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# **Part 4(i) – Complaints Against Members Rules**

## **1. Rules for the Assessment & Review of Complaints against Members**

### **1.1 Making a Complaint**

A complaint that a Member of Southend-on-Sea Borough Council or Leigh-on-Sea Town Council has breached the Code of Conduct must be submitted in writing on the form agreed by the Council's Standards Committee (as may be amended from time to time by the Monitoring Officer) or address in full all the issues covered in the form.

### **1.2 Pre-assessment Activity and Report to Assessment Sub-Committee**

Upon receipt of an allegation against a member or co-opted member of Southend-on-Sea Borough Council or Leigh-on-Sea Town Council, the Monitoring Officer shall consider whether it is one which needs to be dealt with under this procedure, or whether it should be dealt with under the relevant Council's general complaints procedure in which case he may arrange for it to be handled accordingly.

If the complaint is to be dealt with under this procedure, then the Monitoring Officer shall acknowledge receipt of the complaint. The Monitoring Officer shall normally tell the subject Member that a complaint has been made about them, the name of the complainant (unless the complainant has requested confidentiality and the Standards Committee has not yet considered whether or not to grant it), the relevant paragraphs of the Code that may have been breached and that a written summary of the allegation will only be provided to the subject Member once the Assessment Sub-Committee has met to consider the complaint and the date of this meeting is known.

To assist the Assessment Sub-Committee in discharging its terms of reference, the Monitoring Officer shall undertake or secure such pre-assessment enquiries as he considers necessary and shall provide the Assessment Sub-Committee with a report summarising the allegation made and including:

- (a) whether it is within the jurisdiction of the Standards Committee;
- (b) the paragraph(s) of the Code of Conduct to which the allegation may relate or which the complainant has identified;
- (c) key aspects of the allegation if it is lengthy or complex; and
- (d) any further information available which the Monitoring Officer determines is likely to assist the Assessment Sub-Committee in making its initial assessment of the allegation.

**PROVIDED THAT** neither the pre-assessment enquiries conducted by the Monitoring Officer nor the work of the Assessment Sub-Committee shall be carried out in such a way as to amount to an investigation of the allegation. Any report to the Assessment Sub-Committee shall contain only factual information and not any statement of opinion about the allegation or any other circumstances of the case.

### **1.3 Initial Tests**

In assessing any allegation brought before it, the Assessment Sub-Committee must first determine whether this passes the following tests:

- (a) that the allegation is a complaint against one or more named Members or co-opted members of the Southend-on-Sea Borough Council or Leigh-on-Sea Town Council;
- (b) that the named Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;

- (c) that the allegation, if proven, may amount to a breach of the Code of Conduct under which the Member was operating at the time of the alleged misconduct.

If the allegation fails to meet one or more of these requirements it cannot be investigated as a breach of the Code, and the Assessment Sub-Committee will inform the complainant, through the Monitoring Officer, that no further action will be taken.

#### 1.4 Assessment Criteria

In assessing allegations in accordance with its terms of reference the Assessment Sub-Committee will also apply the following Assessment Criteria:

##### Which complaints will be referred for investigation?

- (a) It is serious enough, if proven, to justify the range of sanctions available to local Standards Committees or the Adjudication Panel for England.
- (b) It is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it, short of investigation.
- (c) In considering this, the Assessment Sub-Committee will take into account the time that has passed since the alleged conduct occurred.

##### Which complaints are unlikely to be referred to investigation?

- (a) The complaint is considered to be vexatious, malicious, relatively minor, or tit-for-tat.  
**Note:** Complaints may be considered to be vexatious if they are repeated complaints, use aggressive or repetitive language of an obsessive nature, disclose an ulterior motive and / or where the complainant refuses to let the matter rest once the complaint process (including the Review Stage) has been exhausted.
- (b) The same, or substantially similar, complaint has already been the subject of an investigation or inquiry and there is nothing further to be gained by seeking the sanctions available to the local Standards Committee or the Adjudication Panel for England.
- (c) The complaint concerns acts carried out in the Members' private life, when they are not carrying out the work of the Council or have not misused their position as a Member.
- (d) It appears that the complaint is really about dissatisfaction with a Council decision.
- (e) There is not enough information currently available to justify a decision to refer the matter for investigation.
- (f) Anonymous complaints will only be considered if documentary or photographic evidence is included indicating an exceptionally serious or significant matter.

#### 1.5 Initial Assessment Decision

The Assessment Sub-Committee will normally complete its assessment of an allegation and reach a decision on the action to be taken on it within 20 working days of the allegation being received by the Monitoring Officer. If it is apparent, owing to exceptional circumstances, that there is likely to be any substantial delay in the Assessment Sub-Committee completing its work the Monitoring Officer shall advise the person making the allegation and shall tell them when the assessment of their allegation is likely to be completed.

Upon completion of its assessment, the Assessment Sub-Committee may decide:

- (a) to refer the allegation to the Monitoring Officer for investigation, or (subject to consultation with the Monitoring Officer), for action other than investigation\* and to receive a report on the outcome within 3 months;
- (b) to refer the allegation to the Standards Board for England, where the Assessment Sub-Committee is of the opinion that the circumstances of the case, or public interest considerations justify this;
- (c) that no action is required in respect of the allegation;
- (d) whether the complainant's request for confidentiality in any notification to the subject of the complaint should be respected.

**Note:** "Action other than investigation" means arranging for any Member against whom an allegation is made to attend a training course; arranging for that Member and the person making the allegation to engage in a process of conciliation; and/or such other appropriate actions such as recommending changes to the procedures of the Southend-on-Sea Borough Council or Leigh-on-Sea Town Council if they have given rise to the complaint.

**Note:** If the Assessment Sub-Committee, after consultation with the Monitoring Officer, chooses the option of other action, the Monitoring Officer shall invite the Member concerned, and the party making the allegation, if appropriate, to confirm their willingness to cooperate.

In any case, the Assessment Sub-Committee shall notify its decision to the person making the allegation and the Member who is the subject of it.

If the Assessment Sub-Committee decides that no action is required, the notification shall give the Assessment Sub-Committee's reasons for the decision and shall inform the person making the allegation of their right to ask for a review of the decision, by writing to the Monitoring Officer, so long as their written request is received within 30 working days after the date when they receive the notice.

If the Assessment Sub-Committee decides to refer the allegation to the Monitoring Officer or the Standards Board for England, its notification of that decision should not give reasons for the decision, but it will normally include a summary of the allegation. However, the Assessment Sub-Committee shall not give the Member who is the subject of the complaint a copy of that summary if it decides, after consulting the Monitoring Officer, that to do so would be against the public interest or would prejudice any future investigation. In such cases the Sub-Committee may give limited information to the Member if it decides that to do so would not be against the public interest or prejudice any future investigation. In any event the Monitoring Officer shall notify the subject Member that a complaint has been made.

## **1.6 Review Request - Process of Review**

In undertaking a review, the Review Sub-Committee shall apply the same assessment criteria as were applied by the Assessment Sub-Committee, and has the same decisions available to it as were available to the Assessment Sub-Committee.

In any case where further information is made available in support of an allegation that appears to change its nature or give rise to a potential new complaint, the Review Sub-Committee shall consider whether it is more appropriate to pass this to the Assessment Sub-Committee to be handled as a new allegation. In any case where it does this, the Review Sub-Committee shall also make a formal decision that the review request will not be granted.

## **1.7 Notification Requirements in respect of a review request**

Upon receipt of a review request the Monitoring Officer shall notify the Member who is the subject of the allegation in question that a review has been requested.

## **1.8 Review Decision**

The Review Sub-Committee will normally complete its review of an allegation and reach a decision on the action to be taken on it within 20 working days of the request for a review being received by the Monitoring Officer. If it is apparent, owing to exceptional circumstances, that there is likely to be any substantial delay in the Review Sub-Committee completing its work, the Monitoring Officer shall advise the person requesting the review and shall tell them when the review is likely to be completed.

The Review Sub-Committee shall notify its final decision to the person making the allegation and the member who is the subject of it.

If the Review Sub-Committee has decided that no action is required, the notification shall give the Review Sub-Committee's reasons for the decision.

If the Review Sub-Committee has decided to refer the allegation to the Monitoring Officer or the Standards Board for England, its notification of that decision to the person making the allegation and to the Member who is the subject of it should not give reasons for the decision, but it will normally include a summary of the allegation. However, the Review Sub-Committee shall not give the Member a copy of that summary (unless previously disclosed) if it decides, after consulting the Monitoring Officer, that to do so would be against the public interest or would prejudice any future investigation. In such cases the Review Sub-Committee may give limited information to the Member if it decides that to do so would not be against the public interest or prejudice any future investigation. In any event the Monitoring Officer shall notify the subject Member that the complaint has been referred for investigation.

## **1.9 Access to Meetings and Decision Making**

Meetings of the Assessment Sub-Committee and the Review Sub-Committee convened to assess allegations or review decisions to take no action are not open to the public or press or other Councillors. The normal statutory rules regarding notices of meetings and circulation of agendas and reports do not apply.

Written summaries of the proceedings of the Assessment and Review Sub-Committees will be produced and made available for public inspection in accordance with the regulations and by reference to the Standards Board guidance.

## **1.10 Withdrawal of Allegations**

If a person who has made a written allegation to the Monitoring Officer that a Member or co-opted member of the Southend-on-Sea Borough Council or Leigh-on-Sea Town Council has failed or may have failed to comply with the Code of Conduct wishes to withdraw the allegation, their request shall be considered by the Assessment Sub-Committee. In deciding whether to accede to the request, the Assessment Sub-Committee shall have regard to all relevant considerations including whether:

- (a) the public interest in taking some action on the allegation outweighs the wishes of the person making it;
- (b) the allegation is such that it can be investigated or subjected to other action without the participation of the person making it;
- (c) there is an identifiable underlying reason for the withdrawal request (e.g. information to suggest that the person making it may have been pressured to withdraw it).

## **1.11 Confidentiality**

A Member will usually be informed as to who has made an allegation against them. Exceptionally however, the Assessment Sub-Committee may accede to a request for confidentiality by the person making the allegation. The Assessment Sub-Committee will consider any such request alongside its consideration of the substance of the allegation. In deciding whether to accede to the request, the Assessment Sub-Committee shall have regard to all relevant considerations including whether:

- (a) the person making the allegation has a reasonable belief that they will be at risk of mental or physical harm if their identity is disclosed;
- (b) that person is an officer who works closely with the Member against whom the allegation is made and has a reasonable belief that they will be adversely affected in their employment if their identity is disclosed;
- (c) that person suffers from a serious medical condition (of which medical evidence has been provided) and there are medical risks associated with their identity being disclosed.

If the Assessment Sub-Committee decides that there are reasonable grounds for acceding to the request it will also consider whether it is possible to investigate the allegation without disclosing the identity of the person making it.

If the Assessment Sub-Committee refuses to accede to the request, it may give the person making the allegation the opportunity to withdraw it unless the Sub-Committee concludes that the public interest in proceeding with the investigation outweighs the wishes of the person making the allegation to have their identity withheld.

### **1.12 Conflict of Interest**

Members and Officers should take care to avoid any personal conflict of interest when participating in the consideration of a complaint, there must be no bias or appearance of bias in the process. Members must comply with the provisions of the Code of Conduct.

### **1.13 Guidance**

In dealing with the assessment and review of Complaints against Members, regard must be had to up to date Standards Board Guidance.

## **2. Procedure for Local Investigations**

Local Investigations shall be conducted in accordance with the provisions of the Standards Committee (England) Regulations 2008 and up to date Guidance issued by the Standards Board. In particular:

- Local Investigations & Other Actions
- How to Conduct an Investigation
- Conducting an Investigation Toolkit

## **3. Hearing Procedure Rules**

The following procedure shall apply to any hearing held by the Standards Committee or the Hearing Sub-Committee to consider a report referred to it by the Monitoring Officer under Regulation 14 or 15 of the Standards Committee (England) Regulations 2008 or any modification or re-enactment thereof.

### **3.1 Interpretation**

**3.1.1** 'Member' means the member of Southend-on-Sea Borough Council or Leigh-on-Sea Town Council who is the subject of the allegation being considered by the Standards Committee or Hearing Sub-Committee, unless stated otherwise. It also includes the Member's nominated representative.

**3.1.2** 'Investigator' means the Monitoring Officer or other investigating officer and his or her nominated representative.

**3.1.3** 'Committee' also refers to any Sub-Committee of the Standards Committee.

**3.1.4** 'Legal Adviser' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of Southend-on-Sea Borough Council, or someone appointed for this purpose from outside the Council.

## **3.2 Representation**

The Member may be represented or accompanied during the hearing by a solicitor, counsel, or with the permission of the Committee, another person.

## **3.3 Legal Advice**

The Committee may take legal advice from its Legal Adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee will be shared with the Member and the Investigator, if they are present.

## **3.4 Introductions**

The Chairman will introduce the members of the Committee and everyone involved and will explain how the Committee is going to conduct the hearing.

## **3.5 Preliminary Procedural Issues**

The Committee will resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

The Committee will also consider any request for an adjournment, and if relevant, take any decision on whether to proceed in the absence of the Member.

## **3.6 Process of Hearing & Findings of Fact**

**3.6.1** The Committee will consider whether or not there are any significant disagreements about the facts contained in the Investigator's report.

**3.6.2** If there is no disagreement about the facts, the Committee will move on to the next stage of the hearing.

**3.6.3** If there is a disagreement, the Investigator (if present) will be invited to make any necessary representations to support the relevant findings of fact in the report. With the Committee's permission, the Investigator may call any necessary supporting witnesses to give evidence. The Committee may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigator.

**3.6.4** The Member will then have the opportunity to make representations to support his or her version of the facts and, with the Committee's permission, to call any necessary witnesses to give evidence.

**3.6.5** At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the Investigator to challenge any evidence put forward by witnesses called by the Member.

**3.6.6** If, during the course of a hearing, the Committee feels that it needs additional evidence in order to come to a determination of the matter it can adjourn and request the Monitoring Officer to provide such further information or undertake further investigation, but the Committee can only do so once on any one matter.



**3.6.7** If the Member disagrees with any relevant fact in the Investigator's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the Investigator is not present, the Committee will consider whether or not it would be in the public interest to continue in their absence. After considering the Member's explanation for not raising the issue at an earlier stage, the Committee will then either:

- (a) continue with the hearing, relying on information in the Investigator's report;
- (b) allow the Member to make representations about the issue, and invite the Investigator to respond and call any witnesses as necessary; or
- (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigator to be present if they are not already.

**3.6.8** The parties will then withdraw to allow the Committee to consider the representations and evidence in private.

**3.6.9** Upon their return, the Chairman will announce the Committee's findings of fact.

### **3.7 Did the Member fail to follow the Code of Conduct?**

**3.7.1** The Committee will then consider whether or not, based on the facts it has found, the Member failed to follow the Code of Conduct.

**3.7.2** The Member will be invited to give relevant reasons why the Committee should not decide that they failed to follow the Code.

**3.7.3** The Committee will then consider any verbal or written representations from the Investigator.

**3.7.4** The Committee may, at any time, question anyone involved on any point raised in their representations.

**3.7.5** The Member will be invited to make any final relevant points.

**3.7.6** The parties will withdraw to allow the Committee to consider the representations.

**3.7.7** Upon their return, the Chairman will announce the Committee's decision as to whether or not the Member has failed to follow the Code of Conduct.

### **3.8 If the Member has not failed to follow the Code of Conduct**

If the Committee decides that the Member has not failed to follow the Code, the Committee will move on to consider whether it should make any recommendations to the Council.

### **3.9 If the Member has failed to follow the Code of Conduct**

**3.9.1** If the Committee decides that the Member has failed to follow the Code, it will consider any verbal or written representations from the Investigator and the Member as to:

- (a) whether or not the Committee should set a penalty
- (b) what form any penalty should take.

**3.9.2.** The Committee may question the Investigator and Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

**3.9.3** The parties will withdraw to allow the Committee to consider whether or not to impose a penalty on the Member and, if so, what the penalty should be.

**3.9.4** Upon their return, the Chairman will announce the Committee's decision.

### **3.10 Recommendations to the Council**

After considering any verbal or written representations from the Investigator, the Committee will consider whether or not it should make any recommendations to the Council, with a view to promoting high standards of conduct amongst members.

### **3.11 The written decision**

The Committee will announce its decision on the day and provide a short written decision on that day. It will also issue a full written decision shortly after the end of the hearing.

### **3.12 Retention of Papers**

Papers relating to the Investigation and Hearing should be retained for 6 years or until the Member against whom the allegation is made ceases to be a Member of the Council, whichever is the earlier.

### **3.13 Guidance**

In dealing with Hearings regard must be had to up to date Standards Board Guidance.