

NORTH YORKSHIRE FIRE AND RESCUE AUTHORITY  
STANDARDS COMMITTEE

COMPLAINT ASSESSMENT SUB-COMMITTEE

**COMPLAINT ASSESSMENT PROCEDURE**

**The Local Assessment and Review of Complaints against Members**

**1.0 INTRODUCTION**

- 1.1 North Yorkshire Fire and Rescue Authority (“the Authority”) has adopted a **Code of Conduct for Members** (attached at **Appendix 1**), based on the statutory national model. The Code applies to the Members of the Authority and voting co-opted Members on Authority Committees, eg the independent Members on the Authority’s Standards Committee, and the phrase “Member” within this procedure refers to all such Members.
- 1.2 The Standards Committee (England) Regulations 2008 provide for the local receipt, assessment, investigation and determination of complaints that Members may have breached the Code of Conduct, by local standards committees.
- 1.3 Consequently, if someone (“the complainant”) wishes to complain about the conduct of a Member of North Yorkshire Fire and Rescue Authority (“the subject Member”), s/he must submit their complaint, **in writing**, to:

The Standards Committee  
c/o The Monitoring Officer  
North Yorkshire Fire and Rescue Service  
North Yorkshire Fire and Rescue Service Headquarters  
Thurston Road  
NORTHALLERTON  
North Yorkshire  
DL6 2ND

- 1.4 The **Standards Committee** can only deal with complaints about the behaviour of a Member and cannot deal with complaints about things that are not covered by the Members’ Code of Conduct. A complaint to the Committee must be about why the complainant thinks a Member has *not followed the Code*.
- 1.5 The Standards Committees will **not** look at complaints that are about:
- people employed by the Authority;
  - incidents that happened before a Member was elected/co-opted/appointed or after they have resigned or otherwise cease to be a Member;
  - incidents that happened before the Authority adopted the Code of Conduct;
  - the way the Authority conducts or records its meetings;
  - the way the Authority has or has not done something;
  - decisions of the Authority or one of the services it provides. In this case, the complainant should ask how to complain using the Authority’s own complaints system.

1.6 When submitting a complaint that a Member has breached the Code of Conduct, **complainants** should provide the following written details:

- the complainant's name, address and other contact details;
- the complainant's status, eg member of the public, fellow Member or Officer;
- who the complaint is about and the authority or authorities that the Member belongs to;
- details of the alleged misconduct including, where possible, dates, witness details and other supporting information;
- where possible, the parts of the Code which have been breached.

1.7 The complainant should set out the complaint clearly and provide at the outset all supporting information s/he wishes to be considered.

1.8 The Standards Committee has established various Sub-Committees, each chaired by an independent Member, to deal with the different stages in the complaints process:

- i. a Complaint Assessment Sub-Committee ("**Assessment Sub-Committee**"), to receive and assess complaints that Members may have breached the Code;
- ii. a Complaint Review Sub-Committee ("**Review Sub-Committee**"), to review Assessment Sub-Committee decisions to take no further action on complaints, where requested to do so by complainants; and
- iii. a Complaint Determination Sub-Committee ("**Determination Sub-Committee**"), to consider investigation reports and conduct hearings determining complaints, following investigation;

with fixed membership and substitute lists.

1.9 Complaints will be assessed and reviewed in accordance with the Standards Committee's local **Assessment Criteria** (attached at Appendix 2) which have been agreed by the Standards Committee and which will be periodically reviewed by the Committee.

1.10 The **Standards Board for England** ("SBE"), an independent, national body, is a key part of the ethical framework, providing advice and guidance to authorities on the framework and acting as a 'light touch' regulator. The Board may still investigate certain, more serious, complaints in particular, limited circumstances. The Standards Board's website ([www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)) contains further information about the ethical framework.

## **2.0 SCOPE OF PROCEDURE**

2.1 This procedure shall be followed by the Standards Committee and/or all relevant Sub-Committees when dealing with the initial **assessment** of such complaints or **review** of assessment decisions to take no further action on particular allegations.

2.2 The procedures for the investigation and determination of complaints are set out in separate protocols.

2.3 All relevant legislation must be followed and SBE Guidance taken into account in dealing with the assessment and review of complaints.

### **3.0 ACTION ON RECEIPT OF COMPLAINT**

3.1 On receipt of a complaint that a Member may have breached the Code of Conduct, the following steps should be taken.

#### **3.1.1 Initial Check**

3.1.2 The Monitoring Officer should consider whether it is a 'legitimate' Code complaint:

- If a written complaint specifies or appears to specify that it is in relation to the Code, then it should be passed to the Assessment Sub-Committee for consideration.
- When a complaint is addressed to the Monitoring Officer, the Monitoring Officer should determine whether the complaint should be directed to the Assessment Sub-Committee or whether another course of action is appropriate. If the complaint is clearly not about Member conduct, then the Monitoring Officer does not have to pass it to the Assessment Sub-Committee.

3.1.3 The Monitoring Officer should consider whether there is any need to seek clarification of the complaint, and if so, contact the complainant accordingly.

3.1.4 The Monitoring Officer should consider whether the complaint includes any elements other than an allegation of breach of the Code of Conduct by a Member and, if so, refer this to the appropriate Officer for action.

3.1.5 The Monitoring Officer should consider whether there is any Officer conflict of interest issue, and which Officer(s) can appropriately perform which roles as the matter proceeds (possibly up to a full hearing).

#### **3.1.6 Complaints about members of more than one authority**

3.1.7 A complaint may be made against an individual who is a member of more than one relevant authority (eg District/Borough, Parish/Town, County Council, Police, National Park) and consequently who may have failed to comply with more than one authority's code of conduct. As such, it would be possible for both/all authorities' standards committees to receive complaints against the Member.

3.1.8 Where such a complaint is received, the Monitoring Officer should check whether a similar allegation has been made to the other authority/ies on which the Member serves and discuss with the relevant Monitoring Officer(s) which standards committee should deal with the matter. Decisions on which standards committee should deal with the matter must then be taken by the standards committees themselves. They may take advice as necessary from the Standards Board.

#### **3.1.9 Multiple Complaints**

3.1.10 A number of complaints may be received from different complainants about the same matter. The Standards Board has advised that such matters should be dealt with in a manner that is a practical use of time and resources.

3.1.11 A number of complaints about the same matter may be considered by the Assessment Sub-Committee at the same meeting. If so, an Officer should be asked to present **one report and recommendation** that draws together all the relevant

information and highlights any substantively different or contradictory information. However, the Assessment Sub-Committee must still reach a **decision on each** individual complaint and follow the notification procedure for each complaint.

#### 3.1.12 **Vexatious Complaints**

3.1.13 In the case of vexatious or persistent complainants, the Authority may take action to limit an individual's contact with the Authority, however, the Standards Committee must consider every new complaint it receives in relation to the Members' Code of Conduct. If the Standards Committee has already dealt with the same complaint by the same person and the Monitoring Officer does not believe that there is any new evidence, then a complaint does not need to be considered.

3.1.14 The Standards Committee's Assessment Criteria provide that malicious, vexatious, politically motivated or tit-for-tat complaints are **unlikely to be investigated** unless they also raise serious matters.

#### 3.1.15 **Anonymous Complaints**

3.1.16 The Assessment Sub-Committee will consider such complaints in accordance with the Assessment Criteria.

3.1.17 The Sub-Committee will only refer such complaints for investigation or some other action if they include documentary or photographic evidence indicating an exceptionally serious or significant matter.

#### 3.1.18 **Acknowledgment of Complaint**

3.1.19 The Monitoring Officer should acknowledge receipt of the complaint (with reference to the SBE Assessment Toolkit) and tell the complainant how it will be dealt with and what will happen next.

3.1.20 It should be made clear to the complainant that the subject Member(s) will be informed that a complaint has been made about them, **who** made the complaint and the relevant paragraphs of the Code of Conduct that it is alleged may have been breached, and that if the complainant wishes to remain **anonymous** he should contact the Monitoring Officer to discuss.

3.1.21 As a matter of fairness and natural justice, subject Members should usually be told who has complained about them, however, there may be instances where the complainant asks for their identity to be withheld. Such requests must be considered by the Assessment Sub-Committee alongside the substance of the complaint itself and will only be granted in **exceptional circumstances**, at the discretion of the Sub-Committee in accordance with the Standards Committee's Assessment Criteria.

#### 3.1.22 **Informing the subject Member**

3.1.23 After acknowledging the complaint and not subsequently receiving word from the complainant that s/he wishes to remain anonymous, the Monitoring Officer should (unless it might be contrary to the public interest or would prejudice an investigation) notify the subject Member(s) that a complaint has been made about them.

3.1.24 The notification can say that a complaint has been made, and state the name of the complainant (unless the complainant has requested confidentiality and the Assessment Sub-Committee has not yet considered whether or not to grant it) and the relevant paragraphs of the Code of Conduct that may have been breached. It should also state that a written summary of the allegation will usually be provided to the subject Member once the Assessment Sub-Committee has met to consider the

complaint (unless contrary to the public interest or prejudicial to an investigation), and the date of this meeting, if known.

3.1.25 Where, in the opinion of the Monitoring Officer, it is appropriate to do so, the Monitoring Officer may also, at an appropriate time around the receipt of a complaint, seek the views of the complainant and subject Member on the matter being dealt with by way of referral for other action.

### 3.1.26 Convening the Assessment Sub-Committee

3.1.27 The Monitoring Officer should consider whether the usual Members of the Assessment Sub-Committee can meet to consider the matter, or whether any of them may be disabled by, for example, inexperience (eg a newly appointed Member), a prejudicial interest, or issues of bias or predetermination. If so, the Monitoring Officer should discuss the issues with the Member(s) concerned.

### 3.1.28 Temporary Appointment of External Independent Members

3.1.29 Independent Members of other authorities' standards committees can be temporarily appointed to the Standards Committee to consider a particular assessment, review or hearing or for a particular period of time.

3.1.30 Such temporary appointments do not need to comply with the same appointment requirements as for fixed term independent Member appointments to the Committee. Within the Authority, power to arrange such temporary appointments has been delegated to the Monitoring Officer, in consultation with the Chair of the Standards Committee, after satisfying herself that any such independent Member selected was validly appointed by that other authority. The Monitoring Officer must report back to the Standards Committee on any such temporary appointments made.

3.1.31 The Monitoring Officer should liaise with Democratic Services and request that they canvass dates for a meeting of the Assessment Sub-Committee with the Members who can properly sit, and then convene a meeting of the Sub-Committee.

3.1.32 Initial assessment hearings and reviews by the Assessment and Review Sub-Committees are '**closed**' meetings (not open to the public) and are excluded from the scope of Part VA of the LGA 1972. Consequently those Sub-Committees are not subject to the following:

- rules regarding notices of meetings
- rules on the circulation of agendas and documents
- rules over public access to meetings and documents
- rules on the validity of proceedings

but instead must follow other requirements set out later in this Procedure.

3.1.33 Consequently, neither the complainant, nor the subject Member(s) shall have a right to attend the meeting, or to be provided with reports or other material which are to be considered by the Sub-Committee.

3.1.34 The Assessment Sub-Committee should aim to **complete** its initial assessment of an allegation within an average of **20 working days** from the date of receipt of the complaint, where possible, to reach a decision on what should happen with the complaint.

3.1.35 The Monitoring Officer should inform the complainant and subject Member(s) of the date of the Assessment Sub-Committee meeting, once set, if this has not already been done.

## **4.0 PRE-ASSESSMENT REPORTS, ENQUIRIES AND OTHER ACTION**

### **4.1 Additional Information**

4.1.1 The Monitoring officer is able to gather **additional factual information** which is readily available about allegations before the assessment process begins, if it would assist decision-making. It should not, however, include interviews or investigation.

### **4.2 Report to Assessment Sub-Committee**

4.2.1 The Monitoring Officer should prepare a **report** to Assessment Sub-Committee, covering the complaint and the Authority's Assessment Criteria and annexing a copy of the complaint itself.

4.2.2 The Standards Committee has decided that it would like the Monitoring Officer to prepare, as standard practice, a short **summary** of a complaint for the Assessment Sub-Committee to consider. This should, therefore, also be appended to the covering report.

4.2.3 The Standards Board has confirmed that such summaries can set out the following types of matters:

- whether the complaint is within jurisdiction;
- the paragraphs of the Code of Conduct the complaint might relate 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, eg:
  - obtaining a copy of a declaration of acceptance of office form and an undertaking to observe the Code;
  - minutes of meetings;
  - a copy of a Member's entry in the Register of Interests;
  - information from Companies House or the Land Registry;
  - other easily obtainable documents.

4.2.4 The Assessment Sub-Committee will also be provided with the following **documentation**:

- this Complaint Assessment Procedure, containing:
  - NYFRA Code of Conduct for Members
  - NYFRA Standards Committee's local Assessment Criteria
- the SBE Guidance on Local Assessment
- the SBE Flowchart on Local Assessment

4.2.5 The agenda and papers for Assessment Sub-Committee meeting shall be despatched by Democratic Services.

4.2.6 The Monitoring Officer shall keep the complainant and subject Member(s) informed of progress/timescale.

## **5.0 WITHDRAWAL OF COMPLAINTS BEFORE ASSESSMENT**

5.1 There may be occasions when the complainant asks to withdraw their complaint prior to the Assessment Sub-Committee having made a decision on it.

5.2 The Assessment Sub-Committee will need to decide whether to grant the request, in accordance with the Committee's Assessment Criteria.

## **6.0 VALIDITY OF ASSESSMENT AND REVIEW PROCEEDINGS**

### **6.1 Quorum**

6.1.1 The quorum for Assessment Sub-Committee and Review Sub-Committee meetings is 3.

6.1.2 Each Sub-Committee must have at least 3 Members, including at least one elected Member and one independent Member (as each Sub-Committee must be chaired by an independent Member).

### **6.2 Conflicts of Interests**

#### **6.2.1 Members**

6.2.1.1 No Member who takes part in the initial assessment of an allegation can be a member of the Review Sub-Committee reviewing a decision to take no further action on that allegation. This is to minimise the risk of conflicts of interest and to ensure fairness for all parties.

6.2.1.2 A Member who was involved in an initial assessment decision, or review decision, can, however, be a Member of the Sub-Committee which hears and determines the complaint. This is because an assessment decision only relates to whether a complaint discloses something that needs to be investigated. It does not require deliberation of whether the conduct did or did not take place and so no conflict of interest arises in determining the complaint.

6.2.1.3 There may be cases where it would not be appropriate for a Member to be involved in the assessment process, even if not disqualified from doing so by law. Any Member who is a complainant or one of the following should not participate in the assessment process:

- anyone closely associated with a complainant;
- a potential witness or victim relating to a complaint.

6.2.1.4 The provisions of the Authority's Code relating to personal and prejudicial interests apply to Standards Committee Members. Any Member who has a prejudicial interest or who is involved with a complaint in any way should not take part in the Assessment or Review Sub-Committees.

#### **6.2.2 Officers**

6.2.2.1 An Officer who has **previously advised** a subject Member or who has advised the complainant about the issues giving rise to a complaint should consider whether they can properly take part in the assessment/review process. The Officer should also consider whether they should stand aside due to their **prior involvement**, where it has been such that others involved may view them as **biased**.

6.2.2.2 If the Officer has taken part in supporting the assessment or hearing process then they should not be involved in the investigation of that matter.

## **7.0 ASSESSMENT SUB-COMMITTEE MEETINGS**

### **7.1 Jurisdiction**

- 7.1.1 The first thing the Assessment Sub-Committee must do is consider whether the complaint falls within the Authority's **legal jurisdiction**, as set out in the Assessment Criteria.
- 7.1.2 If the complaint **fails** one or more of the jurisdiction 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.
- 7.1.3 If the complaint falls **within** jurisdiction, it must then be assessed by the Assessment Sub-Committee in accordance with the Assessment Criteria.

### **7.2 Assessment**

- 7.2.1 The Assessment Sub-Committee will **assess complaints**, and consider any requests by the complainant for **confidentiality** or to withdraw their complaint, in accordance with the Assessment Criteria.
- 7.2.2 If the Assessment Sub-Committee decides to **refuse** a request by a complainant for **confidentiality**, it may wish to offer the complainant the option to **withdraw**, rather than proceed with their identity being disclosed. In certain circumstances, the public interest in proceeding with an investigation may outweigh the complainant's wish to have their identity withheld from the subject Member(s). The Assessment Sub-Committee will need to decide where the balance lies in the particular circumstances of each complaint.
- 7.2.3 The purpose of the initial assessment decision or review assessment decision is simply to decide **whether any action should be taken** on the complaint, either as an investigation or some other form of action. There are two key tests which Members should apply to assessing complaints:
- i. does the complaint disclose a possible breach of the Code of Conduct?
  - ii. if so, should anything be done about it?

Where no breach of the Code is disclosed by the allegation, no matter what its source or whoever the subject Member(s), the case falls at the first hurdle and the matter is at an end: the question of referral for investigation or other action does not arise.

- 7.2.4 The assessment decision does not determine whether the conduct took place or whether it was a breach of the Code. The Assessment and Review Sub-Committees make no findings of fact.
- 7.2.5 The Assessment Sub-Committee is required to reach one of the following **decisions** on the complaint:
- (a) **NO ACTION** should be taken in respect of the complaint;
  - (b) referral of the complaint to the **Monitoring Officer** of the authority concerned, which under section 57A(3) of the Local Government Act 2000, as amended, may be another authority, **for INVESTIGATION**;
  - (c) referral of the complaint to the **Monitoring Officer** of the authority concerned, which under section 57A(3) of the Local Government Act 2000, as amended, may be another authority, **for OTHER ACTION**;

Where a complaint is in respect of a person who is no longer a Member of the Authority, but is a member or co-opted member of some other relevant authority, the Assessment Sub-Committee may, if it thinks it more appropriate than referring the allegation to the Authority's Monitoring Officer, refer it instead to the Monitoring Officer of that other authority for investigation or other action.

(d) referral of the complaint to the **STANDARDS BOARD for INVESTIGATION**;

Further details on the decision options are set out below.

7.2.6 When a matter is referred for investigation or other action, it does not mean that the Assessment Sub-Committee has made up its mind about the allegation. It simply means that the Sub-Committee believes the alleged conduct, if proven, **may amount to a failure to comply** with the Code and that **some action should be taken** in response to the complaint.

7.2.7 The Chair, the Monitoring Officer or the Clerk, if present, should **record** the decision, and the reasons for it.

### 7.2.8 Written Summary

7.2.8.1 The Assessment Sub-Committee must, having regard to the SBE Assessment Guidance, produce a **written summary** of its consideration of the matter, recording:

- the main points considered
- the conclusion(s) reached
- reasons for those conclusions

7.2.8.2 The written summary may also disclose the **name** of the subject Member(s) unless it is not in the public interest or would prejudice any investigation (eg might lead to intimidation of witnesses or destruction of evidence). The Assessment Sub-Committee should take advice from the Monitoring Officer or his/her designated officer in such matters, who would need to assess the situation.

7.2.8.3 Where the Assessment Sub-Committee does not provide a written summary at the time it receives the allegation (ie at the assessment meeting), it may give the subject Member(s) some details and must take reasonable steps to provide the summary to the subject Member(s) when it is no longer contrary to the public interest or prejudicial and, in any event, before any hearing is convened to consider any Monitoring Officer or Ethical Standards Officer report on the allegation. The Monitoring Officer can, however, notify the subject Member(s) that an allegation has been made.

7.2.8.4 The written summary must be **sent** to the subject Member(s) and to any parish/town council on which they serve and be available for **public inspection** for 6 years after the meeting (but the subject Member(s) should be sent their copy first).

## 7.3 **Decision to take no action**

7.3.1 If the Assessment Sub-Committee decides that **no action** should be taken in respect of the complaint it must, within **five working days** of making the decision (or as soon as possible thereafter), give written notice of the decision and the reasons for it (ie the **written summary**), to the complainant, the subject Member(s) and any parish or town council on which the subject Member(s) also serve.

7.3.2 The Assessment Sub-Committee should also inform the complainant of their **right to request a review** of the decision within **30 days** from the date on the notice by writing to the Standards Committee with their reasons for requesting a review. The complainant should be advised of the date by which their review request should be received by the Standards Committee.

7.3.3 Reviews of decisions to take no action will be heard by the Complaint Review Sub-Committee.

#### **7.4 Referral to Monitoring Officer for Investigation**

7.4.1 If the Assessment Sub-Committee decides to refer the matter to the Monitoring Officer for **investigation**, the Monitoring Officer must (unless otherwise directed by the Sub-Committee) **inform**:

- the complainant
- the subject Member(s)
- the standards committee of any other authority/ies concerned
- any parish council concerned

that the matter has been **referred** for investigation and, if appropriate, advise who will be responsible for conducting the investigation.

7.4.2 The Sub-Committee should also supply the **written summary** (unless contrary to the public interest or prejudicial to an investigation).

#### **7.4.3 Referral back from the Monitoring Officer**

7.4.3.1 The Monitoring Officer can refer complaints referred to him/her for investigation **back to the Sub-Committee** if:

- a. as a result of new evidence/information, the Monitoring Officer believes that the matter is materially **more or less serious** than may have seemed apparent to the Sub-Committee when it made its decision on the initial allegation and the Sub-Committee would have made a **different decision** had it been aware of that new evidence/ information; or
- b. the subject Member has died, is seriously ill or has resigned from the authority concerned, and the Monitoring Officer believes that it is consequently **no longer appropriate** to continue the investigation.

7.4.3.2 In forming an opinion for the purposes of paragraph (a) above, a Monitoring Officer may take account of —

- the failure of any person to co-operate with an investigation;
- an allegation that the Member concerned has engaged in a further breach of the Code of a relevant authority;
- an allegation that another Member has engaged in a related breach of the Code of a relevant authority.

7.4.3.3 Where a matter is referred back by the Monitoring Officer, the Sub-Committee must make a decision as if the matter had been referred to it for initial assessment. It can, however, remove the ability of the Monitoring Officer to refer the matter back again.

## **7.5 Referral to Monitoring Officer for Other Action**

7.5.1 The Standards Board has issued (non-mandatory) **Guidance** on 'Other Action' to help describe what it is, when it might be used and how the process can be managed.

7.5.2 A complaint may be referred to the **Monitoring Officer**, after **consultation** with him/her, by the Sub-Committee for **action other than investigation**. The Monitoring Officer may be able to advise the Sub-Committee on how **viable** the proposed other action is, by providing information on the resources available (and whether, for example, the Authority has access to the facilities/resources required), and on how much any proposed other action might cost. If the Monitoring Officer is not present at the Assessment Sub-Committee meeting, and has not given any indication of his/her views on other action, the assessment meeting may need to be **adjourned** (see later).

7.5.3 The Assessment /Review Sub-Committee cannot direct the subject Member or any other party to take action. The direction is to the Monitoring Officer.

7.5.4 **Examples** of other action are:

- arranging for the Member to attend a **training** course, for example relating to:
  - chairing skills;
  - working with external bodies and partnerships;
  - governance issues;
  - the Code of Conduct;
  - Authority procedures and protocols;
  - legal matters;
  - planning and licensing;
  - working with officers;
  - use of Authority resources;
- arranging for the Member and complainant to engage in a process of **conciliation**;
- anything else (excluding investigation) that appears **appropriate**, eg directing the Monitoring Officer to arrange for the:
  - institution of changes to Authority policies/procedures if they have given rise to the complaint;
  - training of Members of the Authority as a whole;
  - mentoring of a Member or Members, or whole Authority;
  - management of conflict;
  - development of Authority protocols;
  - implementation of an Authority complaints procedure.

7.5.5 A complaint will generally be **suitable** for action other than investigation:

- if there is evidence of **poor understanding** of the Code of Conduct and/or the Authority's procedures/protocols (eg by same breach by many Members);
- if **relationships** within the Authority as a whole have **broken down** to such an extent that it becomes very difficult to conduct the business of the Authority, eg as evidenced by a **pattern** of allegations of minor disrespect, harassment or bullying allegations which may be symptomatic of governance problems within the Authority, which are more significant than the allegations in themselves;

- if there is:
  - misleading, unclear or misunderstood advice from officers;
  - lack of experience or training;
  - interpersonal conflict;
- if there are:
  - allegations and retaliatory allegations from the same Members;
  - allegations about how formal meetings are conducted.

The Sub-Committee should be satisfied that other action could assist the **proper functioning** of the Authority. Other action is most beneficial when used to deal with **systemic problems** rather than individual ones.

7.5.6 The action proposed does not have to be limited to the subject of the complaint. Several Members, or indeed the whole Authority, could be included in the action the Monitoring Officer is asked to take.

7.5.7 A complaint will **not** be suitable for other action:

- where an investigation is in the public interest;
- where the allegation challenges the subject Member's honesty or integrity; or
- where, if proven to be true, the alleged conduct would undoubtedly warrant a sanction. (This excludes training, which can be other action decided on at assessment stage, and a sanction following a hearing).

7.5.8 Other action is not intended to be a 'quick fix' for matters which the Assessment Sub-Committee considers too trivial or time-consuming to investigate. Genuinely trivial cases should be dealt with by a decision to take no action.

7.5.9 The **purpose** of other action is not to find out whether the Member breached the Code: the decision is made as an **alternative to investigation**. A decision to refer a complaint for other action makes **no findings of fact**, nor reaches any conclusions, and therefore the other action decided on must not imply that the subject Member has breached the Code. Consequently, other action cannot, for example, take the form of requiring the subject Member to apologise.

7.5.10 The Assessment Sub-Committee may be reluctant to refer a complaint for other action without knowing whether the subject Member and any other Members of the Authority will cooperate with the proposed approach. The Sub-Committee may **adjourn** the assessment to ask the Monitoring Officer to find out whether the Member(s) will co-operate or, alternatively, the Monitoring Officer may have already sought views on other action upon receipt of the complaint, where s/he thought it appropriate to do so. No decision to adjourn the meeting in this respect should be taken without the Committee first considering the advantages and disadvantages to doing so, as may be relevant, and as set out in the Standards Board Guidance.

7.5.11 When the Monitoring Officer receives a referral with a direction to take other action, s/he must deal with it in accordance with the direction. The Monitoring Officer does not have discretion to take a different course of action. S/he should make every attempt to ensure that the action specified is carried out.

7.5.12 The Monitoring Officer must give **notice** of the referral to:

- the complainant

- the subject Member(s)
- the standards committee of any other authority/ies concerned
- any parish council concerned

that the matter has been so referred. The assessment/review **Decision Notice** will usually suffice in this regard. It is important that the wording does not imply that the subject Member is culpable. The Monitoring Officer should also seek to obtain their **written confirmation** that they will co-operate with the process. A decision to take other action **closes the opportunity to investigate** (eg if the 'other action' fails) and the Sub-Committee should therefore **communicate** this clearly to all parties involved, along with the fact that the purpose of the referral is not to find out whether the subject Member breached the Code.

- 7.5.13 The Monitoring officer must submit a **written report to the Sub-Committee within three months** of such a referral being made (or as soon as reasonably practicable afterwards), detailing what action has been taken or is proposed to comply with the referral.
- 7.5.14 The Sub-Committee must **consider** the Monitoring Officer's report and decide whether it is satisfied with the action described. The meeting at which the report is considered is subject to the general **notice and publicity requirements** under **Regulation 8** of the 2008 Regulations.
- 7.5.15 If it is **satisfied**, it shall give **written notice** of that fact to:
- the complainant
  - the subject Member(s)
  - the standards committee of any other authority/ies concerned
  - any parish council concerned

The matter is then at an end.

- 7.5.16 If the Sub-Committee is **not satisfied** with the action specified in the report, it shall give a **further direction** to the Monitoring Officer to take some kind of other action. The Sub-Committee may also consider making a further direction where the report indicates that the subject Member has **refused to cooperate**, has done so unwillingly or inadequately, or has not engaged with the process.
- 7.5.17 For **each direction** of other action, the Monitoring Officer must submit a **written report** to the Sub-Committee. If the Sub-Committee continues to be dissatisfied, it can continue to issue directions until it is satisfied. However, directions issued should be **proportionate and reasonable**, and the process should be drawn to a close after a **limited number of attempts** by the Monitoring Officer to bring about other action, even where this has not occurred in accordance with the direction.
- 7.5.18 Complaints that have been referred for other action **cannot** be referred back to the Sub-Committee for a referral for investigation if the other action is perceived to have failed. This is unfair to the subject Member, and a case may be jeopardised if it has been discussed as part of a mediation process. There is also a risk that other action will not be taken seriously if it is seen merely as a precursor to an investigation.
- 7.5.19 Although there is no formal route for dealing with a Member who refuses to comply with other action, continued and deliberate **failure to cooperate** may amount to conduct bringing the office of Authority Member into **disrepute**. The Assessment Sub-Committee may take this into account when deciding what action to take if it is assessing a complaint about a Member who has previously failed to cooperate.

7.5.20 If a **complaint** is received that a Member **did not cooperate** with other action in relation to a previous complaint, the Assessment Sub-Committee should only **assess** the complaint about the **failure to cooperate**. They should not take into account the conduct which led to the original complaint. If the complaint is referred for investigation, then the **investigation** must focus on the **lack of cooperation**, not the original complaint that led to the other action. Otherwise there is a danger that the original complaint will be resurrected. This is particularly important where the Member says that the lack of cooperation was because they had done nothing wrong.

7.5.21 There is **no right of review** of a decision to refer for other action.

## **7.6 Referral to Standards Board for Investigation**

7.6.1 There may be **issues** in a case, or **public interest** considerations, which make it difficult for the Authority to deal with the case fairly and speedily. In such cases, the Assessment Sub-Committee may wish to refer a complaint to the Standards Board to be investigated by an **Ethical Standards Officer**, eg:

- complaints concerning the leadership of the Authority or in some cases the opposition;
- complaints from chief executives and monitoring officers;
- instances where a large number of key people are conflicted out and there is a risk of successful judicial review;
- where there has been national attention;
- where the Sub-Committee feels that the matter turns on an important point of interpretation of the Code.

7.6.2 The Assessment Sub-Committee should **inform** the Standards Board of the paragraph(s) of the Code of Conduct that it believes the allegation refers to and the **reasons** why it cannot be dealt with locally.

7.6.3 The Standards Board may:

- **accept** the case for investigation
- take **no action**, or
- **refer the matter back** to the Standards Committee.

7.6.4 There is **no right of appeal** against the Board's decision.

7.6.5 When deciding which cases to accept in the public interest, the Board will take the following matters into account:

- whether the **status** or **number of subject Member(s)** would make it difficult for the Sub-Committee to deal with the complaint;
- whether the **status of the complainant(s)** would make it difficult for the Sub-Committee to deal with the complaint;
- whether there is a potential **conflict of interest** of so many Members of the **Standards Committee** that it could not properly monitor the investigation;

- whether there is a potential **conflict of interest** of the **Monitoring Officer**/other Officers and that suitable alternative arrangements cannot be put in place;
- whether the case is so **serious or complex**, or involves so many Members, that it cannot be handled locally;
- whether the complaint requires **substantial amounts of evidence** beyond that available from the Authority's documents, its Members or Officers;
- whether there is **substantial governance dysfunction** in the Authority or its Standards Committee;
- whether the complaint relates to long-term or systemic Member/Officer **bullying** which could be more effectively investigated externally;
- whether the complaint raises **significant or unresolved legal issues** on which a national ruling would be helpful;
- whether the public might perceive the Authority to have an **interest** in the outcome of a case;
- whether there are **exceptional circumstances** which would prevent the Standards Committee investigating the complaint competently, fairly and in a reasonable period of time, or meaning that it would be unreasonable for local provision to be made for an investigation.

7.6.6 If the Board **declines to investigate** a complaint referred to it, it will normally send it back to the Standards Committee with its reasons. The **Assessment Sub-Committee** must again take an assessment decision and should complete this within an average of **20 working days**. As the Assessment Sub-Committee initially decided that the matter was serious enough to be referred to the Standards Board for investigation, it is likely that it will still think that it should be investigated. However, if the circumstances of the complaint have changed in the meantime, it may be reasonable to take a different decision. This decision will again need to be **communicated** to relevant parties in the same way as the original decision.

## **8.0 REVIEW OF 'NO ACTION' ASSESSMENT DECISIONS**

- 8.1 A complainant may, in writing and within 30 days of the assessment decision, request a review of an Assessment Sub-Committee decision to take no action on a complaint.
- 8.2 If such a review request is received, then the Monitoring Officer shall, on behalf of the Standards Committee Review Sub-Committee, send the complainant an **acknowledgement** of receipt of request for review and **explain** to the complainant how it will be dealt with.
- 8.3 The Monitoring Officer shall also **notify the subject Member(s)** and all other relevant parties of the receipt of the review request.
- 8.4 The Monitoring Officer shall prepare a **report** on the complaint for the Review Sub-Committee. In addition to the documents referred to in section 4.2 above, the Sub-Committee will have a copy of the **Assessment Sub-Committee's decision notice**.
- 8.5 The Review Sub-Committee must carry out its **review** within a maximum of **three months** of receiving the request. Where possible, however, the Review Sub-Committee will aim to complete the review within an average of **20 working days**.

## **8.6 Review**

8.6.1 The review must be, and must be seen to be, **independent** of the original assessment decision. Members of the Assessment Sub-Committee who made the original decision must not, therefore, take part in the review of that decision.

8.6.2 The Review Sub-Committee will meet to consider the complainant's request for a review and will consider the complaint afresh, using the **same Assessment Criteria** used for the initial assessment of the matter as set out in Appendix 2 and the **same assessment procedures** as set out in this Complaint Assessment Procedure. Where in context in relation to the review process, all references to the Assessment Sub-Committee in this Procedure will be deemed to refer to the Review Sub-Committee.

8.6.3 There may be cases where **further information** is made available in support of a complaint that changes its nature or gives rise to a potential new complaint. In such cases, the Review Sub-Committee should consider carefully if it is more appropriate to pass this to the Assessment Sub-Committee to be handled as a new complaint. In this instance, the Review Sub-Committee will still need to make a formal decision that the review request will not be granted.

8.6.3.1 A review (rather than new assessment) may be more appropriate if a complainant wishes to challenge that:

- not enough emphasis has been given to a particular aspect of the complaint;
- there has been a failure to follow any published criteria;
- there has been an error in procedures;

however, if more information or new information of any significance is available, and this information is not merely a repeat complaint, then a new complaint rather than a request for review may be more suitable.

## **8.7 Decision required on review**

8.7.1 The Review Sub-Committee has the same decisions available to it as the Assessment Sub-Committee:

- a) **no action** should be taken in respect of the complaint – original assessment decision upheld;
- b) **referral** of the complaint to the **Monitoring Officer** of the authority concerned, which under section 57A(3) of the Local Government Act 2000, as amended, may be another authority, **for investigation**;
- c) **referral** of the complaint to the **Monitoring Officer** of the authority concerned, which under section 57A(3) of the Local Government Act 2000, as amended, may be another authority, **for other action**;

Where a complaint is in respect of a person who is no longer a Member of the Authority, but is a member or co-opted member of some other relevant authority, the Review Sub-Committee may, if it thinks it more appropriate than referring the allegation to the Authority's Monitoring Officer, refer it instead to the Monitoring Officer of that other authority for investigation or other action.

d) **referral of the complaint to the Standards Board for England for investigation.**

8.7.2 The Review Sub-Committee will follow the same **notification of outcome** procedures as set out in Section 7 above. However, it should be borne in mind that if the Review Sub-Committee decides that **no action** should be taken in respect of the complaint, then when giving notification of the outcome, there is no further right to request a review.

July 2009

**NORTH YORKSHIRE FIRE AND RESCUE AUTHORITY**

**MEMBERS' CODE OF CONDUCT**

***PREAMBLE***

**THE GENERAL PRINCIPLES OF CONDUCT**

***Selflessness***

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

***Honesty and Integrity***

2. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

***Objectivity***

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

***Accountability***

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

***Openness***

5. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

***Personal Judgment***

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

***Respect for Others***

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

### *Duty to Uphold the Law*

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

### *Stewardship*

9. Members should do whatever they are able to do, to ensure that their authorities use their resources prudently and in accordance with the law.

### *Leadership*

10. Members should promote and support these principles by leadership, and by example, and should always act in a way that secures or preserves public confidence.

## **THE CODE OF CONDUCT**

### **PART 1**

#### **GENERAL PROVISIONS**

##### *Introduction and interpretation*

1. (1) This Code applies to **you** as a member of an authority.  
(2) You should read this Code together with the general principles prescribed by the Secretary of State (annexed to this Code).  
(3) It is your responsibility to comply with the provisions of this Code.  
(4) In this Code:  
    “meeting” means any meeting of—  
    (a) the authority;  
    ***[(b) Paragraph 1(4)(b) does not apply to the Authority and has not been adopted.]***  
    (c) any of the authority’s committees, sub-committees, joint committees, or joint sub-committees;  
    “member” includes a co-opted member and an appointed member.  
(5) In relation to a parish council, references to an authority’s monitoring officer and an authority’s standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

##### *Scope*

2. (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you:

- (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
  - (b) act, claim to act or give the impression you are acting as a representative of your authority, and references to your official capacity are construed accordingly.
- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.
- (4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- (5) Where you act as a representative of your authority:
- (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
  - (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### ***General Obligations***

3. (1) You must treat others with respect.
- (2) You must not:
- (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
  - (b) bully any person;
  - (c) intimidate or attempt to intimidate any person who is or is likely to be:
    - (i) a complainant,
    - (ii) a witness, or
    - (iii) involved in the administration of any investigation or proceedings,in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
  - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
- (3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.
4. You must not:

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
    - (i) you have the consent of a person authorised to give it;
    - (ii) you are required by law to do so;
    - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
    - (iv) the disclosure is:
      - (aa) reasonable and in the public interest; and
      - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
  - (b) prevent another person from gaining access to information to which that person is entitled by law.
5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
6. You:
- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
  - (b) must, when using or authorising the use by others of the resources of your authority—
    - (i) act in accordance with your authority's reasonable requirements;
    - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes).
- [(c) Paragraph 6(c) does not apply to the Authority and has not been adopted.]*
7. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—
- (a) your authority's chief finance officer; or
  - (b) your authority's monitoring officer,
- where that officer is acting pursuant to his or her statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

## PART 2

### INTERESTS

#### *Personal Interests*

8. (1) You have a personal interest in any business of your authority where either:
- (a) it relates to or is likely to affect:
    - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
    - (ii) any body:
      - (aa) exercising functions of a public nature;
      - (bb) directed to charitable purposes; or
      - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),of which you are a member or in a position of general control or management;
    - (iii) any employment or business carried on by you;
    - (iv) any person or body who employs or has appointed you;
    - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
    - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
    - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
    - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
    - (ix) any land in your authority's area in which you have a beneficial interest;
    - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
    - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
  - (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

- (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
  - (ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or
  - (iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.
- (2) In sub-paragraph (1)(b), a relevant person is—
- (a) a member of your family or any person with whom you have a close association; or
  - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
  - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
  - (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

### ***Disclosure of Personal Interests***

9. (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- (3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

*[(6) Paragraph 9(6) does not apply to the Authority and has not been adopted.]*

*[(7) Paragraph 9(7) does not apply to the Authority and has not been adopted.]*

### ***Prejudicial Interest Generally***

10. (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

- (2) You do not have a prejudicial interest in any business of the authority where that business:
- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
  - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
  - (c) relates to the functions of your authority in respect of:
    - [(i) Paragraph 10(2)(c)(i) does not apply to the Authority and has not been adopted.]*
    - [(ii) Paragraph 10(2)(c)(ii) does not apply to the Authority and has not been adopted.]*
    - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
    - (iv) an allowance, payment or indemnity given to members;
    - (v) any ceremonial honour given to members; and
    - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

***[Prejudicial interests arising in relation to  
Overview and Scrutiny Committees]***

*[11. Paragraph 11 does not apply to the Authority and has not been adopted.]*

***Effect of prejudicial interests on participation***

12. (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority:
- (a) you must withdraw from the room or chamber where a meeting considering the business is being held:
    - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
    - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;unless you have obtained a dispensation from your authority's standards committee;
  - [(b) Paragraph 12(1)(b) does not apply to the Authority and has not been adopted.]*
  - (c) you must not seek improperly to influence a decision about that business.
- (2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

## **PART 3**

### **REGISTRATION OF MEMBERS' INTERESTS**

#### ***Registration of Members' Interests***

13. (1) Subject to paragraph 14, you must, within 28 days of:

- (a) this Code being adopted by or applied to your authority; or
- (b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

#### ***Sensitive Information***

14. (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

(3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

NORTH YORKSHIRE FIRE AND RESCUE AUTHORITY

**STANDARDS COMMITTEE**

**Jurisdiction and Local Assessment Criteria**

**Jurisdiction**

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

1. it is a complaint against one or more named Members of the Authority or an authority covered by the standards committee;
2. the named Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
3. 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**

All complaints falling within the jurisdiction of the Standards Committee will be assessed in accordance with the criteria below.

More than one criteria may be applicable to a complaint.

1. Capacity

**Was the Member acting in his/her official capacity at the time of the alleged conduct?**

If the answer is **no**, then unless there is some direct link between the activity and the Member's office, the Code did not apply to the Member at the time of the alleged conduct and therefore there can be no breach of the Code. The response of the sub-committee should therefore be: "The Member concerned was not acting in his/her official capacity at the time of the alleged conduct and therefore the Code of Conduct for Members did not apply to the Member at that time. Consequently no potential breach of the Code has been disclosed and the Standards Committee is unable to take any action in respect of the complaint."

The Code does not currently apply to Members' conduct outside of the performance of their functions as Members. Only if they have engaged in private conduct/activity which has a link with the functions of the office of member, might the conduct in question be covered by the Code.

*NB: If certain legislative provisions are enacted in the future, then the Code will also apply to certain private conduct (which relates to paragraphs 3(2)(c) (intimidation), 5 (disrepute) or 6(a) (improperly conferring advantage/disadvantage) of the Code) which has led to a criminal conviction.*

2. Sufficient Information

**Has the complainant submitted enough information to satisfy the sub-committee assessing the complaint that the complaint should be referred for investigation or other action?**

If the answer is **no**, the response of the sub-committee should be: “The information provided was insufficient to make a decision as to whether the complaint should be referred for investigation or other action. So unless, or until, further information is received, the sub-committee is taking no further action on this complaint.”

3. Current Membership

**Is the complaint about someone who is no longer a Member of the authority, but is a Member of another authority? If so, does the sub-committee wish to refer the complaint to the monitoring officer of that other authority?**

If the answer is **yes**: “Where the Member is no longer a Member of our authority but is a Member of another authority, the complaint will be referred to the standards committee of that authority to consider.”

4. Prior Investigation/Action

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

If the answer is **yes**: “The matter of complaint has already been subject to a previous investigation or other action and there is nothing more to be gained by further action being taken.”

5. Passage of Time

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

If the answer is **yes**: “The period of time that has passed since the alleged conduct occurred was taken into account when deciding whether this matter should be referred for investigation or further action. It was decided under the circumstances that further action was not warranted.”

6. Triviality

**Is the complaint too trivial to warrant further action?**

If the answer is **yes**: “The matter is not considered to be sufficiently serious to warrant further action.”

7. Underlying Motivation

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

If the answer is **yes**: “The matter appears to be simply malicious, vexatious, politically motivated or tit-for-tat, and not sufficiently serious, and it was decided that further action was not warranted”.

## 8. Anonymous Complaints

### **Is the complaint under consideration anonymous?**

If the answer is **yes**, the Assessment Sub-Committee will only refer such a complaint for investigation or some other action if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

## 9. Requests for Confidentiality

### **Has the complainant asked for his/her identity to be withheld?**

If the answer is **yes**, the Assessment Sub-Committee will need to consider the request by the complainant for confidentiality alongside the substance of the complaint itself.

As a matter of fairness and natural justice, Members should usually be told who has complained about them. Requests for confidentiality should only be granted in exceptional circumstances and at the discretion of the Assessment Sub-Committee.

The following considerations may assist the Sub-Committee's deliberations in this respect:

- (a) Whether the complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed;
- (b) Whether the complainant is an officer who works closely with the subject Member and they are afraid of the consequences to their employment or of losing their job if their identity is disclosed (NB: this should be covered by the Authority's Whistle-Blowing Policy);
- (c) Whether the complainant suffers from a serious health condition and there are medical risks associated with his/her identity being disclosed. In such circumstances, the Assessment Sub-Committee may wish to request medical evidence of the complainant's condition;
- (d) Whether the disclosure of the complainant's identity is necessary for the investigation of the complaint; for example, this may be relevant in a bullying allegation. In such cases, the Assessment Sub-Committee may give the complainant the option of requesting a withdrawal of his/her complaint;
- (e) Whether it is possible to investigate the complaint without making the complainant's identity known;
- (f) Whether the public interest in proceeding with an investigation outweighs the complainant's wish to have their identity withheld from the subject Member.

Where the Assessment Sub-Committee decides to refuse a request by a complainant for confidentiality, it may, in the particular circumstances, decide to offer the complainant the option to withdraw the complaint, rather than proceed with their identity being disclosed.

## 10. Withdrawal of Complaints

### **Has the complainant indicated that s/he wishes to withdraw his/her complaint?**

If the answer is **yes**, the Assessment Sub-Committee will need to decide whether to grant the request. The following considerations may assist the Sub-Committee's deliberations in this respect:

- (a) Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
- (b) Is the complaint such that action can be taken on it, for example an investigation, without the complainant's participation?
- (c) Is there an identifiable underlying reason for the request to withdraw the complaint? For example, is there information to suggest that the complainant may have been pressured to withdraw the complaint?

### **Possible decisions**

The sub-committee assessing a complaint is required to reach one of the three following decisions on a complaint about a Member's actions in relation to the Code of Conduct:

- referral of the complaint to the Monitoring Officer of the authority concerned, which under section 57A(3) of the Local Government Act 2000, as amended, may be another authority, for investigation or other action;
- referral of the complaint to the Standards Board for England;
- no action should be taken in respect of the complaint.

October 2008