

### **Complaints under the Code – Current Procedure**

1. The Monitoring Officer receives a written complaint, acknowledges receipt and advises the relevant member a complaint has been received.

#### **Initial Assessment Sub Committee**

2. Within 20 working days an initial Assessment Sub Committee is convened (three members of Standards Committee including an independent member as chair).
3. The Assessment Sub Committee receives a formal report and considers the complaint against a list of criteria previously approved as guidance by the standards committee and determines either to:
  - **Take no action in respect of the complaint**
  - **Refer the matter for ‘other action’ (training, conciliation, change in process and procedures)**
  - **Refer the complaint to Standards for England (SfE) for investigation**
  - **Refer the complaint for local investigation**

#### **No Action and Review Sub Committee**

4. If the decision has been to take ‘No Action’ the subject member and complainant must be notified and the complainant advised of his/her right to ask for a review of the decision within 30 days from the date on the Initial Assessment Decision Notice. The notice must set out in full the Assessment Sub-Committee’s reasons.
5. If a complainant seeks a formal review of the decision not to investigate the complaint the Monitoring Officer must convene a meeting of the Review Sub-Committee within a maximum of three months of receiving the request (but ideally within 20 working days).
6. The Review must be seen to be independent of the original decision and so members who made the original decision must not take part in the review. Accordingly the Review Sub Committee must consist of three different members of the Standards Committee with an independent chair.
7. The Review Sub Committee will apply the same criteria available to the Assessment Sub Committee and may either uphold the decision to take no action or refer to the matter for investigation and ‘other action’.

8. The decision of the Review Sub Committee should be sent out to the complainant and subject member within five working days.

### **Referral for “Other Action”**

9. The Assessment Sub Committee may conclude that it is not in the interests of good governance to undertake a full investigation into an allegation of misconduct and it may refer the matter to the Monitoring Officer for alternative action to be taken, for example arranging for conciliation, training or a review of policy and procedures. This is known as “Other Action “. It is important that both the complainant and the subject member appreciate that the decision has been made as an alternative to investigation of the complaint and that no conclusion has been reached on whether there has been any breach of the Code.

### **Referral to Standards for England (SfE)**

10. If the matter is referred to SfE they will normally inform the Monitoring Officer within 10 working days whether they will accept a case or whether they intend to refer it back to the Standards Committee with reasons for doing so. There is no appeal against the decision of the SfE.
11. If the SfE declines to investigate a case the Assessment Sub Committee must re-convene within 20 working days to determine what action to take. Although it has the discretion to take no action or ‘other action’ the most likely outcome will be to refer for Local Investigation.

### **Access to Information Requirements**

12. Initial Assessment decisions and any subsequent reviews must be carried out in closed meetings and are exempt from the notice and publicity requirements under Access to Information provisions since the Sub Committee may be considering unfounded and potentially damaging complaints about elected members. Instead the Regulations provide that a written summary must be produced setting out the main points considered, the conclusions on the complaint and reasons. The summary must be available for the public to inspect at the Council’s offices for six years and to be given any Parish and Town Council concerned.

### **Referral for Local Investigation**

13. Where the matter is referred for Local Investigation the Monitoring Officer must arrange for a full investigation to be concluded within 6 months of the Initial Assessment decision. SfE provide detailed guidance on how to undertake the investigation including the interviewing of witnesses, examination of background documents and computer records, and evaluation of evidence. A draft report must be produced and circulated to both the complainant and subject member

for comments. The final report should incorporate their relevant comments and indicate whether in the investigators opinion there has been a breach of the Code of Conduct.

14. SfE have prescribed a detailed template setting out the information to be incorporated in the final report as follows:

- **Title Page** – the author and date of the report
- **Executive Summary** – the full allegation ,who it was made by , the relevant provisions of the Code, the findings and whether there has been a breach
- **Members Official Details** – when the member was elected, his term of office, details of committees served on, the date member signed the undertaking to observe the Code and any relevant training
- **Evidence Gathered and the Investigator’s Consideration** – a summary of the information, chronological facts, undisputed facts, disputed facts and the investigators conclusions based on the balance of probabilities
- **Summary of the Material Facts** – a summary of the facts to support conclusions reached
- **Subject Members Additional Submissions** – outline of additional submissions from the subject member and their relevance
- **Reasoning as to whether there has been a failure to comply with the Code of Conduct** – dealing with each alleged breach in turn an outline of which section of the Code is relevant and a detailed explanation of whether the Investigator considers there has been a breach
- **Finding** – a detailed explanation of the Investigators decision together with any aggravating or mitigating facts
- **Schedule** – a list of ,and copies ,of all documents relied upon in reaching a conclusion

### Hearing Sub Committee

15. The final report should be sent to the Monitoring Officer on behalf of the Standards Committee, the subject member and is also usually sent to the complainant. A meeting of the Hearings Sub Committee of the Standards Committee should be convened to consider the report.

16. If the Investigator has found that there has been no breach of the regulations then the Hearings Sub Committee must decide whether to accept that recommendation. It may conclude that it appears likely that there has been a breach of the Code in which case a separate meeting of the Hearings Sub Committee must take place to hear all the evidence and determine what action, if any, is appropriate.
17. Where the Sub Committee concludes that there has been no breach the Authority should arrange to publish a notice stating that the Standards Committee has found that there has been no failure to comply with the Code, unless the subject member would prefer no notice to be issued.
18. Where the Investigator has concluded that there is a breach of the Code the Monitoring Officer should convene a Hearings Sub Committee within 3 months of the date of receiving the report. Hearings normally take place in public. Detailed guidance from the SfE sets out a pre hearings procedure designed to identify what facts or evidence are in dispute, whether the subject member is to be represented and what witnesses are to be called.
19. The Standards Committee Hearing is a formal meeting of the authority and not a court of law. Evidence is not given on oath and factual evidence is determined on the balance of probabilities. It is important that the hearing is conducted in a fair, independent and impartial way.

## **Sanctions**

20. Sanctions which may be imposed include one or more of the following:
  - **Censure**
  - **Restricted access to Council premises or resources for up to 6 months provided that this does not unduly**
  - **Restrict the ability to perform the functions of a member**
  - **Partial suspension for up to 6 months**
  - **Suspension as a member for up to 6 months**
  - **Submission of a written apology in a form approved by the committee**
  - **Specified Training**
  - **Conciliation**

- **Partial or full suspension for up to 6 months until the member either submits an apology or undergoes specified training or conciliation**

### **Publicity**

21. The decision should be announced at the end of the Hearing and a full written decision issued within 14 days. A summary of the decision should be published in the local newspaper and on the Council's website. However, if the Committee found that there had been no breach of the Code the Subject member is entitled to request that no summary is published.
22. Reports and Minutes should be available for public inspection for 6 years after the hearing with the exception of any parts of the hearing held in private.

### **Appeal**

23. Permission to appeal any finding of the Standards Committee to the 1<sup>st</sup> Tier Tribunal (Standards for England) may be sought within 21 days of receiving the Decision notice. The Appeal Tribunal will determine whether to uphold or dismiss the appeal and may either confirm any sanction imposed by the Committee or substitute another sanction. A summary of the decision will be published in a local newspaper.