

CHELTENHAM BOROUGH COUNCIL STANDARDS (INITIAL ASSESSMENT) AND (REVIEW) SUB-COMMITTEES

Procedure for the Local Assessment of Complaints against Councillors

Introduction

These procedures explain the way in which a complaint that a borough councillor or a parish councillor within the borough has breached the code of conduct will be considered, and the factors that will be taken into account when deciding whether to investigate a complaint.

The procedures will be used to guide decision making but they cannot address every possible eventuality and each case will be considered on its merits.

Making a Complaint

Complaints must be made in writing to the Monitoring Officer either by letter or by using the code of conduct complaint form. If the complainant is unable to provide written details as a result of disability, assistance will be provided by council officers.

The Monitoring Officer will refer the matter to the Standards (Initial Assessment) Sub-Committee if he is satisfied that it is potentially about member conduct.

The Monitoring Officer will prepare short summary of the complaint for consideration by the sub-committee to include the following information:

- (a) Whether the complaint is within the jurisdiction of the committee
- (b) The paragraphs of the code of conduct that might apply
- (c) Any other factual information that is reasonably available and that might assist the sub-committee.
- (d) If the councillor serves on two or more authorities whether a similar complaint has been made to that other authority.

Where a number of similar complaints are made at or about the same time, the report will summarise these collectively. However, at this stage further enquiries may only be made for the purpose of clarification of the complaint.

The sub- committee shall endeavour to meet and consider all written complaints referred to it within 20 working days of receipt by the Monitoring Officer.

Assessment Criteria

(a) *Initial Test*

The sub-committee will carry out an initial test to establish whether it has jurisdiction over the complaint by determining whether:

It is a complaint against one or more named members of either the borough council or a parish council.

The named member(s) was in office at the time of the alleged misconduct and the code of conduct was in force at that time.

The complaint if proven would be a breach of the code of conduct.

If any of the above elements of the test are failed the sub- committee cannot authorise investigation and the complainant will be notified that no further action will be taken.

(b) *Public Interest*

Once the committee has established that it has the power to consider the complaint it will consider the matters set out below. Underpinning its consideration at every stage will be an assessment of the public interest in investigating a complaint taking into account the cost and time involved.

(c) *Adequacy of Information*

The sub-committee will then consider the adequacy of the information provided by the complainant. If the complaint does not contain sufficient detail to determine whether the matter should be referred for investigation the complainant will be advised that no further action will be taken unless such additional information as the sub-committee consider to be necessary is provided to the Monitoring Officer.

(d) *Former Councillors*

If the complaint is about someone who is no longer a member of an authority within its jurisdiction, but is a member of another authority the sub-committee will consider whether to refer the matter to the Monitoring Officer of that other authority.

(e) *Previous Action under the Code of Conduct or by other regulatory authorities*

If the complaint has already been subject to a previous investigation or some other action relating to the code of conduct, or a related regulatory process, the matter will ordinarily not be referred for further action.

(f) *Repeated Complaints*

The Monitoring Officer will not refer to the Standards (Initial Assessment) Sub-committee a complaint that is the same or substantially the same as one previously made by the complainant.

(g) *Timing of the Alleged Conduct*

The sub-committee will consider the timing of the alleged misconduct when deciding whether to refer the matter for investigation or further action. If there are significant delays between the incident(s) complained of and the complaint the matter will not ordinarily be considered further unless there are strong reasons for the delay.

(h) *Trivial Matters*

No further action will be taken if the sub-committee consider that the matter is not sufficiently serious to warrant further action.

(i) *Ulterior Motive*

No further action will be taken if the sub-committee consider that the complaint is motivated by malice, political motivation or retaliation.

(j) *Complaints Previously Assessed by the Standards Board for England*

No action will be taken in respect of complaints that are the same or substantially the same as complaints previously assessed by the Standards Board for England as not warranting investigation.

(k) *Members of Two or More Authorities*

Where a complaint is made about a councillor who is a member of two or more authorities the Monitoring Officer, having consulted with the Monitoring Officer of the other authority, shall advise the committee as to which council should assume responsibility for the complaint.

Initial Assessment Decision

The sub- committee shall make one of the following decisions:

- (1) Referral of the complaint to the Monitoring Officer of either the borough council or another authority where appropriate
- (2) Referral of the complaint to the Standards Board for England (in accordance with the criteria set out below)
- (3) No further action

Referral to the Standards Board for England

The sub-committee shall use its discretion in determining whether to refer a complaint to the Standards Board for England but in any event shall not refer a complaint unless it considers that one of the following criterion apply:

- (a) Where the status of the councillor complained about would make it difficult for the committee to deal with the complaint
- (b) Where the status of the complainant would make it difficult for the committee to deal with the complaint
- (c) Where a number of committee members have a conflict of interest that would prevent it from properly discharging its duties or reasonably give the appearance that it could not do so.
- (d) Where there is a potential conflict of interest of the Monitoring Officer or other officers and suitable alternative arrangements cannot reasonably be put in place.
- (e) Where the complaint is so serious that if proven, the powers of the committee would not be adequate to deal with it.

- (f) Where the complaint is so complex or involves so many members that it cannot be handled locally within the borough council's available resources.
- (g) Where the complaint relates to systemic or long term governance issues requiring an independent investigation.
- (h) Where the complaint raises an unresolved legal issue that is a point of public interest and on which a national ruling would be helpful.
- (i) Where the council could reasonably be perceived as having an interest in the case sufficient to indicate actual or apparent bias.
- (j) Where there are exceptional circumstances that would prevent a competent, fair and timely investigation and determination being undertaken locally.

The Standards Board for England have a discretion to decline to investigate the complaint and to refer it back to the Standards and Ethics committee. Where it does so, the assessment sub-committee will reconsider the complaint again within 20 working days taking into account any direction given by the Standards Board.

Referral to the Monitoring Officer

The sub-committee may refer a matter to the Monitoring Officer for investigation or for some other action. The sub-committee will consider the appropriateness of other actions based on the facts of the case but it is more likely to be appropriate where there is a pattern of poor relationships or failings in governance.

Other action is an alternative to investigation and the option will only be pursued following consultation with the Monitoring Officer as to its suitability in the circumstances.

Although the sub-committee shall retain the discretion to determine what form other action shall take, ordinarily it will be confined to either:

- (1) Training for the councillor(s)
- (2) Mediation between the complainant and the councillor
- (3) Advice on changes to procedures of the council if they are relevant to the complaint.

Mediation

Where mediation is proposed, the sub-committee shall first seek the written consent of the complainant and the councillor and any third party that would need to participate.

In any case where a complaint is referred for other action the complainant and councillor shall be advised that the matter shall not be reconsidered again for investigation except;

- (1) Where the councillor complained of refuses to co-operate with mediation, the sub-committee shall reconsider whether to investigate and the failure to co-operate shall be viewed as an aggravating factor.
- (2) Where a complainant refuses to co-operate in mediation, the sub-committee shall reconsider whether to investigate and the failure to co-operate shall be viewed as a mitigating factor in favour of the councillor
- 3) Where both parties refuse to co-operate, the sub-committee shall reconsider whether to investigate and in doing so shall discount the refusals of the parties.

In the above cases the sub-committee shall endeavour to reconsider the complaint within 20 working days of the deadline given to the parties to state whether they will co-operate with mediation.

Decision Notices

Subject to the exception below, the decision notice must set out the reasons for that decision and be provided to the complainant, the councillor concerned, and the parish clerk in respect of complaints about a parish councillor. The Monitoring Officer will endeavour to send this letter within 5 working days of the decision of the sub-committee.

The complainant should be advised of the right to request a review of the decision by setting out in writing the grounds upon which a review is sought within 30 clear days of receipt of the initial assessment decision.

If the decision is to refer the complaint to the Monitoring Officer or the Standards Board for England the decision notice must summarise the complaint and the type of referral made but must not explain why a particular referral decision has been made.

The sub-committee may decide not to provide a summary of the complaint to the member complained about (i.e the decision notice) only where it decides that to do so would be against the public interest or may prejudice any future investigation. The advice of the Monitoring Officer must first be obtained and the sub-committee must satisfy itself that sufficient evidence exists to justify the application of one of the above grounds.

The sub-committee must also consider whether more limited information can be provided to the councillor, and any restriction on the provision of information to the councillor must be kept under review by the Monitoring Officer. Where the Monitoring Officer considers that the reasons for withholding the information no longer apply the assessment sub-committee shall reconsider their decision.

Where a decision is taken to withhold the decision notice from the councillor subject to the complaint, then the notice will also be withheld from the parish council (if relevant) and will not be published for public inspection until the information is provided to the councillor.

Review of No Further Action Decisions

The review sub committee shall meet within 3 months of receiving a request to review the decision of the assessment sub committee not to investigate a case.

The review sub committee shall apply the same criteria used for initial assessment.

When a request for a review is received, the Monitoring Officer shall write to the complainant acknowledging the request and explaining the process for determination. The councillor subject to the complaint and the Parish Clerk (where relevant) will be similarly advised.

Initial Test

The review sub committee will initially determine whether the request is appropriate to consider as a review. A review will be undertaken where the grounds are:

- (a) That insufficient emphasis has been given to a particular aspect of the complaint
- (b) There has been a failure to follow published criteria
- (c) The assessment sub committee based its decision on a misunderstanding of the complaint

However, if further information is provided with the complaint that was not available to the assessment sub committee, the review sub-committee shall decline to review the original decision if the effect of the new information is to substantially change the nature of the complaint. In these cases the complaint will be referred back to the assessment sub-committee for consideration as a new complaint.

The review sub-committee has the same powers as are available to the assessment sub-committee.

A decision shall be sent to the parties within 5 working days of the meeting wherever possible.

Access to Documents and Meetings of the Assessment and Review Sub Committee

Meetings of the assessment and review sub committees shall be held in private and the committee papers will not be published. However, a written summary of complaints considered by the sub-committee will be published and which will include:

- (1) The main points considered
- (2) The conclusions on the complaint
- (3) The reasons for the conclusion (except the reasons why a particular referral decision has been made)

The summary will not name the councillor subject to the complaint only where to do so would in the view of the assessment sub-committee prejudice any subsequent

investigation or otherwise would not be in the public interest. The summary shall be available for inspection for 6 years following the decision.

Withdrawing Complaints

Where a complainant decides to withdraw a complaint, the matter will be referred to the assessment sub-committee, who will ordinarily formally close the matter by deciding that no further action be taken. However, the sub-committee may continue to assess a complaint or else continue with an investigation or other action already sanctioned where:

- (a) there are other complainants in respect of the same matter, and/or;
- (b) sufficient evidence in relation to the complaint is capable of being gathered without the participation of the complainant who has withdrawn the complaint, and;
- (c) The public interest still warrants assessment or investigation or other action in respect of the complaint.

Confidentiality

Except in exceptional circumstances, the identity of complainants will be disclosed to the councillor subject to the complaint. A request from a complainant to preserve anonymity shall be considered by the assessment sub-committee when it assesses the complaint. The sub-committee shall only consider granting anonymity to the complainant where one of the following grounds applies:

- (a) The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed.
- (b) The complainant is an officer who has reasonable grounds for believing that they will be subject to intimidation, bullying or threats in connection with their employment.
- (c) The complainant suffers from a serious medical condition and there are medical risks associated with the disclosure of their identity. Medical evidence will be required in respect of this ground.

In each of the above cases the sub-committee may only grant a request if they consider that a fair investigation can still be conducted.

If the sub-committee decline a request for anonymity the complainant shall be given the option of withdrawing the complaint as an alternative to the disclosure of information.

Anonymous Complaints

Anonymous complaints will not be considered further unless the complainant provides independent evidence, capable of verification and which discloses potentially serious wrongdoing.

STANDARDS (DETERMINATION OF COMPLAINTS) SUB-COMMITTEE

Procedure for the holding of a Hearing to determine complaints referred to the Standards (Determination of Complaints) Sub-Committee

Interpretation

1. 'Councillor' means the member of the authority who is the subject of the allegation being considered by the Standards(Determination) Sub-Committee, unless stated otherwise. It also includes the Councillor's nominated representative.
2. 'Investigator' means the Ethical Standards Officer (ESO) who referred the report to the authority or an Investigating Officer appointed by the Monitoring Officer, and includes his or her nominated representative.
3. 'Legal adviser' means the officer responsible for providing legal advice to the Standards (Determination of Complaints) Sub-Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

Representation

4. The Councillor may be represented or accompanied during the hearing by a Solicitor, Counsel or, with the permission of the Sub-Committee, another person.

Legal Advice

5. The Sub-Committee may take legal advice from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Sub-Committee should be shared with the Councillor and the Investigator if they are present.

Setting the scene

6. The Chairman of the Sub-Committee will introduce him/herself and then introduce the other Members of the Sub-Committee, the Councillor and his/her representatives, the Investigator and any witnesses.
7. The Chairman will then outline the procedure which will be adopted at the hearing.

Preliminary procedural issues

8. The Sub-Committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

Making findings of fact

9. After dealing with any preliminary issues, the Sub-Committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the Investigator's report.
10. If there is no disagreement about the facts, the Sub-Committee can move on

to the next stage of the hearing.

11. If there is a disagreement, the Investigator, if present, will be invited to make any necessary representations to support the relevant findings of fact in the report. With the Sub-Committee's permission, the Investigator may call any necessary supporting witnesses to give evidence. The Sub-Committee may give the Councillor an opportunity to challenge any evidence put forward by any witness called by the Investigator.
12. The Councillor will then have the opportunity to make representations to support his or her version of the facts and, with the Sub-Committee's permission, to call any necessary witnesses to give evidence.
13. At any time, the Sub-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 Councillor.
14. If the Councillor disagrees with most of the facts, the Sub-Committee may invite the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.
15. If the Councillor disagrees with any relevant fact in the Investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the investigator is not present, the Sub-Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the member's explanation for not raising the issue at an earlier stage, the Sub-Committee may then:
 - a. continue with the hearing, relying on the information in the investigator's report;
 - b. allow the member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary; or
 - c. postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if he or she is not already.
16. The Sub-Committee will usually move to another room to consider the representations and evidence in private.
17. On the Sub-Committee's return, the Chair will announce the Sub-Committee's findings of fact.

Did the member fail to follow the Code?

18. The Sub-Committee then needs to consider whether or not, based on the facts it has found, the Councillor has failed to follow the Code of Conduct.
19. The Councillor should be invited to give relevant reasons why the Sub-Committee should not decide that he or she has failed to follow the Code.
20. The Sub-Committee should then consider any verbal or written representations from the Investigator.
21. The Sub-Committee may, at any time, question anyone involved on any point

- they raise in their representations.
22. The Councillor should be invited to make any final relevant points.
 23. The Sub-Committee will then move to another room to consider the representations.
 24. On the Sub-Committee's return, the Chair will announce the Sub-Committee's decision as to whether or not the Councillor has failed to follow the Code of Conduct.

If the member has not failed to follow the Code of Conduct

25. If the Sub-Committee decides that the member has not failed to follow the Code of Conduct, the Sub-Committee will move on to consider whether it should make any recommendations to the authority.

If the member has failed to follow the Code

26. If the Sub-Committee decides that the member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigator and the Councillor as to:
 - a. whether or not the Sub-Committee should impose a sanction; and
 - b. what form any sanction should take.
27. The Sub-Committee may question the Investigator and Councillor and take legal advice, to make sure they have the information they need in order to make an informed decision.
28. The Sub-Committee will then move to another room to consider whether or not to impose a sanction on the Councillor and, if so, what the sanction should be.
29. On the Sub-Committee's return, the Chair will announce the Sub-Committee's decision.

Recommendations to the authority

30. After considering any verbal or written representations from the Investigator, the Sub-Committee will consider whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

The written decision

31. The Sub-Committee will announce its decision on the day and provide a short written decision on that day. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.
32. A full written decision will be issued within 14 days of the hearing.
33. The full decision will be drafted immediately after the conclusion of the hearing.