

EASTBOURNE BOROUGH COUNCIL

STANDARDS COMMITTEE

LOCAL ASSESSMENT OF COMPLAINTS THAT MEMBERS HAVE BREACHED THE CODE OF CONDUCT

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INTRODUCTION

All councillors are bound by a locally adopted Code of Conduct which must include the provisions of the Model Code of Conduct which was approved by Parliament. The Code of Conduct ('the Code') also applies to independent (i.e. lay) members of standards committees and the co-opted members of other committees. The Code sets out what members must and must not do while acting in their official capacity. The Code also includes rules about registering and declaring interests, gifts and hospitality and explains what members must do when potential conflicts of interest arise at meetings.

The national body overseeing the ethical conduct of members is Standards for England (formerly known as 'the Standards Board for England'). At a local level, however, the task of leading in relation to ethical matters falls to the standards committees of local authorities. These committees are made up both of elected councillors and also appointed independent members who have been recruited from the local community.

In May 2008, standards committees were made responsible for receiving and assessing complaints made about members' conduct (a function previously carried out by the Standards Board). Local standards committees are now responsible for considering allegations that individual members have breached the Code of Conduct and for deciding what action, if any, to take. Where initial assessment indicates that the Code may have been breached, an in-depth investigation will be ordered. If a breach is found to have occurred, a wide range of actions may be taken either individually or in any combination, this with or without the agreement of the parties. The actions may include asking the relevant member to attend training or arranging mediation between the member and complainant as an alternative to other sanctions such as censure, restriction and/or suspension.

This document sets out the procedure to be followed by the standards committees of Eastbourne Borough Council ('the Council') when assessing and determining complaints. The document is based on relevant legislation and on guidance issued by Standards for England. It will be kept under regular review.

SUB-COMMITTEES OF THE STANDARDS COMMITTEE

The Council has established two new Sub-Committees of the Standards Committee: an Assessment Sub-Committee and a Review Sub-Committee.

The Assessment Sub-Committee is required to undertake the initial assessment of a case so as to decide whether the complaint shows an apparent breach of the Code of Conduct and, if so, whether the complaint merits investigation or other action. The complaint will normally be assessed within 20 working days of receipt. If the Sub-Committee decides to take no action then the complainant has 30 days within which to request, in writing, a review of that decision. The Review Sub-Committee is convened to carry out a review of the Assessment Sub-Committee's findings. The membership of the two Sub-Committees considering the complaint must not overlap as members who have been involved in the assessment of a complaint must not participate in any review of it. This is to minimise the risk of conflicts of interest and to ensure fairness for the parties.

If the complaint proceeds to a full hearing, through either of the two Sub-Committees, there is normally no reason why any member who has already considered the complaint on one of the Sub-Committees should not sit on the full hearing.

Given the limited size of the Standards Committee, even with the appointment of a third independent member, the membership of the Sub-Committees is not fixed. The Monitoring Officer has been given authority to appoint members to the various Sub-Committees on an ad-hoc basis having regard to availability and/or any potential conflicts of interest.

The quorum for each Sub-Committee is 3 members. The Chair must be taken by an independent member and at least one elected member must be present at each meeting.

The Committee has adopted Terms of Reference for both the Assessment Sub-Committee and the Review Sub-Committee.

WHICH COMPLAINTS CAN BE CONSIDERED?

The Assessment Sub-Committee can only consider complaints that a member of the Council has failed to comply with the Code of Conduct. It cannot consider complaints which:-

- (a) Do not relate to members of the Council.
- (b) Relate to actions taken before a person became a member of the Council.
- (c) Relate to actions which pre-date the adoption of the Code of Conduct in 2001.
- (d) Relate to conduct which occurred when the member was acting as member of another authority (where a member is also a member of another authority which has its own Code of Conduct, then the complaint should be addressed directly to that authority).
- (e) Refer to conduct in a member's private life and not to his conduct as a member.
- (f) Do not relate to the apparent misconduct of a relevant member (for example, complaints about the policies and priorities of the authority, requests for the provision of a service by the authority or complaints about the conduct of an officer of the authority).

Such complaints will not be referred to the Assessment Sub-Committee but will instead be dealt with by the Monitoring Officer. She will advise the complainant as to the most appropriate avenue for proper consideration of his/her complaint or request, if such an avenue exists.

THE INITIAL RECEIPT OF COMPLAINTS

Allegations of one or more breach(es) of the Code must be made in writing, preferably using the standard form of complaint made available via the Council's website and in hard copy from the Monitoring Officer.

Complaints must normally be signed by the complainant. Anonymous complaints will not be entertained unless exceptional circumstances apply for instance where they include documentary or other photographic evidence which substantiates an exceptionally serious allegation.

Any written communications received by the Council that appear to contain allegations that a Member has failed, or may have failed, to comply with the Code, must be referred to the Monitoring Officer without delay.

Upon receipt of a written complaint, the Monitoring Officer will consider whether the complaint amounts to an allegation of misconduct contrary to the Code. Where it does not, the Monitoring Officer will re-direct the complaint if at all possible.

Where the complaint does disclose a potential breach of the Code of Conduct, then the Monitoring Officer will refer the matter to the Assessment Sub-Committee.

THE LOCAL RESOLUTION OF COMPLAINTS

The Standards Committee is aware that the formal investigation of complaints can be costly and time consuming. Whilst formal investigation may be necessary in some cases, many complaints can be dealt with more rapidly and effectively if an early informal resolution of the matter can be achieved.

The Standards Committee has instructed the Monitoring Officer to use her discretion where a complaint has been received to explore the potential for local resolution of a complaint before reporting the complaint to the Sub-Committee, this in accordance with guidance issued by Standards for England. While this may, in appropriate instances, avoid the need for a formal investigation, it is not an alternative to reporting the matter to the Sub-Committee. All complaints must in any event be referred to the Assessment Sub-Committee, who will consider them in the normal way, taking into account all of the circumstances including any steps which have been taken informally, or which might have been mooted as possible ways in which the matter might be informally resolved.

NOTIFYING MEMBERS

The Standards Committee is required to notify the relevant member of the receipt of a complaint and to provide a written summary of the allegation. In the interests of transparency and fairness, the Monitoring Officer shall normally notify the member that a complaint has been received either at the same time or soon after the complaint is acknowledged and no later than the dispatch of the agenda to the Assessment Sub-Committee. However, the Monitoring Officer retains a discretion to notify the member at a later stage if exceptional circumstances apply. Examples of this include situations where it is considered possible that the member might interfere with evidence or intimidate witnesses. In these cases, the Monitoring Officer would however consult first with the Chair of the Standards Committee.

ACTIONS PRIOR TO THE ASSESSMENT SUB-COMMITTEE

Before referring any allegations to the Assessment Sub-Committee of the Standards Committee, the Monitoring Officer will:

- (i) write to the Complainant acknowledging receipt of their complaint, and
- (ii) write to the Subject Member (provided that to do so would not be contrary to the public interest and/or would not prejudice any person's ability to investigate the allegation):
 - (a) stating that a complaint has been made against them;
 - (b) providing the name of the Complainant (unless the Complainant has requested anonymity, or to do so would be unlawful);
 - (c) specifying the relevant paragraphs of the Code that it is alleged have been breached;
 - (d) confirming that the complaint will be considered by the Assessment Sub-Committee on a specified date (if the date is known); and
 - (e) providing a written summary of the allegation, this as long as the Monitoring Officer, in consultation with the Chair of the Standards Committee, is not of the opinion that such notification would be contrary to the public interest or would prejudice any person's ability to investigate the allegation

The Monitoring Officer will then prepare a short summary of the complaint for the Assessment Sub-Committee to consider, the form and content of which accords with relevant guidance produced by Standards for England. The summary may attach any items of readily available information which the Monitoring Officer considers would be likely to facilitate the Assessment Sub-Committee in determining whether the complaint merits investigation.

The complainant should have stated clearly (a) who is the subject of the complaint; (b) what actions the complaint relates to; and (c) why the actions are considered to constitute a breach of the Code of Conduct, this preferably by completing a standard form available from the Monitoring Officer or via the EBC website.

Following receipt of details of the complaint, the Monitoring Officer may collect readily available information to assist the Sub-Committee in considering the complaint. Any enquiries she makes will be with a view to clarifying matters. The information amassed may include such items as the agenda and/or minutes of the meeting where the alleged misconduct occurred, for example, or the Member's entry in the Register of Interests.

ACCESS TO MEETINGS AND DECISION-MAKING

The assessment and review processes may involve considering complaints about members which are unfounded and/or potentially damaging and which it would not be

appropriate to make public. For this reason, assessment decisions, and any subsequent review of decisions to take no further action on a complaint, are not subject to the notice and publicity requirements of Part 5 of the Local Government Act 1972. Instead they must be conducted in closed meetings. The assessment and review processes are not subject to the rules which normally require agendas and documents to be made public. Assessment and review decisions must instead be made public in written summary form according to a prescribed process (see below).

THE ASSESSMENT SUB-COMMITTEE'S DECISION

The Assessment Sub-Committee must consider whether, on the basis of the complaint received in and any additional information amassed during their Monitoring Officer's initial enquiries, there has been a potential breach of the Code of Conduct.

In making its assessment, the Assessment Sub-Committee will deal with each case on a case-by-case basis. In doing so, it will have regard to any relevant guidance issued by Standards for England, any professional advice given by relevant officers of the Council, and any relevant criteria that the Council's Standards Committee has put in place.

Having assessed the case, the Assessment Sub-Committee must do one of the following:

- (a) decide that no action should be taken in respect of the allegation;
- (b) after consulting with the Monitoring Officer, refer the allegation to the Monitoring Officer with an instruction to arrange for a formal investigation of the allegation, or with an instruction to arrange for the Subject Member to attend a training course, and/or for that member and the complainant to engage in a process of conciliation; and/or for such other steps (not including an investigation) to be taken as appear appropriate to the Assessment Sub-Committee
- (c) refer the allegation to Standards for England; or
- (d) if the person is no longer a Member of the Council but is a Member of another relevant authority (as defined in s.49 of the Local Government Act 2000), to refer the allegation to the Monitoring Officer of the other authority, if it considers that that is a more appropriate way of dealing with the matter.

The Assessment Sub-Committee must also record the main points it considered, its conclusion and the reasons for its decision.

Where the Assessment Sub-Committee has concluded that a potential breach of the Code **does** exist, then it has available to it the four options detailed above. The decision as to which of those options to choose will be considered in the light of detailed criteria which have been devised to assist the Sub-Committee in reaching its decision in appropriate instances. Whilst each case will be considered on its own merits, these criteria have been created to maintain clarity and transparency and to ensure fairness for all parties.

Circumstances where a decision may be reached to take no further action:

Where the complaint:

- (1) does not include enough information to satisfy the Sub-Committee that the complaint should be referred for investigation or other action;
- (2) is about someone who is no longer a member of the Council;
- (3) has not been received within 3 months of the alleged misconduct (unless there are exceptional circumstances);
- (4) it or a complaint substantially similar to it has already been the subject of an investigation or other action relating to the Code of Conduct or has been the subject of an investigation by other regulatory authorities;
- (5) is believed to be either:
 - (a) relatively minor
 - (b) tit-for-tat
 - (c) politically motivated
 - (d) malicious
 - (e) not sufficiently serious to warrant further action
- (6) where the subject member has apologised and/or admitted making an error and the matter does not warrant a more serious sanction;
- (7) where it is apparent that the subject Member is relatively inexperienced as a Member;
- (8) where it appears that even if the allegations were fully investigated and a breach of the Code of Conduct upheld, training or conciliation would be the appropriate remedy; OR
- (9) where the complaint has been made anonymously.

Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers' and members' time. This is an important consideration where the matter is relatively minor. The Standards Committee's Sub-Committees will take into account the public benefit when considering whether or not to investigate complaints which they consider to be relatively less serious, politically motivated, malicious or vexatious. Sub-Committees will not normally refer a complaint for investigation where it is considered that the public interest in investigating the complaint is outweighed by the cost and resources that are likely to be involved.

Circumstances where a decision may be taken to refer the complaint to the Monitoring Officer for local investigation:

Where the complaint is sufficiently serious to justify the cost of an investigation and it is in the public interest to investigate.

Circumstances where a decision may be made to refer the allegation to the Monitoring Officer for other action:

- (1) Where the complaint:
 - (i) could be dealt with more effectively by:
 - (a) requesting an apology
 - (b) mediation
 - (c) training
 - (d) reviewing procedures and protocols
 - (ii) is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the authority and could be dealt with by:
 - (a) mediation
 - (b) training
 - (c) reviewing procedures and protocols
 - (iii) Where it is not in the interests of good governance to undertake or complete an investigation into a complaint.

If consideration is being given to referring the complaint to the Monitoring Officer for other action, the following must be considered in each case:

- What is being proposed
- Why is it being proposed
- Why the Member should co-operate, and
- What the Sub-Committee hopes to achieve.

A complaint referred for other action will state that the decision made was an alternative to formal investigation and that no conclusion was reached regarding whether the subject member had failed to comply with the Code.

There will be no opportunity to undertake an investigation into the complaint at a later date if this option is selected, nor can it be referred back to Committee subsequently if this action is perceived to have failed.

In any event, the Assessment Sub-Committee will always consult the Monitoring Officer before reaching a decision to take other action.

Circumstances where a decision may be taken to refer the complaint to Standards for England for formal investigation:

- (1) Where the status of the member or members, or the number of members about whom the complaint is made, would make it difficult to deal with the complaint, e.g. the complaint is against the Leader of the Council or senior opposition group members or a Cabinet Member or a Standards Committee Member.
- (2) Where the status of the complainant or complainants would make it difficult to deal with the complaint e.g. the complaint is one from the Chief Executive or Legal Director or other senior officer or a Group Leader or Cabinet Member or Standards Committee Member.

- (3) Where a large number of key people are conflicted out and/or there is a risk of successful judicial review.
- (4) Where there is a potential conflict of interest of the Monitoring Officer or other officers and suitable alternative arrangements cannot be put in place to address the conflict.
- (5) Where the complaint is so serious or complex, or it involves so many members, that it cannot be handled locally.
- (6) Where the complaint requires substantial amounts of evidence beyond that available from the authority's documents, its members or officers.
- (7) Where there is substantial governance dysfunction in the Council or its Standards Committee.
- (8) Where the complaint relates to long-term or systemic member/officer bullying which could be more effectively investigated by someone outside the authority.
- (9) Where the complaint raises significant or unresolved legal issues on which a national ruling would be helpful.
- (10) Where the public might perceive the Council to have an interest in the outcome of the case e.g. if the Council would be liable to be judicially reviewed if the complaint is upheld.
- (11) Where there are exceptional circumstances which would prevent the authority or its 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.

REVIEW

Where the Assessment Sub-Committee has decided that no action will be taken on a particular matter, the complainant has thirty days from the receipt of notification of the decision to make a written request for a review.

Any such review will be heard by a Review Sub-Committee, and will include two elements:-

- (a) consideration of whether the decision which is subject to review is reasonable taking into account the information that was before the Sub-Committee as well as the approved assessment criteria.
- (b) consideration of whether any new evidence submitted by the complainant or obtained by the Monitoring Officer since the original decision demonstrates that the decision was incorrect.

The review must be completed within three months. It will involve the Monitoring Officer reporting to the Review Sub-Committee the information which was provided to the Assessment Sub-Committee together with any other relevant information which has become available subsequently.

The Review Sub-Committee must deal with each element of the matter before it on a case-by-case basis, having to any relevant guidance of Standards for England; the Complainant's reasons for requesting a review; the Assessment Sub-Committee's decision and the reasons for its decision; the professional advice given by relevant officers of the Council including the Monitoring Officer, and the assessment criteria outlined above.

Where it was previously decided to withhold from a Subject Member certain details of any allegations against them, the Review Sub-Committee should consider, on advice from the Monitoring Officer, whether it would still be contrary to the public interest or would still prejudice any person's ability to investigate the allegation to provide any further details, including a written summary of the allegation.

After having considered any request for review, the Review Sub-Committee must either 1) uphold the Assessment Sub-Committee's decision and decide that no action should be taken in respect of the allegation, or 2) overturn the Assessment Sub-Committee's decision.

If the Review Sub-Committee decides to overturn the Assessment Sub-Committee's decision, then it has a choice of options:

i) after consulting with the Monitoring Officer, it may refer the allegation to her with an instruction to arrange for a formal investigation of the allegation; or with an instruction to arrange for the Subject Member to attend a training course; and/or for that member and the complainant to engage in a process of conciliation; and/or other steps (not including an investigation) to be taken as appear appropriate, or

(ii) refer the allegation to Standards for England, or

(iii) if the person is no longer a Member of the Council but is a Member of another relevant authority then it may refer the allegation to the Monitoring Officer of the other authority if it considers that that is a more appropriate way of dealing with the matter.

The Review Sub-Committee must also record the main points it considered, its conclusion and the reasons for its conclusion.

Where the Review Sub-Committee decides to uphold the Assessment Sub-Committee's decision to take no action on any allegations, the complainant cannot pursue the matter any further with the Council's Standards Committee.

COMPLAINANT CONFIDENTIALITY

As a matter of fairness and natural justice, a member will usually be told who has complained about them. In the instances when a complainant makes a request that their identity be withheld then the request will only be granted in circumstances which the Assessment Sub-Committee considers to be exceptional (and will be reviewed by any Review Sub-Committee). Examples might include:

(a) the complainant has reasonable grounds for believing that he/she will be at risk of physical harm if his/her identity is disclosed

(b) the complainant is an officer who works closely with the member and s/he has a reasonable fear of intimidation or victimisation if his/her identity is disclosed

(c) the complainant suffers from a serious health condition which might be adversely affected if his/her identity is disclosed. In this situation, the Assessment Sub-Committee may wish to request medical evidence.

WITHDRAWING COMPLAINTS

In situations where the complainant seeks to withdraw a complaint before the Assessment Sub-Committee has made a decision regarding it, then the Assessment Sub-Committee will decide whether or not to grant the request in all of the circumstances. Consideration will be given to the Assessment Sub-Committee's assessment of the public interest, in particular whether the public interest in taking action on the complaint outweighs the complainant's desire to withdraw it. Other factors may include the practicality or otherwise of proceeding without the complainant's participation and also the Assessment Sub-Committee's assessment of any underlying reason – such as the complainant being pressurized to withdraw – which may appear to apply to the request to withdraw. There may be situations where the Assessment Sub-Committee considers the public interest to be served by investigating a complaint, notwithstanding the complainant's wish to formally withdraw it.

NOTIFICATION OF DECISIONS

1. to the complainant

As soon as practicable after the Assessment or the Review Sub-Committee has taken a decision on a complaint, and in any case within 5 working days of the decision, the Monitoring Officer will notify the complainant in writing of the Sub-Committee's decision together with a summary of the Sub-Committee's reasons for that decision. Where the Assessment Sub-Committee's decision is to take no action, the Monitoring Officer's notification to the complainant will set out the rights of the complainant to request a review of that decision.

2. to the member who is the subject of the complaint

As soon as practicable after the Assessment or the Review Sub-Committee has taken a decision on a complaint, and in any case within 5 working days of the decision, the Monitoring Officer will notify the Subject Member in writing of the Sub-Committee's decision together with a summary of the Sub-Committee's reasons for that decision. The only circumstances in which such notification shall not be given is where the Sub-Committee has resolved that it would be contrary to the public interest to give such notification at this stage. This might be on the basis that notification would be likely to hinder the proper investigation of the complaint as it would give rise to a real risk of destruction of evidence or intimidation of witnesses. Where the Sub-Committee so resolves, the Monitoring Officer shall make such notification as soon as, in her opinion, the investigation of the complaint has progressed to a point where the reasons for deferment of notification no longer apply.

PUBLICATION OF DECISION NOTICES

Once the Decision Notice has been communicated to the Complainant and the Member, the Council must publish the Decision Notice and make it available for public inspection at the Council offices for a period of 6 years beginning with the date of the Assessment Sub-Committee's meeting.

It is noted that additional detail about the allegation may be incorporated into the Decision Notice if the Monitoring Officer has decided in consultation with the Chair of the Assessment Sub-Committee that at the time of publishing it would not be contrary to the public interest, and would not prejudice any person's ability to investigate the allegation, to provide these further details and the Subject Member and Complainant have already been notified of such details.

OTHER ACTION: FURTHER STEPS

Monitoring Officer responsibilities following other action instruction

Where the Assessment Sub-Committee, or the Review Sub-Committee, refer an allegation to the Monitoring Officer after consulting with the Monitoring Officer, with an instruction:

to arrange for the Subject Member to attend a training course; and/or for

that the member and the complainant to engage in a process of conciliation; and/or

for other steps (not including an investigation) to be taken as appear appropriate to the Assessment or Review Sub-Committees,

then the Monitoring Officer must deal with the matter in accordance with the instruction given to her.

Option of referring matter back to the Sub-Committee

Where a matter has been referred to the Monitoring Officer by the Assessment or Review Sub-Committees for steps other than investigation, then the Monitoring Officer may refer the matter back to the Sub-Committee:

(i) if, as a result of new evidence or information, the Monitoring Officer is of the opinion that:

the matter is materially more serious or less serious than may have seemed apparent when the Assessment or Review Sub-Committee made its decision to refer to the Monitoring Officer for steps other than investigation; and

the Assessment or Review Sub-Committee would not have decided to refer to the Monitoring Officer for steps other than investigation had it been aware of the new evidence or information; or

(ii) if the Subject Member, has died, is seriously ill, or has resigned from the Borough Council and the Monitoring Officer is of the opinion that, in the

circumstances, it is no longer appropriate to continue with the steps other than investigation.

If the Monitoring Officer refers a matter back to the Sub-Committee then the Sub-Committee should consider the matter as it would any other. It is empowered to take the full range of decisions in respect of it as outlined above, except that the committee may direct that the matter should not be referred back a further time.

Monitoring Officer Report on Other Action

Within 3 months of the day on which the Monitoring Officer received an instruction to take other action, the Monitoring Officer must submit a written report to the Standards Committee giving details of the action taken or proposed to comply with the instruction.

The Standards Committee's decision on the report

If the Standards Committee is not satisfied with the action specified in the Monitoring Officer's report, it must issue a further instruction to the Monitoring Officer.

If the Committee is satisfied with the action specified in the Monitoring Officer's report, it must give written notice to this effect to:

the Subject Member;
the Complainant; and
the Standards Committee of any other authority concerned.

ACTIONS FOLLOWING A DECISION TO REFER A MATTER FOR LOCAL INVESTIGATION

It is recognised that the Monitoring Officer will not normally conduct local investigations personally. Instead she may arrange for the investigation and other functions in connection with it to be conducted by a suitable, and appropriately qualified and experienced person ("a delegated investigator"). The delegated investigator may be another senior officer of the authority, a senior officer of another authority or an appropriately experienced consultant, but it may not be a current Ethical Standards Officer of Standards for England.

The procedures to be followed where a matter is investigated locally and is brought before the Hearings Sub-Committee for determination are entirely separate to those outlined here. Those procedures and are the subject of detailed guidance issued by Standards for England (entitled 'Standards Committee Determinations' and available at www.standardsforengland.gov.uk).

INFORMATION AND RETURNS

The Standards Committee is obliged to monitor how effectively members are complying with the Code, the type of complaints received and how these are dealt with.

The Monitoring Officer ensures that an appropriate system is in place to ensure that information regarding the Standards process and the Standards Committee's decisions are recorded and maintained.

Data regarding the number and nature of complaints received in for local assessment is provided in an annual report to the Standards Committee which is made in January of each year.

The information that is retained enables the Monitoring Officer to comply with her statutory responsibilities to feed back quarterly returns to Standards for England.