

Gateshead Council Standards Committee

Procedure for the Initial Assessment of Complaints of Breach of the Code of Conduct

Introduction

1. In accordance with the Local Government Act 2000 as amended by the Local Government and Public Involvement in Health Act 2007, any person may make a written complaint to the Council's Standards Committee that a member of the Council, or a member of any Parish Council in Gateshead Borough, has acted in breach of the Code of Conduct for Members.
2. This procedure applies on receipt of any such complaint. The procedure is in accordance with the relevant legislation and Statutory Guidance issued by the Standards Board for England.
3. The person making the complaint will be referred to as the complainant and the person against whom the complaint is made will be referred to as the subject member.
4. The procedure will also apply if a complaint is referred back to the Standards Committee by the Standards Board for England.
5. No Member or officer will participate in any stage of the assessment process if they have any personal conflict of interest in the matter.

Initial Notification of Complaint

6. Any complaint received will be acknowledged within 3 working days.
7. The subject member will normally, as soon as practicable after the complaint is received, be sent a letter by the Monitoring Officer indicating that a complaint has been made, which paragraphs of the Code of Conduct have allegedly been breached and stating the name of the complainant.
8. In some circumstances the Monitoring Officer may decide not to give notification to the subject member at all, for example, if the Monitoring Officer considers that to do so would be against the public interest or might prejudice any future investigation. The Monitoring Officer may give notification of the complaint but withhold the name of the complainant where this has been requested by the complainant and the Monitoring Officer considers there are good reasons in support.

9. Any such decision by the Monitoring Officer will only apply pending consideration of the matter by the Assessment Sub-Committee.

Assessment Sub-Committee

10. Upon receipt of a complaint that a subject member has or may have failed to comply with the Code of Conduct, the Monitoring Officer will liaise with the Head of Democratic Services to convene as soon as reasonably practicable, and in any event within 20 working days of receipt of the complaint, a meeting of an Assessment Sub-Committee.
11. The Assessment Sub-Committee will comprise at least three members of the Standards Committee, including at least one Independent Member and at least one elected Member from Gateshead Council. The Sub-Committee must be chaired by an independent member. The Sub-Committee will be convened on an ad hoc basis, and members will be appointed by the Head of Democratic Services or his representative taking account of availability, and any potential conflicts of interest.
12. The Assessment Sub-Committee will be advised by the Monitoring Officer, the Deputy Monitoring Officer or another lawyer.
13. The purpose of the Assessment Sub-Committee will be to decide whether any action should be taken on the complaint – either as an investigation or some other action. **The Assessment Sub-Committee will not make any findings of fact.**
14. The Assessment Sub-Committee will receive in advance of the meeting a copy of the complaint, together with a report prepared by the Monitoring Officer or their representative which will set out the following details:
 - Whether the complaint is within the jurisdiction of the Standards Committee
 - The paragraphs of the Code of Conduct the complaint might refer to, or the paragraphs the complainant has identified
 - A summary of key aspects of the complaint if it is lengthy or complex
 - Any further information that the officer has obtained to assist the Assessment Sub-Committee with its decision. This may include minutes of meetings, a copy of a member's entry in the register of interests, information from Companies House or the Land Registry, or other easily obtainable documents
 - Any clarification obtained by the officer from the complainant if the complaint was unclear

It should be noted, however, that pre-assessment inquiries will be limited, and will not be carried out in such a way as to amount to an investigation.

The Assessment Process

15. The Assessment Sub-Committee will first consider whether the complaint meets the following tests:

- The complaint is against one or more named members of the Council, a relevant Parish Councillor or a Co-opted Member to whom the Code of Conduct applies
- The subject member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time
- The complaint, if proven, would be a breach of the Code under which the subject member was operating at the time of the alleged misconduct

If the complaint fails one or more of these tests, then the decision of the Assessment Sub-Committee must be that no further action will be taken.

16. If the complaint meets the above tests, then the Assessment Sub-Committee will proceed to consider whether to refer it to the Monitoring Officer (either for investigation or other action), to refer it to the Standards Board for England, or whether no action should be taken. In making its decision, the Sub-Committee will take account of the Assessment Criteria at Appendix 1, which have been approved by the Standards Committee, and which will from time to time be reviewed by the Committee.
17. If the Assessment Sub-Committee decides to take no action over a complaint, then it will arrange for notice of that decision, including the reasons for it, to be given to the complainant and the subject member within five working days after the date of the meeting.
18. If the Assessment Sub-Committee decides to refer the complaint to the Monitoring Officer or to the Standards Board for England, it will arrange for a summary of the complaint to be sent to the complainant and the subject member stating what the allegation is, and the type of referral that has been made. This will be done within five working days after the date of the meeting.
19. The Assessment Sub-Committee may decide not to give the subject member a summary of the complaint if it considers that doing so would be against the public interest or would prejudice any future investigation. In considering this, the Sub-Committee will take advice from the Monitoring Officer, and will consider in particular whether it is likely that the subject member may intimidate the complainant or any witnesses involved or whether early disclosure of the complaint may lead to evidence being compromised or destroyed. The Sub-Committee will balance whether the risk of the case being prejudiced by the subject member being informed of the details of the complaint at that stage may outweigh the fairness of notifying the subject member.

20. Requests by the complainant for confidentiality (i.e. not revealing the name of the complainant to the subject member), will be considered in accordance with the Confidentiality Criteria at Appendix 2.

The Review Process

21. If the Assessment Sub-Committee decides not to take any action on a complaint, then the Complainant has a right to request a review of that decision, and will be so advised when notified of the decision.
22. When a request for review is received, the Monitoring Officer will liaise with the Head of Democratic Services or his representative to convene as soon as possible, and in any event within 20 working days, a meeting of a Review Sub-Committee.
23. The Review Sub-Committee will comprise at least three members of the Standards Committee, including at least one Independent Member and at least one elected Member from Gateshead Council. The Sub-Committee must be chaired by an independent member. None of these Members will have been members of the Assessment Sub-Committee that considered the original complaint. The Sub-Committee will be convened on an ad hoc basis, and members will be appointed by the Head of Democratic Services or his representative taking account of availability and any potential conflicts of interest.
24. In addition to the documents referred to in paragraph 9 above, the Review Sub-Committee will have a copy of the Assessment Sub-Committee's decision notice, but will consider the complaint afresh, using the Assessment Criteria at Appendix 1. The Review Sub-Committee has the same decisions available to it as the Assessment Sub-Committee and will follow the procedure outlined above in paragraphs 15-19.
25. Where on a request for review further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint, the Review Sub-Committee will consider if it is more appropriate to pass this to an Assessment Sub-Committee as a new complaint. In this instance, the Review Sub-Committee will make a formal decision that the review request will not be granted.

Withdrawing Complaints

26. If a complainant asks to withdraw the complaint prior to the Assessment Sub-Committee having made a decision on it, the Assessment Sub-Committee will decide whether or not to grant the request. In making its decision, the Sub-Committee will consider:
 - Whether the public interest in taking some action on the complaint outweighs the Complainant's wish to withdraw it
 - Whether the complaint is such that action can be taken on it without the complainant's participation

- Whether there is an identifiable underlying reason for the request to withdraw the complaint, and in particular whether there is any evidence that the Complainant may have been pressured by the subject member or other person to withdraw the complaint

Confidentiality

27. If a Complainant has asked for their identity to be withheld, this request will be considered by the Assessment Sub-Committee at the same time as it considers the complaint.
28. As a matter of fairness and natural justice, the subject member should usually be told who has complained about them. However, in exceptional circumstances, the Assessment Sub-Committee may grant confidentiality if it is satisfied that the Complainant has reasonable grounds for believing that they will be at risk of physical harm, or their employment will be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.
29. The Assessment Sub-Committee will also take into account whether it would be possible to refer the complaint without making the Complainant's identity known, and in particular whether the Complainant's participation would be required if the complaint were referred.
30. If the Assessment Sub-Committee decides to refuse a request from a Complainant for confidentiality, it may offer the Complainant the option to withdraw, rather than proceed with their identity being disclosed. The Assessment Sub-Committee will balance whether the public interest in taking action on a complaint may outweigh the complainant's wish to have their identity withheld from the subject member

Complaints about Members of more than one Authority

31. Where a complaint is received about a Member who is known to be a member of another authority, for example the Police Authority, the Monitoring Officer will, before the meeting of the Assessment Sub-Committee, establish whether a similar allegation has been made to the other authority. In the light of information from and in co-operation with the other authority, the Assessment Sub-Committee will consider which authority should best deal with the complaint.