

Complaints under Members' Code of Conduct Assessment criteria

1. Introduction

The Council has adopted assessment criteria to ensure a consistent approach and to avoid accusations of bias or unfair treatment. This procedure is only to be used for the assessment and investigation of complaints of alleged failures by councillors to comply with the Code of Conduct or failure to declare a pecuniary interest in a matter.

This criteria is broken down into a two stage assessment which attempts to strike the balance between ensuring that complainants are confident that complaints about councillor conduct are taken seriously and dealt with appropriately, while on the other hand recognising that investigating a complaint or taking other action will cost both public money and the officers' and councillors' time. This is an important consideration where the matter is relatively minor.

2. Pre-assessment (stage 1) of a complaint (jurisdiction test)

A complaint will only be assessed as a complaint if:

- it is a complaint about the conduct of one or more named members of the District Council or one or more members of a town or parish council in the district.
- the named member was in office at the time of the alleged conduct, otherwise, the complainant will be notified that no further action will be taken.
- the complaint, if proven, would be a breach of the Code under which the councillor was operating at the time of the alleged misconduct.
- the complaint is related to a member failing to declare a pecuniary interest in a matter.
- the complaint has been made in writing.

A complaint will not be considered and no further action taken if:

- the complaint is about a council decision, the way the council conducts or records its meetings or the way the council has or has not done something.
- the complaint falls within the council's complaints procedure.
- the complaint is about a council officer e.g. a Council employee or a parish/town council clerk.
- the complaint relates to matters where the councillor was acting in a private capacity, and not as a councillor or representative of the authority.
- the complaint would be better handled by another party, depending on the circumstances.

If a complaint is rejected at initial assessment, there is no right of appeal, but reasons will be given.

3. Further assessment (stage 2) of a complaint

Once stage 1 jurisdictional tests have been met, a complaint will then be assessed by the following criteria.

The Monitoring Officer (in liaison with the Independent Person if required), will then decide what action, if any, to take, also taking into account public interest.

1. Does the complaint contain sufficient evidence to demonstrate a potential breach of the Code?
2. Are there alternative, more appropriate, remedies that should be explored first?
3. Where the complaint is by one councillor against another, a greater allowance for robust political debate (but not personal abuse) may be given, bearing in mind the right to freedom of expression
4. Is the complaint in the view of the authority malicious, politically motivated, or 'tit for tat'?
5. Whether an investigation would not be in the public interest or the matter, even if proven, would not be serious enough to warrant any sanction
6. Whether a substantially similar complaint has previously been considered and no new material evidence has been submitted within the current administration
7. Whether a substantially similar complaint has been submitted and accepted
8. Does the complaint relate to conduct in the distant past? This would include consideration of any reason why there had been a delay in making the complaint
9. Was the behaviour that is the subject of the complaint already dealt with? For example, through an apology at the relevant meeting
10. Does the complaint actually relate to dissatisfaction with a local authority decision rather than the specific conduct of an individual?
11. Is it about someone who is no longer a councillor or who is seriously ill (i.e. has a dispensation)?

There is no provision for appeal or review of a decision not to investigate the complaint further, but reasons for the decision will be provided.

4. Outcomes following assessment

If a complaint passes the first 2 stages of the assessment, the complaint will be referred to the Subject Councillor for their comment (and Parish/Town Clerk if relevant). Details of the complaint and the Complainant's name will be provided to the subject of the complaint to provide their perspectives and any supporting evidence they have. The subject has until 28 days after we accept the complaint to respond. The outcome of an initial assessment of a complaint will be that the Monitoring Officer (in liaison with the Independent Person) decides to take one of the following courses of action:

- **Decision to take no action**

Where the initial assessments determines that no further action should be taken in respect of the complaint, the Complainant and the Subject Councillor (if required) (and Parish/Town Clerk if relevant) shall be advised of that decision in writing by the Monitoring Officer.

- **Decision that the Monitoring Officer shall resolve the complaint informally**

Where the initial assessment determines that the complaint should be resolved informally, the Complainant and the Subject Councillor (and Parish/Town Clerk if relevant) shall be advised of that decision in writing by the Monitoring Officer.

In deciding to resolve the complaint informally, the Monitoring Officer may pursue any of the following courses of action consistent with the LGA Guidance including:

- Provide further training and guidance to the Subject Councillor
- Mediate between the Complainant and the Subject Councillor
- Require the Subject Councillor to write a personal apology to the Complainant
- Write an advisory letter to the Subject Councillor

This will ordinarily be managed through private communications which will not be published, unless there are exceptional circumstances and it is lawful to do so. Where informal resolution does not resolve the complaint, the Monitoring Officer may, following consultation with the Independent Person, decide to refer the complaint for investigation.

- **Decision to refer the complaint for investigation**

In some cases, an investigation may be required. The Monitoring Officer will not refer complaints for investigation where the complaint is not sufficiently serious to justify the cost of an investigation or it is not in the public interest to investigate.

Please see 'guide for complainants' on the website which details further information on what happens during an investigation.

5. Circumstances where it may be appropriate to arrange 'other action' or to refer the matter to the relevant group leader or parish/town council chairman:

- The alleged behaviour indicates a lack of understanding of the Code of Conduct
- There has been the same breach of the Code by several members indicating a poor understanding of the Code
- The complaint indicates a general breakdown of relationships at a council
- There appears to be misunderstanding of protocols and procedures
- An investigation would serve no useful purpose or the conduct is not serious enough to warrant a sanction
- The complaint may be symptomatic of more widespread issues within the council

'Other action' includes:

- arranging for appropriate training
- arranging for the member and complainant to engage in a process of conciliation
- arranging mediation
- any other steps (not including an investigation) which may appear appropriate as decided by the Monitoring Officer