

ALLERDALE BOROUGH COUNCIL

LOCAL CODE OF CONDUCT

INITIAL ASSESSMENT PROCEDURE

INTRODUCTION

1. The initial assessment of allegations about the conduct of a Member will be governed by this procedure.
2. The person making the complaint will be referred to in this procedure as the Complainant and the person against whom the complaint is made will be referred to as the Member.
3. The Standards Committee means the Council's Standards Committee or a Sub-Committee of that Committee.
4. This procedure will also be applied if a matter is referred by an Ethical Standards Officer of the Standards Board for England.

Before the Complaint is Assessed

5. The Monitoring Officer will acknowledge receipt of the complaint and when doing so will inform the person making the complaint of the procedure to be followed.
6. The Monitoring Officer will normally inform the member against whom the complaint has been made of the complaint. He/she may not do so if it appears that the member should not be informed having regard to whether such disclosure would be contrary to the public interest or to any person's ability to investigate the complaint.
7. The Monitoring Officer will normally inform the member against whom the complaint is made of the identity of the Complainant prior to the meeting of the Standards (Assessment) Sub-Committee. If the Complainant has requested that his/her identity should be withheld, this information will not be given before the Standards (Assessment) Sub Committee has considered the request.

Assessment Sub-Committee

8. Upon receipt of an allegation that a Member or Co-opted Member may have breached the Code of Conduct a meeting of the Assessment Sub-Committee will be convened where possible within 20 working days) to consider that allegation.
9. Before assessment of a complaint begins the Assessment Sub-Committee shall be satisfied that the complaint meets the tests and assessment criteria set out in Appendix A to this procedure.
10. That Sub-Committee must:-
 - a) refer the allegation to the Council's Monitoring Officer;

- b) refer the allegation to the Standards Board for England; or
 - c) decide that no action should be taken in respect of the allegation
11. If the Sub-Committee decides that no action should be taken in respect of the allegation, it must take reasonable steps to give notice in writing to the Complainant of the decision and the reasons for the decision. This will be done within 5 working days after the date of the meeting.

Right of Review

12. If a decision is made by the Assessment Sub-Committee that no action should be taken in respect of an allegation the Complainant may ask the Standards Committee to review the decision.
13. Any request for review must be in writing, within 30 days of the date of decision of the Assessment Sub-Committee.
14. Any request for review will be determined by a Standards Review Committee, where possible within 20 working days but in any event, within 3 months beginning with the date a request for review is received.

NOTIFYING THE MEMBER

15. The Standards Committee will, where appropriate, give a written summary of the allegation to the Member.
16. If the Standards Committee makes a decision that no action should be taken in respect of the allegation, it will take reasonable steps to give notice in writing to the Member of the decision and reasons for the decision.
17. If a request for review of that decision is made, the Member will also be advised in writing of the request.
18. The requirement to notify the Member does not apply if the Standards Committee determines that to do so would be contrary to the public interest or would prejudice any person's ability to investigate the allegation.

REFERRAL TO MONITORING OFFICER – OTHER STEPS

19. If the Assessment Sub-Committee or an Ethical Standards Officer makes a decision to refer the allegation to the Council's Monitoring Officer they can make a direction to take steps other than carrying out an investigation.
20. Those steps may be:-
- a. arranging for the Member to attend a training course;
 - b. arranging that the Member and Complainant engage in a process of conciliation;
 - c. such other steps [not including an investigation] as appear appropriate to the Standards Committee.

21. Where a matter is referred to the Monitoring Officer as directed at 19 above, the Monitoring Officer shall deal with the matter in accordance with the direction and shall give notice that the matter has been so referred to:-

- i. the Member
- ii. the Complainant; and
- iii. any Parish Council concerned

and will within 3 months of the direction, or as soon as reasonably practicable thereafter, submit a written report giving details of the action taken or proposed to comply with the direction of the Standards Committee or an Ethical Standards Officer [as appropriate].

22. If the Standards Committee is not satisfied with the action specified in the report, it shall give further direction to the Monitoring Officer.

23. If the Standards Committee is satisfied with the action specified, it shall give written notice to that effect to:

- a. the Member;
- b. the Complainant;
- c. the Standards Committee of any other Authority concerned; and
- d. any Parish Council concerned.

24. If the Ethical Standards Officer is satisfied with the report he/she will give notice as in 23 above. If he/she is not satisfied that Officer may require the Monitoring Officer to arrange for a statement to be published in at least one local newspaper circulating in the area giving:

- a. details of the direction given by the Ethical Standards Officer;
- b. the Ethical Standards Officer's reasons for being dissatisfied; and
- c. the Monitoring Officer's response to the Ethical Governance Officer's reasons for being dissatisfied.

REFERRAL TO MONITORING OFFICER FOR INVESTIGATION

25. If a matter is referred to the Council's Monitoring Officer for investigation then the Monitoring Officer, unless otherwise directed, shall inform:

- i. the Member;
- ii. the Complainant;
- iii. the Standards Committee of any other authority concerned; and
- iv. any Parish Council concerned

that the matter has been referred for investigation.

26. If the matter is referred for investigation, then the Council's Procedure for Local Investigation of Referred complaints will be applied to such investigation.

LOCAL INITIAL ASSESSMENT PROCEDURE - APPENDIX A

Initial tests

Before assessment of a complaint begins, the assessment sub-committee should be satisfied that the complaint meets the following tests:-

- It is a complaint against one or more named members of the authority or an authority covered by the standards committee
- The named 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 member was operating at the time of the alleged misconduct

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.

Assessment Criteria

A Circumstances where the Assessment Sub-Committee may decide that no action should be taken in respect of the allegation:

- A1 Where the complaint is about someone who is no longer a Member of the District Council or a Town/Parish Council.
- A2 Where the information provided by the complainant is not sufficient to enable the Sub-Committee to make a decision as to whether the complaint should be referred for investigation or other action.
- A3 Where a substantially similar allegation has previously been made by the complainant or another complainant in respect of the Member to the Standards Board or the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority [except where a Review Sub-Committee considers that a request for review contains new information and should be considered by an Assessment Sub-Committee rather than the Review Sub-Committee].
- A4 Where the complaint is about something that happened so long ago that there would be little benefit in taking action now.
- A5 Where the allegation is anonymous, unless it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.
- A6 Where the allegation discloses a potential breach of the Code of Conduct, but the Committee considers that the complaint is too trivial to merit further action.
- A7 Where the complaint appears to be malicious, politically motivated or tit-for-tat.

B Circumstances where the Standards Committee may decide to refer the allegation to the Monitoring Officer for investigation

B1 Where the allegation discloses a potential breach of the Code of Conduct that the Committee considers sufficiently serious to justify the cost of an investigation.

C Circumstances where the Standards Committee may decide to refer the allegation to the Monitoring Officer for training, conciliation or other steps as appear appropriate to the Standards Committee

Note – this approach may be appropriate where the Sub-Committee believes that the conduct, if proven, may amount to a failure to comply with the Code, and that some action should be taken in respect to the complaint. If this approach is taken, the purpose of the action is NOT to find out whether the subject member breached the Code, and no conclusion will have been reached on whether the subject member failed to comply with the Code.

C1 Where the complaint suggests that there is a wider problem throughout the authority and it is appropriate to extend the action to other members who are not the subject of the complaint.

C2 Where it is apparent that the subject of the allegation has admitted making an error and the matter would not warrant a more serious sanction.

C3 Where it appears that even if the allegation were fully investigated, and a breach of the Code of Conduct upheld, training or conciliation would be the appropriate remedy.

D Circumstances where the Standards Committee may decide to refer an allegation to the Standards Board

D1 Where the Assessment Sub-Committee believes that the status of the member or members, or the number of members about whom the complaint is made, would make it difficult for the Standards Committee to deal with the complaint. For example, if the complaint is about the Leader of the Council or a Group Leader, or a member of the Cabinet or Standards Committee.

D2 Where the Assessment Sub-Committee believes that the status of the complainant[s] would make it difficult for the Standards Committee to deal with the complaint. For example, if the complainant is a Group Leader, Member of Cabinet or the Standards Committee, or the Chief Executive or a statutory officer.

D3 Where the Assessment Sub-Committee believes that there is a potential conflict of interest of so many members of the Standards Committee that it could not properly deal with the matter itself.

D4 Where the Assessment Sub-Committee believes that there is a potential conflict of interest of the Monitoring Officer or other officers and that suitable alternative arrangements cannot be put in place to address the conflict.

D5 Where the case is so serious or complex that it cannot be handled locally. Where the complaint will require substantial amounts of evidence beyond that available from the Authority's documents, its Members or Officers.

- D6 Where the complaint relates to long-term or systematic member/officer bullying which could be more effectively investigated by someone outside the Council.
- D7 Where the allegation raises significant or unresolved legal issues on which a national ruling would be helpful.
- D8 Where the public might perceive the Council to have an interest in the outcome of a case. For example, if the Authority could be liable to be judicially reviewed if the complaint here upheld.

Withdrawal of Complaints

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

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.

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 jeopardized if their identity is disclosed, or where there are medical risks [supported by medical evidence] associated with the Complainant's identity being disclosed.

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.

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

Where a complaint is received about a District, Town or Parish Councillor who is known to be a member of another Authority, for example the County Council or 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 deal with the complaint.