

PROCEDURE FOR LOCAL ASSESSMENT OF COMPLAINTS

1. **Introduction**

Under changes made to the Local Government Act 2000 by the Local Government and Public Involvement in Health Act 2007, any person may make a written complaint to the Council's Standards Committee that a member of the Council, , has acted in breach of the Code of Conduct for Members.

Any such complaint should be sent (using the Complaint Form below) to the Standards Committee **c/o the Monitoring Officer, Durham County Council County Hall Durham DH1 5UL**

The following is the procedure, which will normally be followed on receipt of such a complaint. Much of this procedure is either required by regulations made by Government or is in line with statutory Guidance issued by the Standards Board for England.

This procedure should be read in conjunction with the Procedure for Local Determination of Complaints Against Members approved by the Standards Committee on 2 February 2004 as amended ("the Local Determination Procedure")

2. **Initial Notification of Complaint**

- 2.1.1 The member who is the subject of the complaint will normally as soon as practicable after the complaint is received be sent a letter by the Monitoring Officer telling him/her that a complaint has been made, which paragraphs of the Code of Conduct have been allegedly breached and stating the name of the complainant (unless the complainant has requested confidentiality and the Standards Committee has not yet considered whether or not to grant it).

(At that stage, a summary of the allegation will not be provided to the member because the Regulations do not allow this until the matter has been to the Assessment Sub-Committee).

In certain circumstances, the Monitoring Officer may decide not to give any notification at all to the member who is the subject of the complaint. This will happen if it is considered by the Monitoring Officer that to do so would be against the public interest or might prejudice any future investigation, or where non-disclosure has been specifically requested by the complainant for what the Monitoring Officer considers may be good reasons. Any such decision by the Monitoring Officer will only apply pending consideration of the matter by the Assessment Sub-Committee referred to in paragraph 3.1 below.

3. **Initial Assessment**

- 3.1 A sub-committee of the Standards Committee (known as "**the Assessment Sub-Committee**") will meet as soon as reasonable, and normally within 20 working days of receipt of the complaint, to consider and decide if any action should be taken on it.

The Sub-Committee must comprise, for the duration of the meeting, at least three members of the Standards Committee, including at least one elected County Council member and one Independent Member. It must be chaired by an Independent Member.

The Sub-Committee will normally comprise four members of the Standards Committee, being two Independent Members and two members of the Council. These members will be selected on a rotation basis and in the case of Council Members from a different political group (or groups) to that of the Member concerned - by the Monitoring Officer in consultation with the Chair of the Standards Committee (where appropriate) but wherever possible one of the Independent Members will be the Chair of the Standards Committee who will also act as the Chair of the Sub-Committee. The Chair of the Sub-Committee will in the case of any equality of vote have a second and casting vote. A quorum of the Sub-Committee will be three of the four members selected.

- 3.2 The Assessment Sub-Committee will receive a report from the Monitoring Officer which will give a summary of the complaint and explain any relevant parts of the Code, as well as attaching a copy of the complaint form and any supporting documents which came with it. It may also include any other documents the Monitoring Officer considers might help the Sub-Committee in its assessment eg a copy of any relevant minutes or entry on the Register of Interests.

The meeting and papers will not be open to the public. Neither the complainant nor the member who is the subject of the complaint will be invited to attend.

The Sub-Committee will not be subject to the usual rules which apply to council committees or sub-committees concerning notice of meetings, circulation of agendas and documents and public access.

- 3.3 The Assessment Sub-Committee will decide either:

- (a) to refer the complaint to the Council's Monitoring Officer, or
- (b) to refer it to the Standards Board for England, or
- (c) that no action should be taken in respect of it.

- 3.4 Where the complaint is against a person who is no longer a Member of the Council, but is a member of another relevant authority, the Sub-Committee may instead refer the complaint to the monitoring officer of that other relevant authority if it thinks it more appropriate to do so.

- 3.5 After making its decision, the Sub-Committee will produce a written summary of its decision which will include the main points considered, its conclusion and the reasons for that conclusion. The summary may give the name of the member who was the subject of the complaint, unless the Sub-Committee believes such disclosure is not in the public interest or would prejudice any investigation.

The summary will be sent as soon as possible to the complainant and to the Member who is the subject of the complaint.

That summary will be available for inspection at the offices of the Council for 6 years beginning with the date of the meeting. However, the summary will not be made available for inspection, until the member who was the subject of the complaint has received a written summary of the decision.

- 3.6 In addition, a written summary of the allegation will be sent at this stage to the member who is the subject of the complaint unless exceptionally the Sub-Committee considers that to do so would be contrary to the public interest or would prejudice the investigation of the allegation. Even in those circumstances, the Sub-Committee may disclose some details of the allegation to the member if it is satisfied this would not be contrary to the public interest or prejudice any investigation. In any event, the

member who is the subject of the complaint will be sent a summary of it whenever the Monitoring Officer advises these concerns no longer apply or before the result of any investigation is reported to Standards Committee, whichever is the earlier.

4. **Allegation referred to the Monitoring Officer**

If the Assessment Sub-Committee refers the complaint to the Monitoring Officer, it may direct the Monitoring Officer either (i) to carry out an investigation or (ii) to take steps other than an investigation (“other steps”).

Where the Assessment Sub-Committee refers the complaint to the Monitoring Officer to carry out an investigation, the procedure for the conduct of a Hearing Panel shall be in accordance with paragraph 4.3 below.

4.1 **Referral to Monitoring Officer for other steps**

4.1.1 The Sub-Committee may refer the complaint to the Monitoring Officer to take other steps only after first consulting the Monitoring Officer.

4.1.2 The other steps which the Sub-Committee can direct the Monitoring Officer to take are:

- (a) arranging for the Member who is the subject of the complaint to attend a training course;
- (b) arranging for that Member and the complainant to engage in a process of conciliation;
- (c) such other steps (not including an investigation), as appear appropriate to the Sub-Committee.

If the Sub-Committee is minded to direct other steps it may before making a formal decision to do so decide to seek assurances from the parties involved that they will co-operate with such other steps.

4.1.3 Where a matter is referred to the Monitoring Officer to take other steps, the Monitoring Officer:

- (a) shall act in accordance with the direction;
- (b) shall give written notice that the matter has been so referred to:
 - (i) the member who is the subject of the allegation,
 - (ii) the complainant,
 - (iii) the standards committee of any other authority concerned, and
- (c) within 3 months after the day on which the direction was received, or as soon as is reasonably practicable thereafter, shall submit a written report back to the Assessment Sub-Committee giving details of the action taken, or proposed, to comply with the direction.

4.1.4 If the Sub-Committee is not satisfied with the action specified in that report, it shall give a further direction to the Monitoring Officer.

[Note for Standards Committee: Standards Board advice is that the Regulations preclude the Sub-Committee referring the complaint for investigation at this stage. They advise that once ‘other steps’ have been chosen, a subsequent decision to refer for investigation cannot be made]

4.1.5 If the Assessment Sub-Committee is satisfied with the action specified in the Monitoring Officer's report, it shall give written notice to that effect to:

- (a) the member who is the subject of the report;
- (b) the complainant;
- (c) the standards committee of any other authority concerned; and

4.2 **Referral to the Monitoring Officer for investigation**

4.2.1 Where the Assessment Sub-Committee refers the complaint to the Monitoring Officer for investigation, the procedure set out in paragraph 4.3 below will apply.

4.2.2 The Monitoring Officer may at any time refer the matter back to the Assessment Sub-Committee if:

- (a) as a result of new evidence or information, s/he is of the opinion (i) the matter is materially more or less serious than may have seemed apparent when the Sub-Committee initially referred it to the Monitoring Officer for investigation and (ii) the Sub-Committee would have made a different decision had it been aware of that new evidence or information; or
- (b) the person who is the subject of the complaint has died; or is seriously ill; or has resigned from the Council, and the Monitoring Officer considers that in the circumstances it is no longer appropriate to continue with an investigation.

If a matter is referred back to the Sub-Committee, it will reconsider and make one of the decisions set out in paragraph 3.3 above.

Note 1 In forming an opinion for the purposes of paragraph 4.2.2(a) above, the Monitoring Officer may take account of:

- (a) the failure of any person to co-operate with an investigation; or
- (b) an allegation that the Member concerned has engaged in a further breach of the Council's Code of Conduct or that of another relevant authority; or
- (c) an allegation that another member has engaged in a related breach of the Council's Code of Conduct or that of another relevant authority.

Note 2 Where the Sub-Committee considers a matter referred back to it under this paragraph 4.2.2, it may direct that the matter should not be referred back to it again.

4.3 A Hearing Panel shall be convened within three months of the completion of the Monitoring Officer's report to hear and determine any allegation that an elected or co-opted Member of the County Council has failed or may have failed to comply with the Code of Conduct for Members. The procedure for Hearing Panels contained in the Local Determinations Procedure shall be complied with, except where the same has been varied as below or where the Standards Committee (England) Regulations 2008 require.

The Hearing Panel shall comprise four Members of the Standards Committee being two Independent Members and two Members of the Council. It must be chaired by an Independent Member. These Members will be selected on a rotation basis and in the case of Council Members from a different political group (or groups) to that of the Member concerned by the Monitoring Officer in consultation with the Chair of the Standards Committee (where appropriate) but wherever possible one of the

Independent Members will be the Chair of the Standards Committee who will also act as the Chair of the Hearing Panel. The Chair of the Hearing Panel will, in the case of any equality of vote, have a second and casting vote. A quorum of the Hearing Panel will be three of the four Members selected.

The Hearing Panel, will undertake the functions set out in Regulations 17 to 20 of the Standards Committee (England) Regulations 2008 and shall make one of the following findings, namely:-

- (a) that the Member who was the subject of the Hearing had not failed to comply with the Code of Conduct of any authority concerned; or
- (b) that the Member who was the subject of the Hearing had failed to comply with the Code of Conduct of an authority concerned, but that no action needs to be taken in respect of the matters which were considered at the Hearing; or
- (c) that the Member who was the subject of the Hearing had failed to comply with the Code of Conduct of an authority concerned and that a sanction under paragraph (2) or (3) of Regulation 19 of the Standards Committee (England) Regulations 2008 should be imposed.

5. **Allegation referred to the Standards Board**

Where the Assessment Sub-Committee refers the complaint to the Standards Board and the Standards Board refers the allegation back to the Standards Committee, an Assessment Sub-Committee will be convened. It must then decide either:

- (a) to refer the complaint to the Monitoring Officer for investigation or other steps,
or
- (b) that no further action should be taken in respect of the complaint.

6. **Decision to take no action in respect of allegation**

- 6.1 If the Assessment Sub-Committee decides that no action should be taken in respect of the complaint, it must take reasonable steps to give written notice of the decision and the reasons for it to:
- (a) the complainant,
 - (b) the person who was the subject of the complaint.

It shall endeavour to send this notice within 5 working days of the Sub-Committee meeting.

6.2 **Right to request review of decision to take no action**

- 6.2.1 The complainant may request the Standards Committee to review the decision not to take any action.

Any such request must be in writing, addressed c/o the Monitoring Officer, and made within 30 days of the date of the notice referred to in paragraph 6.1.

- 6.2.2 On receipt of such a request, the Monitoring Officer will give written notice of that fact to the person who is the subject of the complaint

- 6.2.3 Another sub-committee of the Standards Committee (“the Review Sub-Committee”) will be appointed to review the decision not to take any action.

That Sub-Committee must also comprise, for the duration of the meeting, at least three members of the Standards Committee, including at least one elected member and one Independent Member. It must be chaired by an Independent Member. Its members however must not include members who sat on the Assessment Sub-Committee whose decision is being reviewed.

The Review Sub-Committee will normally comprise four members of the Standards Committee, being two Independent Members and two members of the Council. These members will be selected on a rotation basis and in the case of Council Members from a different political group (or groups) to that of the Member concerned, by the Monitoring Officer in consultation with the Chair of the Standards Committee (where appropriate) but wherever possible one of the Independent Members will be the Chair of the Standards Committee (if s/he has not been a member of the Assessment Sub-Committee) who will also act as the Chair of the Sub-Committee. The Chair of the Sub-Committee will in the case of any equality of vote have a second and casting vote. A quorum of the Sub-Committee will be three of the four members selected.

- 6.2.4 The meeting and papers will not be open to the public. Neither the complainant nor the member who is the subject of the complainant will be invited to attend.

The Sub-Committee will not be subject to the usual rules which apply to council committees or sub-committees concerning notice of meetings, circulation of agendas and documents and public access.

- 6.2.5 The Review Sub-Committee must either:

- (a) refer the complaint to the Monitoring Officer for investigation or other steps,
- (b) refer it to the Standards Board,
- (c) decide no action should be taken.

The Review Sub-Committee must make such reference/decision within 3 months from receipt of the request for review, but it will seek to do so within 20 working days.

- 6.2.6 If the Review Sub-Committee decides that no action should be taken, there is no further right of review.

The Sub-Committee, through the Monitoring Officer, will normally notify both the complainant and the member who is the subject of the complaint of that decision within 5 working days.

- 6.2.7 If the Sub-Committee decides to refer the complaint to the Monitoring Officer or the Standards Board, then paragraphs 4.1, 4.2 or 5 shall apply as appropriate.

- 6.2.8 After making its decision, the Sub-Committee will produce a written summary of its consideration which will include the main points considered, its conclusion and the reasons for that conclusion. The summary may give the name of the member who was the subject of the complaint, unless such disclosure is not in the public interest or would prejudice any investigation.

The summary will be sent as soon as possible to the complainant and to the Member who is the subject of the complaint.

That summary will be available for inspection at the offices of the Council for 6 years beginning with the date of the meeting. However, the summary will not be made available for inspection, until the member who was the subject of the complaint has received a written summary of the decision.

7. Withdrawing Complaints

7.1 If a complainant requests to withdraw his/her complaint before the Initial Assessment Sub-Committee has made a decision on it, then the Committee will decide whether to grant that request.

In making that decision it will take into account the following considerations:

- Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
- Is the complaint such that action can be taken on it, for example, an investigation without the complainant's participation?
- 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 by the member who is the subject of the complaint, or an associate of theirs, to withdraw the complaint?

Durham County Council

COMPLAINT FORM – Alleged Breach of Members’ Code of Conduct

Your details

1. Please provide us with your name and contact details

Title:	
First name:	
Last name:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile telephone:	
Email address:	

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, we will tell the following people that you have made this complaint:

- the member(s) you are complaining about
- any other person whom we consider it necessary to inform to properly investigate your complaint.

We will tell them your name and give them a summary of your complaint. We will give them full details of your complaint where necessary or appropriate to be able to deal with it. If you have serious concerns about your name and a summary, or details, of your complaint being released, please complete section 6 of this form.

1. Please tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted member of an authority
- An independent member of the standards committee
- Member of Parliament
- Local authority monitoring officer

Other council officer or authority employee

2. Equality monitoring questions

We have attached an Equality Monitoring Form to the back of this complaint form which you are invited to complete as well.

Making your complaint

Your complaint will initially be considered, usually within 20 working days, by an assessment sub-committee of the Council's Standards Committee. This will decide whether any action should be taken on your complaint. You will be advised of that decision. If the decision is to take action, the sub-committee can either ask the Council's Monitoring Officer to investigate the complaint or to arrange some other appropriate action eg conciliation or training. It can also in very serious cases or in certain other exceptional circumstances refer the complaint to the Standards Board for England.

If your complaint is investigated, the result will be reported to a Hearing Panel of the Council's Standards Committee which will then decide if there has been a breach of the Members' Code of Conduct and, if so, what sanction to impose.

2. Please provide us with the name of the member(s) you believe have breached the Code of Conduct and the name of the authority of which they are a member

Title	First name	Last name	Council or authority name

3. Please explain in this section (or on separate sheets) what the member has done which you believe breaches the Code of Conduct. If you are complaining about more than one member you should clearly explain what each individual person has done which you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the assessment sub-committee when it decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should explain whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

Only complete this next section if you are requesting that your identity or details of your complaint is kept confidential

6. In the interests of fairness and natural justice, we believe members who are complained about have a right to know who has made the complaint. We also believe

they have a right to be provided with a summary of the complaint and then further details of it if there is a decision to investigate it or take other action on it.

We will not withhold your identity, or a summary or the details of your complaint, unless you have exceptional reasons why we should do so.

If you think you have such reasons and want us to consider withholding your identity and/or any details of your complaint, either altogether or for some period of time, you must cross out the statement in the box below giving your consent to such disclosure. You must also attach to this form a separate sheet which fully explains what information you want withheld and your reasons for your request to withhold it.

I understand and agree that my name and details of this complaint will be disclosed to the persons mentioned in paragraph 1 above.
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If you do request confidentiality and this is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we may still proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Additional Help

7. Complaints must be submitted in writing. This includes fax and email submissions. However, in line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please let us know as soon as possible. You should initially contact the Council's Monitoring Officer (whose contact details are given below) who will try to arrange appropriate assistance for you.

.....

Signed

.....

Dated

This form once completed should be sent, along with any supporting documents, to:

**The Standards Committee
The Monitoring Officer
Durham County Council
County Hall
Durham
DH1 5UL**

Equality Monitoring Form

Durham County Council operates an Equality Policy. To help us make sure that everybody is treated fairly and equally we need to know who is making complaints. This information will help us to develop and change our policies and practices to ensure that no one is discriminated against.

To help us to do this we request that you complete the questions below. You do not have to do so but this information would be helpful to us. All of the information you give will be treated with the strictest of confidence and will be used for monitoring purposes only.

Are you:

Male

Female

What is your age group?

15 and under 16-24 25-39 40-59 60-64

65-74 75+

Do you have any long standing illness or disability?

(Long standing means anything that has troubled you over a period of time or that is likely to affect you over a period of time)

Yes

No

If yes, does this illness or disability limit your activities in any way?

Yes

No

Please state the impairment type(s) which applies to you:

Mobility

Visual impairment

Hearing Impairment/Deaf

Mental Health diagnosis

Other

Prefer not to say

What is your ethnic group?

A. White

British

Irish

Other Please state

B. Mixed

- White and Black Caribbean
- White and Asian
- White and Black African
- Any other mixed background Please state

C. Asian or Asian British

- Indian
- Bangladeshi
- Pakistani
- Any other Asian background Please state

D. Black or Black British

- Caribbean
- African
- Any other Black background Please state

E. Chinese

F. Any other ethnic group

 Please state

What is your sexual orientation?

- Bisexual
- Gay Man
- Gay women/lesbian
- Heterosexual/straight
- Other
- Prefer not to say

What is your religion? (Tick one box only)

- None
- Christian
- Buddhist
- Hindu
- Jewish
- Muslim
- Sikh
- Any other religion Please state.
- Prefer not to say

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Equality Monitoring Form

Durham County Council operates an Equality Policy. To help us make sure that everybody is treated fairly and equally we need to know who is making complaints. This information will help us to develop and change our policies and practices to ensure that no one is discriminated against.

To help us to do this we request that you complete the questions below. All of the information you give will be treated with the strictest of confidence and will be used for monitoring purposes only.

Are you:

Male

Female

What is your age group?

15 and under 16-24 25-39 40-59 60-64

65-74 75+

Do you have any long standing illness or disability?

(Long standing means anything that has troubled you over a period of time or that is likely to affect you over a period of time)

Yes

No

If yes, does this illness or disability limit your activities in any way?

Yes

No

Please state the impairment type(s) which applies to you:

Mobility

Visual impairment

Hearing Impairment/Deaf

Mental Health diagnosis

Other

Prefer not to say

What is your ethnic group?

B. White

British

Irish

Other Please state

D. Mixed

- White and Black Caribbean
- White and Asian
- White and Black African
- Any other mixed background Please state

E. Asian or Asian British

- Indian
- Bangladeshi
- Pakistani
- Any other Asian background Please state

D. Black or Black British

- Caribbean
- African
- Any other Black background Please state

E. Chinese

F. Any other ethnic group

 Please state

What is your sexual orientation?

- Bisexual
- Gay Man
- Gay women/lesbian
- Heterosexual/straight
- Other
- Prefer not to say

What is your religion? (Tick one box only)

- None
- Christian
- Buddhist
- Hindu
- Jewish
- Muslim
- Sikh
- Any other religion Please state.
- Prefer not to say

SOME ISSUES

[Note for Standards Committee: 3.1

The other realistic options are:

- 1. A Sub-Committee of 3, but practical problems if one of the three is unable to attend at the last minute – inquorate and thus require adjournment. Also who would be the 3? 2 Independents, in which case one of the political groups would not be represented. Or only one Independent, so political members would be in majority.***
- 2. A Sub-Committee of 5, but if 3 Independents would leave only one spare to cover any Review Sub-Committee. If only 2 Independents, would be in minority.***

True a Sub-Committee of 4 does increase chance of a split vote but it is not unreasonable that the Independent Chair should have a second casting vote.]

[Note for Standards Committee:

Although this will involve the Sub-Committee comprising 6 members for parish councillor complaints, it is suggested this may be the most convenient approach, resulting in a Sub-Committee of 2 independents, 2 City Council members and 2 parish council representatives (subject of course to them all turning up). If Committee feels the number should be kept to 4-or some other number -, then it needs to consider which 'groupings' that number should be made up from bearing in mind there must be at least 1 City Council member, 1 independent member and 1 parish council representative].