

## **Draft Standards Committee Assessment Criteria**

### **Which complaints can be considered?**

The Assessment Sub-Committee of the Standards Committee must consider every complaint where a member may have failed to comply with the City Council's Code of Conduct ("the Code").

The Assessment Sub-Committee has no jurisdiction in respect of any complaint which relates to:

- § persons who are not members of the City Council
- § conduct which occurred in the member's private life, unless such conduct constitutes a criminal offence which the member has been convicted of. The Code otherwise only applies to a member's conduct acting in their official capacity.
- § conduct which occurred at a time when the person against whom the complaint was made was not a member of the City Council, unless such conduct constitutes a criminal offence which the member was convicted of after taking office.
- § conduct which occurred when the member was acting as member of another authority. Where a member is also a member of another authority which has its own Code of Conduct, then the complaint should be addressed directly to that authority.
- § a matter other than the apparent misconduct of a relevant member but, for example, about the policies and priorities of the City Council, or a request for the provision of a service by the City Council, or a complaint about the conduct of an officer of the City Council
- § any other matter clearly not about member conduct

Such complaints will not be referred to the Standards Committee but instead the Monitoring Officer will notify the complainant as to how the complaint will be dealt with.

Where more than one complaint is received about the same alleged misconduct, the Assessment Sub-Committee may decide to consider only the first complaint received in relation to that particular misconduct. No action

need be taken in relation to any later complaints on the basis that the alleged misconduct has already been considered by Standards Committee.

### **Does the complaint appear to show a breach of the Code?**

The first assessment, which will be undertaken by the Assessment Sub-Committee, will be to determine whether the complaint appears to show that there may have been a breach of the Code. For this purpose, the Assessment Sub-Committee will take into account the complaint letter and the short summary of the complaint as prepared by the Monitoring Officer. The Monitoring Officer's summary shall include the following:

- § whether the complaint is within jurisdiction
- § the paragraphs of the Code which the complaint might relate to, or the paragraphs the Complainant has identified
- § a summary of the key aspects of the complaint if it is lengthy or complex
- § any further information that the Monitoring officer has obtained to assist the Assessment Sub-Committee with its decision, for example:
  - a) a copy of the declaration of office form and an undertaking to observe the Code
  - b) minutes of meetings
  - c) a copy of a member's entry in the register of interests
  - d) information from Companies House or the Land Registry
  - e) other easily obtainable documents

The Assessment Sub-Committee will then consider whether it appears that there may have been a breach of the Code. If the Assessment Sub-Committee concludes that the evidence does not disclose an apparent breach of the Code, it has no further jurisdiction in respect of the matter and will decide to take no further action..

### **Possible actions where the complaint appears to show a breach of the Code**

Where the Assessment Sub-Committee has concluded that the complaint appears to show that there may have been a breach of the Code, it has four options available to it. These are as follows:

**a. Request the Monitoring Officer to undertake an investigation;**

A local investigation would normally be appropriate where the alleged conduct is sufficiently serious to merit the imposition of a sanction against the member, but not so serious that it would merit a greater sanction than the City Council's Standards Committee could impose following a formal hearing. In practice, this means that a local investigation would not be appropriate where the appropriate sanction is likely to be a suspension as a member of the City Council for a period of more than six months, or disqualification as a member of the City Council or any other authority.

The following factors will therefore be considered when deciding whether to refer the allegation for investigation by the Monitoring Officer:

- § whether it is serious enough, if proved, to justify a sanction being imposed
- § whether the sanctions available to the Standards Committee are sufficient if a breach is proved
- § whether it is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the City Council and there is no other avenue left to deal with it short of investigation
- § whether a significant period of time has passed since the alleged misconduct took place

**b. Refer the matter to Standards for England;**

The following factors will be considered by the Assessment Sub-Committee to be factors which support referring the complaint to the Standards for England:

- § whether the status of the member or members, or the number of members about whom the complaint is made, would make it difficult for the Assessment Sub-Committee to deal with the complaint. For example, is the member a group leader, or a member of the cabinet or Standards Committee?
- § whether the status of the complainant or complainants would make it difficult for the Assessment Sub-Committee to deal with the complaint. For example, is the complainant a group leader, or a member of the

cabinet or Standards Committee, the Chief Executive, the Monitoring Officer or any other senior officer?

- § that so many members of the Standards Committee have a potential conflict of interest in respect of the matter that the City Council is going to be in difficulty in organising an impartial hearing panel for the matter
- § that there is a potential conflict of interest of the Monitoring Officer or officer officers and suitable alternative arrangements cannot be put in place to address the conflict, for example the Monitoring Officer has witnessed the conduct which has led to the complaint
- § that the public perceive that the City Council has an interest in the outcome of the case, for example where an upheld complaint may lead to a judicial review of a decision taken by the City Council
- § that the complaint is so serious that, if proven, the conduct complained of merits a sanction in excess of that which could be imposed by the Standards Committee. In practice this means that the appropriate sanction would be either a suspension from the City Council for a period of more than six months, or a disqualification from being an elected member of the City Council or any other authority.
- § that the case is so serious or complex, or involving so many members that it cannot be handled locally.
- § that the investigation required is so extensive that it requires substantial amounts of evidence beyond that available from the City Council's documents, its members or officers, and/or that any hearing conducted on the basis of that investigation would be unreasonably complex for the Standards Committee
- § that the complaint raises significant or unresolved legal issues where a national ruling would be helpful
- § that there are other exceptional circumstances which would prevent the City Council from securing a timely, full and impartial investigation and/or hearing of the matter, or which are likely to give rise to the perception that the City Council cannot secure a timely, full and impartial investigation and/or hearing of the matter.
- § that the complaint relates to long-term or systemic member/officer bullying which could be more effectively investigated by someone outside the City Council.

- § whether there is substantial governance dysfunction in the authority or the Standards Committee

**c. Decide to take no action in respect of the complaint.**

Where the conduct complained of is not sufficiently serious to merit any action or occurred a considerable time ago, the Assessment Sub-Committee may determine that no action should be taken in respect of it. The Assessment Sub-Committee will take the following factors as supporting a decision to take no action in respect of the matter:

- § the complaint appears to be trivial, vexatious, simply malicious, politically motivated or tit for tat. The Assessment Sub-Committee should consider whether there is a public benefit in taking any action in relation to such a complaint.
- § the complaint is anonymous. The Assessment Sub-Committee can protect the confidentiality of the identity of the complainant, where it is justified by a real fear of intimidation or victimisation. However, where this is not an obvious risk, the fact that the complainant has not disclosed his/her identity can indicate that the complaint is less serious, malicious or politically motivated
- § a significant period of time has elapsed since the events which are the subject of the complaint and insufficient reasons are provided for the delay in complaining. This would be taken into account since a) given the passage of time it would be difficult to obtain documentary evidence and reliable witness evidence and/or b) where a matter is serious, it would be reasonable to expect the complainant to make a complaint promptly.
- § the complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter. This could be where it is unlikely that there is any firm evidence on the matter.
- § whether the complaint is relatively minor. Since a decision to investigate a complaint or to take other action will cost both public money and officers' and member's time it is important to consider whether the expense of doing so is justified.

- § the same, or a substantially similar allegation, has already been received and there is nothing further to be gained (for example, in view of sanctions) by considering this particular complaint.
- § It appears that the allegation is really about dissatisfaction with the City Council's decisions or services.
- § There is not enough information available to justify a decision to refer the matter for investigation.

**d. Request the Monitoring Officer to take other appropriate action**

Recognising that a formal investigation is only able to address the immediate subject matter of the complaint, the Assessment Sub-Committee can direct the Monitoring Officer to take other appropriate action. However, complaints should not be referred for other action when an investigation is in the public interest.

The Assessment Sub-Committee cannot impose a sanction on the member against whom the complaint has been made without a formal investigation and hearing. However, it can direct the Monitoring Officer to take a range of other actions, including providing training for members, securing conciliation or mediation between competing interests, or reviewing procedures to minimise conflict.

In some instances, the conduct complained of may be a symptom of wider conflicts within the City Council. A formal investigation and hearing would only deal with that instant complaint and may not resolve such underlying conflicts. Alternative action is therefore most suitable where:

- § the conduct complained of is a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct
- § the conduct complained of is apparently common to a number of members within the City Council, demonstrating a lack of awareness or recognition of the particular provisions of the Code
- § Where there is a breakdown in relationships within the City Council which may be apparent by a pattern of allegations of disrespect, bullying or harassment; factionalised groupings within the City Council;

a series of 'tit for tat' allegations; and/or ongoing employment issues, which may include resolved or ongoing employment tribunals, or grievance procedures.

- § the conduct complained of is not so serious that it requires a substantive formal sanction, such as suspension or disqualification
- § the complaint reveals that there is a poor understanding of the Code and City Council's procedures or a breakdown in relationships.
- § the complaint reveals a lack of guidance, protocols and procedures within the City Council, for example on the use of resources or the process of decision-making
- § the member complained of and the person making the complaint are amenable to engaging in such alternative action.

Examples of alternatives to investigation include:

- § Arranging for members to attend a training course
- § Arranging for the member or members and the complainant to engage in a process of conciliation
- § Instituting changes to the City Council's policies or procedures
- § Mentoring of a member or members, or the whole council

### **Anonymous complaints**

An anonymous complaint should usually only be referred for investigation, or some other action, if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter. The Assessment Sub-Committee must weigh the anonymous submission against the strength of the evidence and the seriousness and significance of the matter presented.

### **Confidentiality**

As a matter of fairness and natural justice, a member should usually be told who has made a complaint about them. However, there may be instances where the complainant asks for their identity to be withheld. Such requests will only be granted in exceptional circumstances and at the discretion of the Assessment Sub-Committee who will take into account the following criteria when considering a request for confidentiality:

- § The complainant demonstrates reasonable grounds to believe that he/she, or someone close to him/her, will be at risk of physical harm if his/her identity is disclosed.
- § The complainant is an Officer of the City Council who works closely with the member and is afraid of the consequences to his/her employment if his/her identity is disclosed
- § The complainant has provided medical evidence that he/she suffers from a serious medical condition and there are medical risks from his/her identity being released.

The Assessment Sub-Committee will also consider whether it is possible to investigate the complaint without making the complainant's identity known. If the Assessment Sub-Committee decides to refuse a request by a complainant for confidentiality, it will usually offer the complainant the option to withdraw the complaint, rather than proceed with their identity being disclosed. Only in exceptional circumstances would the Assessment Sub-Committee conclude that the public interest in proceeding with the allegation, due to its nature and severity, is such that it outweighs the complainant's wish for anonymity.

### **Withholding summary**

The summary of the complaint may be withheld from the member if, and only if, it is the Assessment Sub-committee's view that providing it would be against the public interest or would prejudice any future investigation, ie it is considered likely that the member may seek to intimidate the complainant or witnesses or where early disclosure might lead to evidence being compromised or destroyed.

### **Request for withdrawal of complaint**

If the complainant has submitted a request for the complaint to be withdrawn this request must be assessed in relation to the public interest. If the public interest in taking some action on the complaint outweighs the complainant's desire to withdraw it then the request should be rejected and appropriate action directed.



The Assessment Sub-committee should also consider whether or not there is an identifiable underlying reason for the request, such as a suggestion of intimidation, and practical considerations such as whether an investigation or other action could proceed without the complainant's co-operation.