

Arrangements paper - appendix 2

Assessment of the Complaint

The Monitoring Officer will, within 10 working days of the acknowledgement of receipt of a complaint, apply the following questions to determine whether a Complaint falls within the jurisdiction of these arrangements.

The Monitoring Officer shall do so in consultation with the Independent Person.

Stage 1 - Initial Jurisdiction Test

The complaint will be assessed by the Monitoring Officer against an Initial Jurisdiction Test as follows:

- (a) Did the alleged conduct occur before the adoption of the Code of Conduct?
- (b) Was the Subject Member a member of the Borough Council at the time of the alleged conduct?
- (c) Was the Subject Member acting in an official capacity as a councillor at the time of the alleged conduct? (The case law and legislative position is that Code of Conduct matters can only be dealt with when the allegation is about something that a Councillor did in his or her role as a councillor when acting in an official capacity.)
- (d) Did the alleged conduct occur when the Subject Member was acting as a member of another authority?
- (e) If the facts, could be established, as a matter of evidence, could or would the alleged conduct be capable of a breach of the Code of Conduct?
- (f) Is the complaint limited to dissatisfaction with the Borough Council's decisions, policies and priorities, etc.?

If the complaint fails one or more of the initial jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons. There is no internal right of appeal against the Monitoring Officer's decision.

If the complaint satisfies the Initial Jurisdiction Test the Monitoring Officer the Monitoring Officer will then proceed to assess the complaint. The Assessment Test aids the Monitoring Officer in reaching a decision on the complaint by enabling the Monitoring Officer to consider the following criteria, whilst taking into account the nature of the complaint and the need to adopt a proportionate response:

Stage 2 - The Assessment Test:

General

- (1) Has the Complainant submitted enough information as regards the allegation and alleged misconduct to sustain a potential breach of the Code of Conduct?
- (2) Is an investigation likely to prove on the balance of probability whether or not a breach took place?
- (3) Does the complaint appear to be too trivial to warrant further action?
- (4) Is the evidence sufficiently reliable i.e. is it first-hand evidence or hearsay evidence?
- (5) Is the evidence relevant to the alleged breach?
- (6) Could any further evidence be revealed by an investigation?
- (7) Would an investigation serve any useful purpose?
- (8) Is the allegation serious enough to warrant further action?

Mitigating factors (tending to make further action less likely)

- (9) The substance of the complaint has already been the subject of an investigation or

- other action relating to the Code of Conduct;
- (10) The allegation took place more than 28 days prior to receipt of the complaint and there would be little benefit in taking action now;
 - (11) The Subject Member took appropriate advice on the matter and followed that advice;
 - (12) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter;
 - (13) It is likely that an investigation will prove only a technical or inadvertent breach;
 - (14) The complaint appears to be malicious, vexatious, politically motivated or tit-for-tat;
 - (15) The Complainant has involved the press in relation to the alleged complaint;
 - (16) The member has already provided (or tried to provide) a suitable remedy (such as apologising);
 - (17) The breach occurred in all innocence i.e. without knowledge;
 - (18) There was unreasonable provocation;
 - (19) The complaint involves a Subject Member who is seriously ill and it would not be in the public interest to pursue;
 - (20) The complaint is about a deceased person;
 - (21) The complaint is about a person who is no longer a borough councillor.

Aggravating factors (tending to make further action more likely)

- (22) The complaint involves allegations of bullying or intimidation of a Complainant;
- (23) The allegation if proven could have a serious effect upon the reputation of the Council or parish council, upon staff relations or upon public trust and confidence;
- (24) The Subject Member holds a position of seniority and/or a position of influence;
- (25) There is a pattern of individual acts of minor misconduct which appear to be part of a continuing pattern of behaviour that is unreasonably disruptive to the business of the Council;
- (26) The Subject Member took appropriate advice on the matter but did not follow that advice;
- (27) The complaint involves an allegation that the behaviour may cause the Council to breach an equality enactment;

The criteria set out in the Assessment Test is not an exhaustive or prescriptive list and the Monitoring Officer can take into account other criteria dependent on the circumstance of the complaint. The existence of such criteria does not fetter the discretion of the Monitoring Officer. A written record of the assessment decision will be provided aiding robust and transparent decision-making.