determination hearing is a formal meeting of the County Council (conducted by the Consideration and Hearing Sub-Committee) and not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities.

The Subject Member may choose to be represented by counsel, a solicitor, or by any other person they wish. Prior approval of the Consideration and Hearing Sub-Committee is required for a non-legal representative.

The Sub-Committee controls the procedure and evidence presented at the hearing, including the number of witnesses and the way witnesses are questioned. The Consideration and Hearing Sub-Committee may consider the report in the Subject Member's absence if the Subject Member does not go to the hearing.

Members are responsible for meeting the cost of any representation at a hearing.

As far as possible, the Sub-Committee will follow the model hearing procedures published by Standards for England.

The Sub-Committee should announce its decision at the end of the hearing. A full written decision must be given as soon as possible after the hearing. In most cases this will be within 2 weeks. The decision must be given to the relevant parties:

- The Subject Member
- The complainant
- The standards committees of any other authorities concerned
- Standards for England

A summary of the decision and the reasons for it must be published in at least one newspaper that is independent of the Council. If the finding is of no breach the Subject Member is entitled to decide that no summary of the decision should be passed to the local newspapers.



## PROCEDURE FOR LOCAL ASSESSMENT, INVESTIGATION AND DETERMINATION OF COMPLAINTS

### Sanctions

If the Sub-Committee finds that a Subject Member has failed to follow the Code of Conduct and that they should be sanctioned, it may impose any one or a combination of the following:

- Censure
- Restriction for a period not exceeding 6 months of access to premises or use of resources
- Partial suspension for a period not exceeding 6 months
- Suspension for a period not exceeding 6 months
- Written apology
- Undertake training
- Conciliation

The Sub-Committee should have regard to Standards for England's guidance on reasonableness and proportionality, and mitigating and aggravating factors, in determining a sanction. Standards for England has also issued guidance on the implications of partial and full suspension and restrictions.

### Appeal

A Member subject to a Standards Committee finding may apply in writing to the President of the General Regulatory Chamber of the First-Tier Tribunal (Local Government Standards for England) for permission to appeal against that finding. The application must be received by the President within 21 days of the Member receiving notice of the Standards Committee's decision.