

Halton Borough Council

Draft Complaint/Assessment Criteria

1. WHICH COMPLAINTS CAN BE CONSIDERED?

The Assessment Sub-Committee must consider every complaint that a member of the authority (or of any Parish or Town Council within its area) has failed to comply with the Code of Conduct which that authority has adopted. Accordingly, it has no jurisdiction in respect of any complaint which relates to:

- (a) persons who are not members of the authority (or a Parish or Town Council in its area)
- (b) conduct which occurred at a time when the person against whom the complaint was made was not a member of the authority (or of a Parish or Town Council in its area)
- (c) conduct which occurred before the relevant authority adopted a Code of Conduct. All local authorities were required to adopt a Code of Conduct in 2001. In practice, the Sub-Committee will expect complaints to be made promptly after the events to which they relate (see below)
- (d) conduct which occurred in the member's private life, as the Code of Conduct only applies to a member's conduct as a member of a local authority
- (e) conduct which occurred when the member was acting as member of another authority. Where a member is also a member of another authority (other than a Parish or Town Council within its area) which has its own Code of Conduct, then the complaint should be addressed directly to that authority.
- (f) complaints which do not relate to the apparent misconduct of a relevant member but are, for example, about the policies and priorities of the authority, or are a request for the provision of a service by the authority, or are a complaint about the conduct of an officer of the authority

Such complaints will not be referred to the Assessment Sub-Committee but will instead be dealt with by the Monitoring Officer who will advise you as to the most appropriate avenue for proper consideration of your complaint or request.

2. DOES THE COMPLAINT APPEAR TO SHOW A BREACH OF THE CODE OF CONDUCT?

The first assessment which will be undertaken by the Sub-Committee will be to determine whether the complaint appears to show that a breach of the Code of Conduct may have occurred.

For this purpose, the Sub-Committee will take into account the complaint letter and any other information which is readily available to them. Accordingly, it is the responsibility of the complainant to set out clearly –

- (a) who the complaint is against

- (b) an understanding of what the relevant member did
- (c) why it is considered that the member's conduct amounted to a breach of the Code of Conduct,

And to provide copies of any documents which the complainant wants the Sub-Committee to consider.

Following receipt of the complaint, the Monitoring Officer will collect any other information which is readily available and which may assist the Sub-Committee in its consideration of the complaint. This will not include conducting interviews with witnesses, but may include providing the Sub-Committee with copies of the agenda, reports and minutes of a meeting of the authority at which the alleged misconduct occurred, or providing copies of the member's entry in the register of members' interests.

The Sub-Committee will then consider whether, on the basis of the complaint and that additional information, there appears to have been a breach of the Code of Conduct.

If the Sub-Committee concludes that the evidence does not disclose an apparent breach of the Code of Conduct, it has no further jurisdiction in respect of the matter.

3. POSSIBLE ACTIONS WHERE AN APPARENT BREACH OF THE CODE OF CONDUCT HAS OCCURRED

Where the Sub-Committee has concluded that there appears to have been a breach of the Code of Conduct, it has four options available to it. These are as follows:

(a) direct the Monitoring Officer to secure that the complaint is investigated locally

A local investigation would normally be appropriate where the alleged conduct is sufficiently serious to merit the imposition of a sanction against the member, but not so serious that it would merit a greater sanction than the authority's Standards Committee could impose following a formal hearing. In practice, this means that a local investigation would not be appropriate where the appropriate sanction is likely to be a suspension as a member of the relevant authority for a period of more than 6 months, or disqualification as a member of any local authority. See paragraph 5(b) below for more detailed grounds for referring a complaint to the Standards Board for England.

However, recognising that a formal investigation is an expensive and time-consuming process, and can only address the immediate subject matter of the complaint, the Sub-Committee can direct the Monitoring Officer to take other appropriate action short of a formal investigation – see paragraph 5(c) below.

In addition, particularly where the conduct complained of is not sufficiently serious to merit any action or occurred a considerable time ago, the Sub-Committee may determine that no action should be taken in respect of it. For more detail, see paragraph 5(d) below.

(b) refer the matter to the Standards Board for England with a request that the Board undertakes a national investigation into the complaint;

The following factors will be considered by the Sub-Committee to be factors which support referring the complaint to the Standards Board for England for a national investigation:

(i) that the complaint is so serious that, if proven, the conduct complained of merits a sanction in excess of that which could be imposed by the Standards Committee. In practice this means that the appropriate sanction would be either a suspension from the relevant authority for a period of more than 6 months, or a disqualification from any local authority

(ii) that the investigation required is so extensive that it would impose an unreasonable burden on the authority and/or that any hearing conducted on the basis of that investigation would be unreasonably complex for the Standards Committee

(iii) that the status of the member against whom the complaint has been made or of the person by whom the complaint has been made is such that either the authority could not conduct a full and impartial investigation and hearing, or that there is likely to be a public perception that the authority could not conduct a full and impartial investigation and hearing

(iv) that so many members of the Standards Committee have a conflict of interest in respect of the matter that the authority is going to be in difficulty in organising an impartial Hearings panel for the matter

(v) that the complaint raises significant or unresolved legal issues where a national ruling would be helpful

(vi) that the authority itself has an interest in the outcome of the investigation and/or hearing, for example where the report may lead to a judicial review of a decision of the authority

(vii) that there are other exceptional circumstances which would prevent the authority from securing a timely, full and impartial investigation and/or hearing of the matter, or which are likely to give rise to the perception that the authority cannot secure a timely, full and impartial investigation and/or hearing of the matter.

- (c) direct the Monitoring Officer to take other appropriate action short of a formal investigation;

The Assessment Sub-Committee cannot impose a sanction on the member against whom the complaint has been made without a formal investigation and hearing. But it can direct the Monitoring Officer to take a range of other actions, including providing training for members, securing conciliation or mediation between competing interests, or reviewing procedures to minimise conflict.

In some instances, the conduct complained of may be a symptom of wider conflicts within the authority. A formal investigation and hearing would only deal with that instant complaint and may not resolve such underlying conflicts.

Such alternative action is therefore most suitable where –

- (i) the conduct complained of is a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct
 - (ii) the conduct complained of is apparently common to a number of members of that authority, demonstrating a lack of awareness or recognition of the particular provisions of the Code of Conduct
 - (iii) the conduct complained of is not so serious that it requires a substantive formal sanction such as suspension or disqualification
 - (iv) the complaint reveals a lack of guidance, protocols and procedures within the authority, for example on the use of resources or the process of decision-making
 - (v) the member complained of and the person making the complaint are amenable to engaging in such alternative action, as there is no power to require them to participate.
- (d) decide to take no action in respect of the complaint.

The Sub-Committee will take the following factors as militating for a decision to take no action in respect of the matter:

- (i) the complaint appears to be trivial, vexatious, malicious, politically motivated or tit for tat.
- (ii) the complaint is anonymous. The Sub-Committee can protect the confidentiality of the identity of the complainant, where that is justified by a real fear of intimidation or victimisation. However, where this is not an obvious risk, the fact that the complainant has not disclosed his/her identity can indicate that the

complaint is less serious, is malicious or is politically motivated. The Monitoring Officer Protocol indicates that a complaint will not be considered if not signed by the complainant.

(iii) a significant period of time has elapsed since the events which are the subject of the complaint. This is both because , where a matter is serious, it would be reasonable to expect the complainant to make a complaint promptly, and because the passage of time may make it more difficult to obtain documentary evidence and reliable witness evidence

(iv) the complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter. This could be where the matter is such that there is unlikely to be any firm evidence on the matter.

Questions that may be asked

Q: Has the complainant submitted enough information to satisfy the assessment sub-committee that the complaint should be referred for investigation or other action?

If the answer is **no**: “The information provided was insufficient to make a decision as to whether the complaint should be referred for investigation or other action. So unless, or until, further information is received, the assessment sub-committee is taking no further action on this complaint.”

Q: 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 assessment sub-committee wish to refer the complaint to the monitoring officer of that other authority?

If the answer is **yes**: “Where the member is no longer a member of our authority but is a member of another authority, the complaint will be referred to the standards committee of that authority to consider.”

Q: 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?

If the answer is **yes**: “The matter of complaint has already been subject to a previous investigation or other action and there is nothing more to be gained by further action being taken.”

Q: Is the complaint about something that happened so long ago that there would be little benefit in taking action now?

If the answer is **yes**: “The period of time that has passed since the alleged conduct occurred was taken into account when deciding whether this matter should be referred for investigation or further action. It was decided under the circumstances that further action was not warranted.”

Q: Is the complaint too trivial to warrant further action?

If the answer is **yes**: “The matter is not considered to be sufficiently serious to warrant further action.”

Q: Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?

If the answer is **yes**: “The matter appears to be simply malicious, politically motivated or tit-for-tat, and not sufficiently serious, and it was decided that further action was not warranted.”