

Tunbridge Wells Borough Council

Procedure for Dealing with the Local Assessment of Complaints

Initial Assessment

1. A complaint may be received verbally, via e-mail or on a complaint form. The Standards Committee has agreed to take a measured and proportionate approach to complaints. If at all possible, it has agreed to seek to resolve the inquiry before it is formally considered by the Assessment Sub-Committee of the Standards Committee.

Mediation

2. If a report is received in any format other than a written complaints form, the Monitoring Officer will explore whether there is any scope for the local resolution of complaints – for example, if a subject member agrees to apologise to the complainant about the alleged offence or to undertake some other form of remedial action. If the subject member and complainant are comfortable with the proposed course of action, the complainant may be willing to withdraw the complaint. If not, the Sub-Committee may take any apology or remedial action, into account when considering whether the matter merits investigation. In any event, complainants will be encouraged to fill out the Council's complaints form. Complaints can only be considered if they are received in writing (subject to any reasonable adjustments that may be required under the Disability Discrimination Act 2000) and the complaints form includes guidance to ensure that complaints include all the information that might be required by the Sub-Committee considering any complaint. The complaints form also includes a section encouraging complainants to think about whether there is any mutually acceptable way forward.

Assessment Sub-Committee

3. If mediation is not deemed to be an acceptable way forward or if it is tried and fails and the complainant declines to withdraw their complaint, then an Assessment Sub-Committee will be convened to conduct an initial assessment of the complaint.
4. At this stage, once a formal complaint form is received, complaints will be logged and letters will be sent to the complainant acknowledging receipt of their complaint, and to the subject member drawing their attention to the fact a complaint has been made against them. Whilst the interested parties will be informed of the date of the Assessment Sub-Committee meeting, they will not be informed of the membership of the committee. Any Member, who sought to lobby other Members in his /her own cause, would be committing a breach of the Code of Conduct.
5. An Assessment Sub-Committee of the Standards Committee has been established to undertake the initial assessment of complaints of Member misconduct, to decide whether the complaint shows an apparent failure to comply with the Code of Conduct for Members, and, if so, whether the complaint merits investigation or other action.
6. Complaints referred to the Assessment Sub-Committee will be accompanied by a report from the Monitoring Officer setting out a summary of the complaint, a description of the relevant paragraphs of the Code of Conduct which may have been breached and any readily available information (including, for example, details of training undertaken by the subject Member or the minutes of any committee meetings).
7. At a Sub-Committee meeting, complaints will first be subjected to a number of initial tests:

- Is it a complaint against a named member of the authority (or an authority covered by the Standards Committee)?
 - Was the named Member in office at the time of the alleged offence?
 - Was the Code of Conduct in force at the time of the alleged misconduct?
8. If the answer to any of the above questions is 'no', then it cannot be investigated as a breach of the Code, and the complainant must be informed that no further action will be taken in respect of the complaint.
9. The Council has also developed Investigating Guidelines (attached as Appendix B) and Assessment Criteria (attached at Appendix C) which will be used in the assessment of any complaints. In considering a complaint, the Assessment Sub-Committee is required to reach one of the three following decisions on a complaint about a Member's actions in relation to the Code of Conduct:
- referral of the complaint to the Monitoring Officer of the authority concerned (which under section 57A(3) of the Local Government Act 2000, as amended may be another authority) either for investigation or further action
 - referral of the complaint to the Standards Board for England
 - no action should be taken in respect of the complaint

Other Considerations

TIMESCALE FOR INITIAL ASSESSMENT OF ALLEGATIONS

10. The Guidance from the SBE indicates that the initial assessment should be undertaken on average within 20 working days of the receipt of the allegation by the Council. Monthly meetings of the Sub-Committee have been timetabled and a complaint will be referred to the next available Sub-Committee after the necessary report has been written.

FILTERING OUT IRRELEVANT COMPLAINTS

11. Standards Board experience has been that a large number of complaints received do not relate to the Code of Conduct for Members; rather, they relate to a number of issues such as:
- Requests for additional service from the Authority
 - Statements of policy disagreement
 - Matters relating to other authorities
 - Matters relating to a member's private life
12. The 2007 Act provides that the function of initial assessment of complaints must be conducted by the Standards Committee or by an Assessment Sub-Committee and does not allow for delegation of this function to the Monitoring Officer. Whilst the Monitoring Officer may be able to ensure that complaints falling in the first two categories are dealt with accordingly, in all other cases, it will be necessary to report to the Sub-Committee. Similarly, if a written complaint received through the Council's complaints procedure is received that specifies or appears to specify that it is in relation to the Code, then it should be passed to the Monitoring Officer for report to the Sub-Committee.

ANONYMOUS COMPLAINTS

13. There is nothing in the legislation which requires a complaint to be signed by the complainant or for the complainant to identify themselves. The Standards Board for England has entertained some anonymous complaints, and this has given rise to

considerable unease. It is proposed that anonymous complaints should not be entertained, but the Monitoring Officer should be authorised to keep the identity of the complainant confidential where he is of the opinion that this is in the public interest. The complaints form contains a section for complainants to set out whether and why they believe their identity should be kept confidential.

MULTIPLE COMPLAINTS

14. It is not uncommon that one event gives rise to similar complaints from a number of different complainants. The legislative position is that each separate complaint must be considered, and that even where a meeting of the Assessment Sub-Committee has previously decided that no action be taken upon an identical complaint, a subsequent complaint must still be reported to and considered by the Assessment Sub-Committee.

PUBLIC OR PRIVATE MEETINGS

15. The new regulations provide that information presented to an Assessment Sub-Committee for the purpose of these new procedures shall be "exempt information" for the purpose of Schedule 12A to the Local Government Act 1972, thus giving the Assessment Sub-Committee a power to exclude the press and public from its meetings. This is discretion, so it will still be necessary for each meeting to start by resolving whether to exclude press and public. In practice, if the Assessment Sub-Committee did not exclude press and public, the Member concerned would be unable to attend as he/she would have a prejudicial interest in the matter under consideration, whereas the complainant would have the right to attend (unless they too were also a Member). This would appear to be unfair.
16. It is therefore proposed that the Assessment Sub-Committee should hold its meetings in private unless it determines otherwise. In any event, neither the complainant nor the subject member would have a right of audience at the meeting.
17. Minutes of the meeting will be kept, but will not be subject to the rules relating to the circulation of documents (as set out in paragraph 18 below). Minutes will be stored securely.

ADVANCE PUBLICATION OF THE AGENDA AND REPORTS

18. SBE Guidance requires initial assessment decisions (and any subsequent review of decisions to take no further action on a complaint) to be conducted in closed meetings. These meetings are not subject to the notice and publicity requirements under Part 5 of the Local Government Act 1972. Such meetings may have to consider unfounded and potentially damaging complaints about members, which it would not be appropriate to make public. As such, the Standards Committee when undertaking its role in the assessment or review of a complaint, is not subject to the following rules:
 - rules regarding notices of meetings
 - rules on the circulation of agendas and documents
 - rules over public access to meetings
 - rules on the validity of proceedings

MEMBER REQUESTS FOR INFORMATION UNDER THE DATA PROTECTION ACT

19. Section 31 of the Data Protection Act 2000 provides that the Authority would not have to disclose such information where it is held for any relevant function which is designed for protecting members of the public against dishonestly, malpractice or other seriously

improper conduct by or the unfitness or incompetence of, persons authorised to carry on any profession or other activity. Accordingly, the Authority would be able to refuse to disclose whether a complaint had been received until the member was notified on the sending out of the Assessment Sub-Committee agenda, or where no notification is made because the disclosure of that information would be likely to prejudice the proper conduct of the investigation until the likelihood of prejudice has passed.

FREEDOM OF INFORMATION ACT

20. The Council may refuse to provide information where the information is held for 'law enforcement' purposes, which includes the regulation of improper conduct, and where the disclosure would prejudice the effective conduct of public affairs. However, in each case, disclosure can only be resisted where the public interest in withholding the information outweighs the public interest in its disclosure.

Notification Following Initial Assessment

21. A decision notice will be published within five days of the Assessment Sub-Committee meeting. A copy of the decision notice will be sent to both the complainant and the subject member and the decision notice will be kept on file for eight years. It is a public document and will be made available upon request.

'No Further Action'

22. If the Assessment Sub-Committee decides that no action should be taken on a complaint, the complainant may, within 30 days of being notified of that decision, request a review. Although a Review must be completed within a maximum of three months of receiving a request, the Guidance indicates it should be completed within an average of 20 working days. The review must be, and must be seen to be, independent of the original decision. The Guidance suggests that this should be undertaken by a Review Sub-Committee. In this Council, this will, in fact, be a new Assessment Sub-Committee with different Members to those involved in the original consideration of the complaint. The criteria to be applied will be the same criteria as for the initial assessment.
23. There may be further information in support of the complaint that changes its nature or gives rise to a potential new complaint. If this is the case, the reviewing Assessment Sub-Committee must decide whether it is sufficiently material to change the original decision or whether to uphold the original decision. There may also be cases where it may be more appropriate to consider the information as a new complaint. There is no further mechanism for review. If the complainant remains dissatisfied with the outcome of the review, he or she will have no further recourse other than judicial review.

Referral to the Standards Board for England

24. There will sometimes be issues in a case, or public interest considerations, which make it difficult for the authority to deal with the case fairly and speedily. In such cases, the Assessment Sub-Committee may wish to refer a complaint to the Standards Board to be investigated by an Ethical Standards Officer. Circumstances might include the status of the complainant or subject member or potential conflicts of interest. Once referred, the SBE may accept a case for investigation, take no action, or refer a case back. Further details on circumstances under which a complaint might be referred to the SBE and their assessment criteria are available in the Guidance document.

Referral for Other Action

25. When the Assessment Sub-Committee considers a new complaint, it can decide that other action to an investigation should be taken and it can refer the matter to the Monitoring Officer to carry this out. It may not always be in the interests of good governance to undertake or complete an investigation into an allegation of misconduct. Guidance from the Standards Board for England makes clear that referring a complaint to the Monitoring Officer for 'other action' can be a good way to resolve matters that are less serious, particularly where the subject member appears to have a poor understanding of the Code and the authority's procedures.
26. At the same time, it is important to note that complaints that have been referred to the Monitoring Officer for "other action" should not then be referred back to the Standards Committee. In other words, the decision to take other action closes the opportunity to investigate. For these reasons, the Assessment Sub-Committee must consult its Monitoring Officer before reaching a decision to take other action. Similarly, if the Assessment Sub-Committee decides to refer a complaint for other action, it may be helpful to introduce a requirement for the parties involved to confirm in writing that they will co-operate with the process of other action proposed.

Referral for Local Investigation

27. The Assessment Sub-Committee may consider that a complaint should be referred to the Monitoring Officer for investigation. In these instances, the complainant and subject member will be informed of the decision. The decision notice would normally contain a summary of the complaint made against him/her but there may be occasions where it is appropriate not to disclose such details if this would be against the public interest or if this would prejudice any investigation.
28. Investigations will normally be conducted by a senior officer of the authority, a senior officer of another authority or an appropriately experienced consultant. Investigations will be undertaken in confidence and in accordance with the guidance published by the Standards Board for England. Investigations should be completed within six months of the original complaint being considered by the Assessment Sub-Committee
29. The report must make one of the following findings:
 - that there has been a failure to comply with the Code of Conduct (a finding of failure)
 - that there has not been a failure to comply with the Code (a finding of no failure)
30. Once an investigation has been completed, a hearing must be held by the Standards Committee to consider the outcome within three months. If the report finds that there has been a breach of the Code of Conduct, the case will be referred for determination by the Sub-Committee. If the report concludes that there has not been a breach of the Code, the Standards Committee must decide at a meeting if it agrees with this. If it disagrees and considers, based on the facts in the report, that there is a case to answer, there will be a hearing.
31. If the Standards Committee agrees that the Code has not been breached, the Standards Committee will arrange for a notice to be published in a local newspaper and on the Council's website. The notice will state the Standards Committee's finding, and give reasons for it. In cases where the Standards Committee finds that the Code has not been breached, the subject member is entitled to insist that the notice is not published anywhere.

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