

**LOCAL ASSESSMENT AND REVIEW  
OF COMPLAINTS OF BREACHES OF  
THE MEMBER CODE OF CONDUCT**

**CRITERIA, GUIDANCE AND  
PROCEDURE**

## **1.0 PRE- ASSESSMENT**

- 1.1 When a written complaint has been received, the Monitoring Officer in consultation with the independent person, will;
- 1.2 Determine whether the complaint should be investigated; whether to refer the decision on investigation to the Assessment Sub-Committee; or whether another course of action is appropriate, including seeking local resolution or to take no action at all.
- 1.3 If a complaint is raised with the Monitoring Officer verbally, the Monitoring Officer should ask the complainant whether they want to formally put the matter in writing. If the complainant does not want to do this then the Monitoring Officer should consider options for informal resolution to satisfy the complaint.
- 1.4 Once the Monitoring Officer has determined that the complaint should be investigated, he/she will acknowledge receipt of the complaint and the member who the allegation is made against will be informed that a complaint has been made against them alleging a breach of the member code of conduct.
- 1.5 Before any investigation of the complaint begins, the Monitoring Officer and the Independent Person/Assessment Sub-Committee must be satisfied that the complaint meets the following tests: -
  - **It is a complaint against a named member of the Council**
  - **The named member was in office at the time of the alleged conduct and acting in their official capacity**
  - **The complaint if substantiated would be a breach of the member code of conduct in force at the relevant time**
- 1.6 If the complaint fails one or more of these tests 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.

## **2.0 ASSESSMENT CRITERIA**

2.1 The following criteria have been developed for the Monitoring Officer and the Independent Person/Assessment Sub-Committee to assess new complaints against and decide what action, if any to take.

### **2.2 Information**

*Has the complainant submitted enough information to satisfy the Monitoring Officer that the complaint should be referred for investigation or other action?*

The complainant must provide sufficient information to enable the Monitoring Officer and the Independent Person to decide whether or not there is prima facie evidence of a breach of the Member Code of Conduct. If insufficient information has been provided to make a decision, the matter will not normally be referred for investigation or other action.

### **2.3 Length of time**

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

The Monitoring Officer and the Independent Person/Assessment Sub-Committee should have regard to the length of time that has elapsed since the alleged conduct occurred. It will not normally investigate or pursue other action where the alleged conduct took place more than 6 months prior to the date of the complaint. However if there are exceptional circumstances (e.g. where the conduct relates to a pattern of behaviour which has recently been repeated) events or incidents which are more than 6 months old could be considered.

### **2.4 Seriousness of the Complaint**

*Does the complaint appear to be simply malicious, politically motivated, a repeated complaint or 'tit-for-tat'?*

The Monitoring Officer and Independent Person/Assessment Sub-Committee will not consider complaints or make a decision to refer matters for investigation, which they believe to be malicious, vexatious, trivial, politically motivated, a repeated complaint, or tit-for-tat.

### **2.5 Public Interest**

*Is it in the public interest to refer a matter for investigation?*

The Monitoring Officer and the Independent Person/Assessment Sub-Committee will determine whether the public interest would be served by referring a complaint for investigation or for any other action in cases where the subject matter has died, resigned or is seriously ill. Similarly, if the

member has offered an apology or other remedial action the Monitoring Officer may decide that it is appropriate to take no further action. In making a decision to investigate, the Monitoring Officer should also consider whether the complaint is serious enough to justify the resources required to investigate.

## **2.6 Other Investigations**

*Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct, or has the complaint been the subject of an investigation by other regulatory authorities?*

If the complaint has already been the subject of an investigation or other action relating to the Member Code of Conduct, or the subject of investigation by another regulatory authority, it is unlikely that it will be referred for investigation by the Monitoring Officer.

## **2.7 Anonymous Complaints**

*Has the complaint been made anonymously?*

The Monitoring Officer and Independent Person/ Assessment Sub-Committee will not normally make a decision to consider anonymous complaints unless there is additional independent documentary evidence to support the complaint.

## **2.8 Multiple Complaints**

It is not uncommon for one event or incident to give rise to similar complaints from a number of different complainants. Wherever possible, these complaints will be considered at the same meeting by the Monitoring Officer and Independent Person/ Assessment Sub-Committee.

## **2.9 Criminal Investigations**

If a complaint made against a member is also subject to a police investigation, the Monitoring Officer and Independent Person/Assessment Sub-Committee should still investigate the facts as far as they are able to ascertain whether there has been a breach of the code of conduct.

## **3.0 CONFIDENTIALITY**

3.1 As a matter of fairness and natural justice, a member should normally be told that a complaint has been made against them alleging a breach of the code of conduct, who has made the complaint and what this relates to. However, there may be cases where the complainant requests that his or her identity is withheld from the member. Such requests should only be granted in exceptional circumstances, such as: -

- the complainant has reasonable grounds for believing that they or their family will be at risk of physical harm if their identity is revealed.
- The complainant is an officer who works with the member and they would have concerns of any consequence to their employment if their identity is revealed
- The complainant suffers from a serious health condition which might adversely be affected if their identity is revealed.

#### **4.0 Withdrawing Complaints**

4.1 A complainant may ask to withdraw their complaint before the Monitoring Officer and Independent Person/Assessment Sub-Committee has made a decision on it. The Monitoring Officer and Independent Person should consider the following when deciding whether to grant the request: -

- Does the public interest in pursuing the complaint outweigh the private interest of withdrawing it?
- Could action, such as an investigation, be properly carried out without the participation of the complainant?
- Is there a reason why the complainant has been asked to withdraw the complaint (e.g. is there any pressure/intimidation to withdraw the complaint from the member or any colleagues)?

#### **5.0 ASSESSMENT DECISIONS**

5.1 The Monitoring Officer or Assessment Sub-Committee should complete its initial assessment of an allegation within an average of 20 working days and to reach a decision on what should happen with the complaint.

5.2 The Monitoring Officer or Assessment Sub-Committee is required to reach one of the three following decisions on a complaint in relation to the Code of Conduct:

- **Refer the complaint for investigation**
- **Take 'other action' including seeking local resolution**
- **Take no action**

#### **6.0 THE DECISION NOTICE**

6.1 The Monitoring Officer/Assessment Sub – Committee is required to produce a Decision Notice which requires a written summary detailing: -

- **the main points considered during its deliberations**
- **its conclusions in respect of the complaint**
- **the reasons for its conclusions**

6.2 The Decision Notice should give the name of the member who is the subject of the allegation and details of the allegation unless doing so is not in

the public interest or would prejudice any separate or subsequent investigation.

6.3 The Decision Notice will be sent to the member and the complainant unless there is a significant risk that by sending it to the member the complainant or any potential witnesses will be intimidated by the subject member or any evidence will be compromised or destroyed.

6.4 The Decision Notice should be issued as soon as possible after the Monitoring Officer/ Assessment Sub-Committee meeting and ideally within 5 working days.

6.5 The Decision Notice shall be made publicly available (e.g. at Council offices and on the Council's website) for a period of 6 years.

## **7.0 DECISION TO TAKE NO ACTION**

7.1 The Monitoring Officer/Assessment Sub-Committee can decide that no action is required in respect of a complaint. For example this could be because the Monitoring Officer/Assessment Sub-Committee does not consider that the complaint is sufficiently serious to warrant any action. Alternatively it could be because of the length of time that has elapsed since the allegation.

7.2 The decision reached by the Monitoring Officer/Assessment Sub-Committee and the reasons for it should adhere to the assessment criteria set out in this document. If the Monitoring Officer has made the decision this must be reported to the Standards Committee.

7.3 As soon as possible after making the decision, and ideally within 5 working days, the Monitoring Officer/Assessment Sub-Committee must give written notice of that decision to the complainant and the member, summarising the complaint and setting out clearly the reasons for the decision to take no action.

7.4 It is important to note that where no potential breach of the Code of Conduct is disclosed by the complaint, no matter what its source or whoever the member was, no action can be taken by the Standards Committee in respect of it. The matter of referral for investigation or other action does not arise.