

LANCASTER CITY COUNCIL STANDARDS COMMITTEE

PROCEDURE FOR THE INITIAL ASSESSMENT OF COMPLAINTS OF BREACH OF THE CODE OF CONDUCT

Introduction

1. This procedure applies when a complaint is received that a City Councillor, Co-opted Member or Parish Councillor has or may have failed to comply with the relevant Code of Conduct.
2. The person making the complaint will be referred to as the complainant and the person against whom the complaint is made will be referred to as the subject member.
3. The procedure will also apply if a complaint is referred back to the Standards Committee by the Standards Board for England.
4. No Member or officer will participate in any stage of the assessment process if they have any personal conflict of interest in the matter.

Assessment Sub-Committee

5. Upon receipt of a complaint that a City Councillor, Co-opted Member or Parish Councillor has or may have failed to comply with the Code of Conduct, the Monitoring officer will liaise with the Head of Democratic Services or her representative to convene as soon as possible and in any event within 20 working days a meeting of an Assessment Sub-Committee.
6. The Assessment Sub-Committee will comprise three members of the Standards Committee, including an Independent Member who will act as Chairman, and a City Councillor. Where the complaint relates to a Parish Councillor, the Assessment Sub-Committee will include a parish member of the Standards Committee. **Where the complaint relates to a City Councillor, the Sub-Committee will, where possible, comprise an Independent Member, a City Councillor and a Parish Councillor, as it is recognised that using two Independent members at the Assessment stage may reduce the pool of Independent Members available should the matter proceed to a hearing.** The Sub-Committee will be convened on an ad hoc basis, and members will be appointed by the Head of Democratic Services or her representative on a rotational basis, taking account of availability, and on the basis that so far as possible the Assessment Sub-Committee will not include a city councillor of the same group as the Subject Member or the Complainant.
7. The Assessment Sub-Committee will be advised by the Monitoring Officer, the Deputy Monitoring Officer or another legal officer. The meeting will not be open to the public, and the subject member will not be informed of the complaint at this stage. However, if a press enquiry is received about a complaint which has not yet been considered by the Assessment Sub-Committee, and it is clear that the press are aware of the identity of the subject of the complaint, the Monitoring Officer is authorised to inform the subject member of the complaint immediately, but, if in doubt, may consult the Chairman or Vice-Chairman, depending on their availability.

8. The purpose of the Assessment Sub-Committee will be to decide whether any action should be taken on the complaint – either an investigation or some other action. The Assessment Sub-Committee will not make any findings of fact.
9. The Assessment Sub-Committee will receive in advance of the meeting a copy of the complaint, together with a report prepared by the Monitoring Officer or her representative which will set out the following details:
 - Whether the complaint is within the jurisdiction of the Standards Committee
 - The paragraphs of the Code of Conduct the complaint might refer 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 with its decision. This may include minutes of meetings, a copy of a member's entry in the register of interests, information from Companies House or the Land Registry, or other easily obtainable documents
 - Any clarification obtained by the officer from the complainant if the complaint was unclear

It should be noted, however, that pre-assessment inquiries will be limited, and will not be carried out in such a way as to amount to an investigation.

The Assessment Process

10. The Assessment Sub-Committee will first consider whether the complaint meets the following tests:
 - The complaint is against one or more named members of the City Council or a parish council within its district
 - The subject member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time
 - The complaint, if proven, would be a breach of the Code under which the subject member was operating at the time of the alleged misconduct

If the complaint fails one or more of these tests, then the decision of the Assessment Sub-Committee must be that no further action will be taken.

11. If the complaint meets the above tests, then the Assessment Sub-Committee will proceed to consider whether to refer it to the Monitoring Officer, to refer it to the Standards Board for England, or whether no action should be taken. In making its decision, the Sub-Committee will take account of the Assessment Criteria at Appendix 1, which have been approved by the Standards Committee, and which will from time to time be reviewed by the Committee.
12. The Assessment Sub-Committee will, unless there are exceptional circumstances, reach a decision within 20 working days of receipt of the complaint.
13. If the Assessment Sub-Committee decides to take no action over a complaint, then it will arrange for notice of that decision, including the reasons for it, to be given to the complainant, the subject member, and, if the subject member is a parish councillor, to the clerk to the relevant parish council. This will be done within 5 working days after the date of the meeting.

14. If the Assessment Sub-Committee decides to refer the complaint to the Monitoring Officer or to the Standards Board for England, it will arrange for a summary of the complaint to be sent to the complainant and the subject member stating what the allegation is, and the type of referral that has been made. This will be done within 5 working days after the date of the meeting. The decision notice will explain why a particular referral decision has been made.
15. However, the Assessment Sub-Committee may decide not to give the subject member a summary of the complaint if it considers that doing so would be against the public interest or would prejudice any future investigation. In considering this, the Sub-Committee will take advice from the Monitoring Officer, and will consider in particular whether it is likely that the subject member may intimidate the complainant or any witnesses involved or whether early disclosure of the complaint may lead to evidence being compromised or destroyed. The Sub-Committee will balance whether the risk of the case being prejudiced by the subject member being informed of the details of the complaint at that stage may outweigh the fairness of notifying the subject member.

The Review Process

16. If the Assessment Sub-Committee decides not to take any action on a complaint, then the Complainant has a right to request a review of that decision, and will be so advised when notified of the decision.
17. When a request for review is received, the Monitoring Officer will liaise with the Head of Democratic Services or her representative to convene as soon as possible and in any event within 20 working days a meeting of a Review Sub-Committee.
18. The Review Sub-Committee will comprise three members of the Standards Committee, including an Independent Member who will act as Chairman, a city councillor, and, where the matter relates to a parish councillor, a parish representative. **Where the complaint relates to a City Councillor, the Sub-Committee will, where possible comprise an Independent Member, a City Councillor and a Parish Councillor, as it is recognised that using two Independent members at the Review stage may reduce the pool of Independent Members available should the matter proceed to a hearing.** None of these Members will have been members of the Assessment Sub-Committee that considered the original complaint. The Sub-Committee will be convened on an ad hoc basis, and members will be appointed by the Head of Democratic Services or her representative on a rotational basis, taking account of availability, and on the basis that so far as possible the Review Sub-Committee will not include a city councillor of the same group as the Subject Member or the Complainant.
19. In addition to the documents referred to in paragraph 9 above, the Review Sub-Committee will have a copy of the Assessment Sub-Committee's decision notice, but will consider the complaint afresh, using the Assessment Criteria at Appendix 1. The Review Sub-Committee has the same decisions available to it as the Assessment Sub-Committee and will follow the procedure outlined above in paragraphs 10-15.
20. Where on a request for review further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint, the Review Sub-Committee will consider if it is more appropriate to pass this to an

Assessment Sub-Committee as a new complaint. In this instance, the Review Sub-Committee will make a formal decision that the review request will not be granted.

Withdrawing Complaints

21. If a complainant asks to withdraw the complaint prior to the Assessment Sub-Committee having made a decision on it, the Assessment Sub-Committee will decide whether or not to grant the request. In making its decision, the Sub-Committee will consider:
- Whether the public interest in taking some action on the complaint outweighs the Complainant's wish to withdraw it
 - Whether the complaint is such that action can be taken on it without the complainant's participation
 - Whether there is an identifiable underlying reason for the request to withdraw the complaint, and in particular whether there is any evidence that the Complainant may have been pressured by the subject member or other person to withdraw the complaint

Confidentiality

22. If a Complainant has asked for their identity to be withheld, this request will be considered by the Assessment Sub-Committee at the same time as it considers the complaint.
23. As a matter of fairness and natural justice, the subject member should usually be told who has complained about them. However, in exceptional circumstances, the Assessment Sub-Committee may grant confidentiality if it is satisfied that the Complainant has reasonable grounds for believing that they will be at risk of physical harm or other victimisation or harassment, or less favourable treatment in terms of any service provision or other contractual relationship with the Council if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.
24. The Assessment Sub-Committee will also take into account whether it would be possible to refer the complaint without making the Complainant's identity known, and in particular whether the Complainant's participation would be required if the complaint were referred.
25. If the Assessment Sub-Committee decides to refuse a request any a Complainant for confidentiality, it may offer the Complainant the option to withdraw, rather than proceed with their identity being disclosed. The Assessment Sub-Committee will balance whether the public interest in taking action on a complaint may outweigh the complainant's wish to have their identity withheld from the subject member

Complaints about Members of more than one Authority

26. Where a complaint is received about a city or parish councillor who is known to be a member of another authority, for example the County Council or police authority, the Monitoring Officer will before the meeting of the Assessment Sub-Committee establish whether a similar allegation has been made to the other authority. In the light of information from and in co-operation with the other

authority, the Assessment Sub-Committee will consider which authority should deal with the complaint.

“Other Action”

27. If an Assessment Sub-Committee or a Review Sub-Committee refers a complaint to the Monitoring Officer for action other than investigation, the Monitoring Officer’s subsequent report under Regulation 13(4)(c) will be considered by the same Assessment Sub-Committee or Review Sub-Committee that made the referral.

APPENDIX 1

LANCASTER CITY COUNCIL STANDARDS COMMITTEE – ASSESSMENT CRITERIA

A. Circumstances where the Assessment Sub-Committee may decide that no action should be taken in respect of the allegation:

A1 Where the complaint is about someone who is no longer a member of the city council or a parish council

A2 Where the information provided by the complainant is not sufficient to enable the Sub-Committee to make a decision as to whether the complaint should be referred for investigation or other action

However, the complainant will be advised that it is possible to resubmit the complaint with further information.

A3 Where a substantially similar allegation has previously been made by the complainant to the Standards Board or the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority (except where a Review Sub-Committee has taken the view that a request for review contains new information and should be considered by an Assessment Sub-Committee rather than the Review Sub-Committee)

The Sub-Committee will only refer the complaint for investigation or other action if it considers that there is a compelling reason to do so

A4 Where the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now.

It is acknowledged, however, that where a delay has arisen as a result of criminal or other legal proceedings, it may be appropriate to refer the complaint for investigation or other action.

A5 Where the allegation is anonymous, unless it includes documentary or photographic evidence indicating an exceptionally serious or significant matter

A6 Where the allegation discloses a potential breach of the Code of Conduct, but the Committee considers that the complaint is not serious enough to warrant further action

A7 Where the complaint appears to be malicious, politically motivated or tit-for-tat, unless a serious matter is raised in the complaint

B. Circumstances where the Standards Committee may decide to refer the allegation to the Monitoring Officer for investigation

B1 Where the allegation discloses a potential breach of the Code of Conduct sufficiently serious, if proven, to warrant a sanction, and where it would be in the public interest to investigate.

C. Circumstances where the Standards Committee may decide to refer the allegation to the Monitoring Officer for training, conciliation or other steps as appear appropriate to the Standards Committee

Note This approach may be appropriate where the Sub-Committee believes that the 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. If this approach is taken, the purpose of the action is NOT to find out whether the subject member breached the Code, and no conclusion will have been reached on whether the subject member failed to comply with the Code. It should be noted that this approach may only be taken after consultation with the Monitoring Officer

C1 Where the complaint suggests that there is a wider problem throughout the authority and it is appropriate to extend the action to other members who are not the subject of the complaint

C2 Where it is apparent that the subject of the allegation is relatively inexperienced as a Member, or has admitted making an error and the matter would not warrant a more serious sanction

C3 Where it appears that even if the allegation were fully investigated, and a breach of the Code of Conduct upheld, training or conciliation would be the appropriate remedy

D. Circumstances where the Standards Committee may decide to refer an allegation to the Standards Board

D1 Where the Assessment Sub-Committee believes that the status of the member or members, or the number of members about whom the complaint is made, would make it difficult for the Standards Committee to deal with the complaint. For example if the complaint is about the Leader of the Council or a Group Leader, or a member of the Cabinet or Standards Committee

D2 Where the Assessment Sub-Committee believes that the status of the complainant(s) would make it difficult for the Standards Committee to deal with the complaint. For example if the complainant is a group leader, member of Cabinet or the Standards Committee, or the Chief Executive or a statutory officer.

D3 Where the Assessment Sub-Committee considers that there is a potential conflict of interest of so many members of the Standards Committee that it could not properly deal with the matter itself

D4 Where the Assessment Sub-Committee believes that that there is a potential conflict of interest of the Monitoring Officer or other officers, and that suitable alternative arrangements cannot be put in place to address the conflict

D5 Where the case is so serious or complex that it cannot be handled locally

D6 Where the complaint will require substantial amounts of evidence beyond that available from the authority's documents, its members or officers

D7 Where the complaint relates to long-term or systematic member/officer bullying which could be more effectively investigated by someone outside the Council

D8 Where the allegation raises significant or unresolved legal issues on which a national ruling would be helpful

D9 Where the public might perceive the Council to have an interest in the outcome of a case. For example if the authority could be liable to be judicially reviewed if the complaint were upheld