

Assessment and Review Criteria for Allegations of Failure to Comply With Member Code of Conduct



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1. Introduction

This paper sets out the criteria which the Assessment and Review Panels will apply in conducting the initial assessment of allegations of failure by members to observe the Code of Conduct. It takes full account of relevant extant Standards Board Guidance.

The Council takes all allegations of member misconduct extremely seriously and seeks to secure the highest standards of conduct at all times. The initial assessment process determines whether the complaint appears to show that there has been a breach of the Code of Conduct, and then whether the complaint should be subject to a formal investigation (either by the Standards Board for England or locally under the direction of the authority's Monitoring Officer), whether the authority's Monitoring Officer should be directed to take other appropriate actions in respect of the complaint, or whether no action should be taken in respect of the complaint.

2. Local Resolution of Complaints

The Standards Committee is acutely aware that the formal investigation of complaints is costly and time consuming. Whilst formal investigation may be necessary in some cases, many complaints can often be dealt with more rapidly and effectively if an early, informal resolution of the matter can be achieved.

The Standards Committee has instructed the Monitoring Officer, where a complaint has been received, to explore the potential for local resolution to the satisfaction of the complainant, to avoid the need for a formal investigation. But any attempts at local resolution do not remove the right of a complainant to have their complaint of member misconduct considered by an Assessment Panel.

3. Which Complaints can be Considered?

The Assessment Panel 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 Panel 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 Panel but will instead be dealt with by the Monitoring Officer who will advise the complainant as to the most appropriate avenue for proper consideration of their complaint or request.

4. Does the complaint appear to show a breach of the Code of Conduct?

The first assessment which will be undertaken by the Panel 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 Panel will take into account the complaint letter or form and any other information which is readily available to them. Accordingly, it is the responsibility of a complainant to set out clearly:

- (a) who the complaint is against
- (b) what they understand that the relevant member did
- (c) why they consider that the member's conduct amounted to a breach of the Code of Conduct

And to provide copies of any documents which they want the Panel to consider.

Following receipt of a complaint, the Monitoring Officer will collect any other information which is readily available and which may assist the Panel in its consideration of the complaint. This will not include conducting interviews with witnesses, but may include providing the Panel 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 Panel 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 Panel 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.

5. Possible actions where an apparent breach of the Code of Conduct has occurred

Where the Panel has concluded that there may 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 will normally be appropriate where the alleged conduct is sufficiently serious to merit the imposition of a sanction against the member, if proven, 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 Panel 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 Panel 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 the investigation into the complaint;

The following factors will be considered by the Panel to be factors which support referring the complaint to the Standards Board for England for its own 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 complaint relates to serious, long-term or systemic member/officer bullying which could be more effectively investigated and handled outside the authority.
- (vii) 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
- (viii) 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 Panel 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 the particular 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).

Regulation 13 of the 2008 Regulations requires the Monitoring Officer to report back within 3 months of any such direction giving details of the action taken or proposed. If the Standards Committee is not satisfied with the action specified, it may give a further direction eg: to conduct a formal investigation.

(d) decide to take no action in respect of the complaint.

The following factors are likely to lead the Panel to decide to take no action in respect of the matter:

- (i) the complaint appears to be trivial, vexatious, malicious, politically motivated or tit for tat. A "new" complaint which is merely a restatement of a previous complaint with no substantive new evidence will be regarded as vexatious.
- (ii) the complaint is anonymous. The Panel can ensure that the confidentiality of the identity of the complainant is protected 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 may suggest that the complaint is less serious, is malicious or is politically motivated and the Standards Committee has therefore decided that it will not entertain anonymous complaints.

- (iii) a significant period of time has elapsed since the events which are the subject of the complaint. This is 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 generally makes it more difficult to obtain documentary evidence and reliable witness evidence and recollection.
- (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.
- (v) insufficient information has been submitted to satisfy the Panel that the complaint should be referred for investigation or other action.
- (vi) the subject member has died or is seriously ill with a medical condition which would prevent them from engaging with the process of an investigation or a hearing for the foreseeable future or has resigned from the authority, and it is not considered appropriate to refer the matter for investigation.
- (vii) the subject member is no longer a member of the authority for a reason other than resignation and it is not considered appropriate to refer the matter for investigation.
- (viii) the subject member has apologised to the complainant or taken other appropriate remedial action and it is not considered appropriate to refer the matter for investigation

6. Confidentiality

As a matter of fairness and natural justice, a member should usually be told who has complained about them and what the complaint is about. There may be occasions where the complainant requests that their identity is withheld. Such a request should only be granted in circumstances which the Assessment Panel consider to be exceptional, for example: -

- (a) the complainant has reasonable grounds for believing that he/she will be at risk of physical harm if his/her identity is disclosed
- (b) the complainant is an officer who works closely with the member and they have a reasonable fear of intimidation or victimisation if their identity is disclosed
- (c) the complainant suffers from a serious health condition which might be adversely affected if his/her identity is disclosed. The Assessment Panel may wish to request medical evidence.

7. Withdrawing Complaints

Where the complainant purports to withdraw the complaint before the Assessment Panel has had the opportunity to take a decision on it, the Panel will consider whether to accept such withdrawal.

- (a) Where the complainant submits further evidence demonstrating that the complaint was ill-founded, it may be appropriate for the Panel formally to resolve that the complaint as amended shows no evidence of a breach of the Code of Conduct, so that the matter is formally concluded.
- (b) Where the alleged misconduct is simply eg: a matter of alleged failure on the part of the respondent to treat the complainant with respect, and raises no wider issues of public interest, the Panel will normally accept such withdrawal.
- (c) However, where the complaint raises issues of wider public interest or if there is information to suggest the complainant may have been pressured to withdraw this may outweigh the complainant's desire to withdraw it and it may be appropriate for the Panel to ensure that such wider issues are formally investigated and resolved, provided it is feasible to do so without the complainant's participation.

8. Review

Where the Assessment Panel has resolved to take no action in respect of a matter (that is, not to refer the matter to the Standards Board for England for investigation, and not to refer the matter to the Monitoring Officer either for investigation or for other appropriate action), the complainant may request the Review Panel to review the decision of the Assessment Panel.

Such a review shall be conducted in two stages:

- (a) First, the Review Panel will determine whether the original decision of the Assessment Panel was unreasonable on the basis of the information available to the Assessment Panel at the time of its decision and in accordance with these approved criteria for assessment. This review shall be conducted on the basis of the original complaint, the Monitoring Officer's report to the Assessment Panel, the decision-notice of the Assessment Panel and any information contained within the complainant's request for a review. Therefore this is a review of the initial decision, rather than a reconsideration of the matter de novo.
- (b) Second, the Review Panel shall consider whether there is any new evidence which demonstrates that the initial assessment decision is no longer the correct decision. This consideration shall take into account any new information provided by the complainant and/or the Monitoring Officer.

If the Review Panel determines that the initial decision was unreasonable, or that new information now available to the Review Panel demonstrates that the original decision is no longer the correct decision, it shall take a new decision in relation to the matter in accordance with these approved criteria.