

STANDARDS COMMITTEE PROCEDURE RULES – SCHEDULE J



1. INTRODUCTION

- 1.1 Any complaints of misconduct against Members (this definition includes co-opted members) should be made to the Monitoring Officer of the Council.
- 1.2 In accordance with the Protocol for handling complaints against Members, the Monitoring Officer may initially refer the complaint to the appropriate Whips' office for consideration.

The Monitoring Officer may also refer the complaint to the Standards Committee who will determine the complaint in accordance with the procedures set out in this Schedule.

Interpretation

- 1.3 'Subject Member' means the Member of the Council who is the subject of an allegation which has been made.
- 1.4 'Investigator' means the Monitoring Officer or his or her nominated representative appointed to carry a full investigation into the circumstances surrounding the complaint.
- 1.5 'Legal advisor' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the Council, or someone appointed for this purpose from outside the Council.
- 1.6 For the purpose of these Rules, 'misconduct' means any conduct by a Member, which is in breach of the Revised Code of Conduct adopted by the Council on 5 July 2012
- 1.7 'Independent member' means a person appointed by the Council under the terms of the Localism Act 2011, who will attend meetings of the Standards Committee in a non-voting capacity, when the Committee is meeting to consider any complaints of misconduct against Members or co-opted members.

2. MAKING A COMPLAINT

- 2.1 In order that members of the public are aware of the procedures for making a complaint against a Member of the Council, the Council will publicise its complaints system:

➤ on its website;

- within its own newspaper;
 - in local libraries and other public areas.
- 2.2 Should any subsequent changes be made to the system, then these will be publicised in a similar manner.
- 2.3 All complaints should be made in writing on the prescribed form (subject to the requirements of the Disability Discrimination Act 2000) and should specify:
- The complainant's name, address and other contact details;
 - The complainant's status e.g. member of the public, Councillor, officer etc;
 - Who the complaint is about and to which authority the Member in question belongs;
 - Full details of the alleged misconduct including where possible dates, witness details and any other supporting information;
 - Equality monitoring data if applicable.
- 2.4 Support will be provided to complainants where English is not their first language.
- 2.5 It should also be made clear to a complainant that his/her identity will normally be disclosed to the Subject Member, unless they specifically request otherwise.

3. ASSESSMENT

- 3.1 Upon receipt of a written complaint, the Monitoring Officer will normally:
- Satisfy himself that the complaint falls within the remit of the Council to consider and is not one that falls within the scope of Part I, Chapter 7, Section 34 of the Localism Act 2011 (relating to non disclosure of Pecuniary Interests);
 - Satisfy himself that the complaint has been subject to consideration by the appropriate Whips' Office in accordance with the adopted Protocol, or that the reasons why this process has not been followed, as stated in the complaint form, are sufficient for it to be referred directly to the Standards Committee.
 - Acknowledge receipt in writing within 3 working days, requesting any additional information that may be required to assist with the assessment of the complaint *;
 - Notify the Subject Member that a complaint has been made, giving details of the complainant (unless the complainant has made a request for confidentiality and the Standards Committee has yet to determine whether to grant it), details of the sections of the Code of Conduct to which the alleged breach relates and requesting / inviting any additional information that may be required to assist with the assessment of the complaint *;
 - Notify the Subject Member that a full written summary will be provided once the Standards Committee has met to consider the complaint;

- Arrange for a meeting of the Standards Committee to be held within 20 working days;
- Prepare a report for the Standards Committee, summarising the complaint and giving full details of the alleged breach along with any additional information the Committee may need to assist with its deliberations.

* at this stage seeking additional information should not in anyway amount to an investigation e.g. interviewing witnesses etc, but should be a factual clarification of any ambiguities;

3.2 The Standards Committee, including the non-voting, independent member, will meet in closed session to assess the validity of the complaint and its meetings are not subject to notice and publicity arrangements under Part 5 of the Local Government Act 1972.

3.3 Before the Committee begins its assessment, it should satisfy itself that a complaint:

- is against one or more named Members of the Council and that those Members were in office at the time of the alleged misconduct and the Code of Conduct was in force at that time;
- if proven, would be a breach of the Code of Conduct under which the Member was operating at the time of the alleged misconduct.

3.4 If the complaint fails the tests above then it cannot be investigated and the complainant must be informed that no further action will be taken.

3.5 To ensure that all complaints are dealt with in a fair and even-handed manner, the Committee will ask itself the following questions and follow any further criteria which is subsequently agreed:

- Has the complainant submitted enough information to satisfy the Committee that the complaint should be referred for investigation or other action?
- Is the complaint about someone who is no longer a Member of the authority, but is a Member of another authority? If so, does the Committee wish to refer the complaint to the Monitoring Officer of that other authority?
- Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct?
- Similarly, has the complaint been the subject of an investigation by other regulatory authorities?
- Is the complaint about something that happened so long ago that there would be little benefit in taking action now?
- Is the complaint too trivial to warrant further action?
- Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?

3.6 The Committee will reach one of the following decisions on a complaint about a Subject Member's actions in relation to the Code of Conduct within 20 working days:

- **referral of the complaint to the Monitoring Officer.** If the matter is to be the subject of a local investigation, the Monitoring Officer will decide who is to be appointed as the investigator (see paragraph 1.4 above).
 - **that no action** should be taken in respect of the complaint.
- 3.7 The decision of the Committee will be made known in a written summary detailing the main points considered, the conclusion on the complaint and the reasons for that conclusion.
- 3.8 The written summary must be available for public inspection for six years once the subject Member has been sent a copy.
- 3.9 **Other Action** - It may not always be in the interests of good governance to undertake or complete an investigation into an allegation of misconduct. The Committee must consult the Monitoring Officer before reaching a decision to take other action which will be dependent on the nature of the complaint but may include:
- arranging for the Subject Member to attend a training course;
 - arranging for that Member and the complainant to engage in a process of conciliation;
 - instituting changes to the procedures of the Council if they have given rise to the complaint.

Notification of Decision

No Action

- 3.10 If the Committee decides to take no action over a complaint, then within 5 working days it will give notice in writing of the decision and the reasons for it.
- 3.11 Where no potential breach of the Code is disclosed, the Committee will explain in the decision notice what the allegation was and why they believe this to be the case.
- 3.12 This notice will be given to the relevant parties i.e. the complainant, the Subject Member and the Chief Executive.

Referral to Monitoring Officer

- 3.13 Within 5 working days a summary of the complaint will be sent to the relevant parties stating that the Committee has referred the matter to the Monitoring Officer for investigation or other action. The decision notice will also explain why a particular referral decision has been made.
- 3.14 The 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 Committee should take advice from the Monitoring Officer in deciding whether it is against the public interest to inform the Subject Member of the details

of the complaint made against them.

- 3.15 It should also take advice from the Monitoring Officer in deciding whether by informing the Subject Member of the details of the complaint, it would prejudice a person's ability to investigate it.

4. WITHDRAWING A COMPLAINT

- 4.1 Should a complainant ask to withdraw their complaint prior to the Standards Committee having made a decision on it, the Committee will need to decide whether to grant the request using the following criteria which may be added to subsequently:

- Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
- Is the complaint such that action can be taken on it, for example an investigation, without the complainant's participation?
- 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?

5. MULTIPLE COMPLAINTS

- 5.1 The Standards Committee may take a view on the best way to handle multiple complaints about the same matter bearing in mind the most practical use of time and resources.
- 5.2 A number of complaints about the same matter may be considered by the Committee at the same meeting. If so, the Monitoring 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.
- 5.3 However, the Committee must still reach a decision on each individual complaint and follow the notification procedure for each complaint.

6. VEXATIOUS AND REPEAT COMPLAINTS

- 6.1 Whilst the Standards Committee must consider every complaint it receives about behaviour in relation to the Code of Conduct, it may give regard to the Council's existing policy on persistent and vexatious complainants when doing so.
- 6.2 Should a complaint be resolved as a result of the Whips' Protocol and all parties have signified the same in writing, it shall not be open to the complainant submitting the original complaint to further submit the same complaint against the same Member to the Monitoring Officer at a later date.
- 6.3 If the Committee has already dealt with the same complaint by the same person against the same Subject Member, or a complaint which

is substantially about the same issues merely re-worded and the Monitoring Officer does not believe that there is any new evidence, then a complaint does not need to be considered.

- 6.4 A person may make frequent allegations about Members, most of which may not have any substance. Despite this, new allegations must still be considered as they may contain a complaint that requires some action to be taken.
- 6.4 Even where restrictions are placed on an individual's contact with the Council, they cannot be prevented from submitting a complaint.

7. CONSIDERATION

- 7.1 Should the Standards Committee decide that a complaint is justified and refer it to the Monitoring Officer for investigation, the Monitoring Officer will arrange to convene a meeting of the Committee, including the non-voting, independent member, to consider the investigation report into the complaint and, if required, conduct a hearing.
- 7.2 Both the complainant and the Subject Member will be invited to the meeting which will normally be held in public. However, there will be occasions when confidential and/or exempt information within the meaning of the Local Government (Access to Information) Act 1985 will need to be considered by the Committee. The Monitoring Officer will in these circumstances advise the Committee whether it is appropriate for all or part of the hearing to be held in private and to restrict the release into public of any or all of the paperwork.
- 7.3 After considering the Monitoring Officer's report, the Committee will either:
- make a finding of no failure; or
 - determine that the matter should proceed to a hearing
- 7.4 As soon as reasonably practicable after accepting the Monitoring Officer's finding of no failure, the Committee shall give written notice of that finding to:
- the Subject Member;
 - the Standards Committee of any other authority concerned;
 - the complainant.
- 7.5 The Committee must also arrange for a notice to be published on the web site of the Council, stating that there has been no breach of the Code of Conduct on the part of the Subject Member.
- 7.6 The only circumstances in which the Notice will not be published is if the Subject Member requests this.

The Hearing of the Complaint

- 7.7 The Committee should work fairly and in a way that encourages the confidence of Members and the public. The procedures should comply with the principles of natural justice and Article 6 of the Human Rights Act 1998 (the right to a fair hearing within a reasonable time). A copy of the Hearing Procedures is appended to this Schedule.
- 7.8 The Subject Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Committee, another person.
- 7.9 The Committee may take legal advice from its legal advisor at any time during the hearing or while it is considering the outcome. The substance of any legal advice given to the committee should be shared with the Subject Member and the investigator if they are present.

Witnesses

- 7.10 Although the Subject Member is entitled to call any witnesses he or she wants, the Committee may limit the number of witnesses if it believes that the number called is unreasonable.
- 7.11 The Committee also has the right to govern its own procedures as long as it acts fairly. For this reason, the Committee may choose not to hear from certain witnesses if it believes that they will simply be repeating the evidence of earlier witnesses or if a witness will not be providing evidence that will assist the Committee to reach its decision.

Evidence

- 7.12 The Committee controls the procedure and evidence presented at a hearing, including the way witnesses are questioned.
- 7.13 The Subject Member must be allowed to make representations, either verbally or in writing and challenge any of the findings of fact contained in the Monitoring Officer's report. If the Subject Member prefers, these representations can be made through his or her nominated representative. The Subject Member must also be given the opportunity to give evidence to the Committee and call witnesses to give evidence.
- 7.14 In many cases, the Committee may not need to consider any evidence other than the investigator's report. If more evidence is needed or if people do not agree with certain findings of fact in the investigator's report, the Committee may need to hear from witnesses.
- 7.15 The Committee can question witnesses directly. It can also allow witnesses to be questioned and cross-examined by the Subject Member or the investigator or their representatives. The Committee can ask that these questions be directed through the Chairman.

- 7.16 If the Subject Member fails to attend a hearing of which that Member has been given notice, the Committee may:
- unless it is satisfied that there is sufficient reason for such failure, consider the allegation and make a determination in the absence of the Subject Member; or
 - adjourn the hearing to another date.
- 7.17 The Committee may, at any stage prior to the conclusion of the hearing, adjourn it and require the Monitoring Officer to seek further information or undertake further investigation on any point specified by it.

The Findings of the Standards Committee

- 7.18 In accordance with Part 1, Chapter 7, Section 11 of the Localism Act 2011, following its hearing, the Committee can make one of the following findings:
- the Subject Member has not failed to follow the Council's Code of Conduct;
 - the Subject Member has failed to follow the Council's Code of Conduct, but no action needs to be taken; or
 - the Subject Member has failed to follow the Council's Code of Conduct and an appropriate sanction should be imposed.

Penalties

- 7.19 If the Committee finds that a Subject Member has failed to follow the Code of Conduct and that he or she should be penalised, it may determine what penalty should be imposed.
- 7.20 When deciding a penalty, the Committee should make sure that it is reasonable and in proportion to the Subject Member's behaviour, reflects the nature and seriousness of the breach of the Code and seeks where possible to make reparations for any damage caused. Before deciding what penalty to set, the Committee should consider the following questions, together with any other relevant circumstances:
- What was the Subject Member's intention? Did the Subject Member know that he/she was failing to follow the Code of Conduct?
 - Did the Subject Member get advice from officers before the incident? Was that advice acted on in good faith?
 - Has there been a breach of trust?
 - Has there been financial impropriety (for example, improper expense claims or procedural irregularities)?
 - What was the result of failing to follow the Code of Conduct?
 - How serious was the incident?
 - Does the Subject Member accept that he or she was at fault?
 - Did the Subject Member apologise to the relevant people?
 - Has the Subject Member previously been warned or reprimanded for similar misconduct?

- Has the Subject Member failed to follow the Code of Conduct before?
- Is the Subject Member likely to do the same thing again?

7.21 After taking into consideration those matters above, the Sub-Committee may do any one or a combination of the following:

- censure the Subject Member. The Council or a Committee of the Council, can issue a formal censure through a motion;
- issue a press release or otherwise publicise a decision that the Subject Member has breached the Members' Code of Conduct;
- send the Subject Member a formal letter;
- remove the Subject Member from a Committee of the Council provided that this decision is made by the Council itself following agreement from the relevant Party Group and not by a Committee of the Council.

7.22 Any sanction imposed shall commence immediately following its imposition by the Sub-Committee.

7.23 As soon as is reasonably practicable after making a finding, the Committee will give notification of its findings and should announce its decision at the end of the hearing whenever it is practicable to do so. It is good practice to make a short written decision available on the day of the hearing, and to prepare the full written decision in draft on that day, before people's memories fade.

APPENDIX

HEARING PROCEDURES FOR THE STANDARDS COMMITTEE

Representation

1. The Subject Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Committee, another person.

Legal advice

2. The Committee may take legal advice from its legal advisor at any time during the hearing or while it is considering the outcome.

Setting the scene

3. After all the Members and everyone involved have been formally introduced, the Chairman should explain how the Committee is going to run the hearing.

Findings of fact

4. The Committee should consider whether or not there are any significant disagreements about the facts contained in the investigator's report. If there is no disagreement about the facts, the Committee can move on to the next stage of the hearing.
5. If there is a disagreement, the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report including, with the Committee's permission, calling any necessary supporting witnesses to give evidence. The Committee may give the Subject Member an opportunity to challenge any evidence put forward by any witness called by the investigator.
6. The Subject Member should then have the opportunity to make representations to support his or her version of the facts and, with the Committee's permission, to call any necessary witnesses to give evidence.
7. At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the Subject Member.
8. If the Subject Member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.
9. Once the Committee has heard the evidence, the Chairman will announce the Committee's Findings of Fact.

Did the subject Member fail to follow the Code?

10. The Committee then needs to consider whether or not, based on the facts it has found, the Subject Member has failed to follow the Code of Conduct.
11. The Subject Member should be invited to give relevant reasons why the Committee should not decide that he or she has failed to follow the Code.
12. The Committee should then consider any verbal or written representations from the investigator and the Subject Member should be invited to make any final relevant points.
13. The Committee may, at any time, question anyone involved on any point they raise in their representations.
14. The Committee will ask the room to be vacated to consider the representations and then the Chairman will then announce the Committee's decision as to whether or not the Subject Member has failed to follow the Code of Conduct.

If the Subject Member has failed to follow the Code

15. If the Committee decides that the Subject Member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigator and the Subject Member as to:
 - a. whether or not the Committee should set a penalty; and
 - b. what form any penalty should take.
16. The Committee may question the investigator and Subject Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
17. The Committee will ask the room to be vacated whilst considering whether or not to impose a penalty on the Subject Member and, if so, what the penalty should be. Upon the return of those present, the Chairman will announce the Committee's decision.
18. Whenever it is practicable to do so a short written decision will be provided on the day and a full written decision issued shortly after the Hearing.