

Stevenage Borough Council

Standards Committee Procedures for the Local Assessment of Complaints against Members

Introduction

These procedures explain the first stages of how a complaint that a Member of Stevenage Borough Council has breached the Member's Code of Conduct will be assessed and determined. They include the factors that will be taken into account when deciding whether to investigate a complaint. They do not cover the investigation itself or the Standards Committee hearing which will decide whether or not there has been a breach of the Code. There may be circumstances in which these procedures are varied

Making a Complaint

Complaints must be made in writing either by letter or by using the Stevenage Borough Council Code of Conduct complaint form. If the complainant is unable to provide written details as a result of disability, assistance will be provided by council officers.

The Borough Solicitor (Monitoring Officer) will refer the matter to the Assessment Sub-Committee if he is satisfied that it is potentially about member conduct. The Assessment Sub-Committee has been established for the sole purpose of making an initial assessment of complaints about Members breaching the Code of Conduct.

The Borough Solicitor will prepare a short summary of the complaint for consideration by the Sub-Committee to include the following information:

- (a) Whether the complaint is within the jurisdiction of the committee
- (b) The paragraphs of the code of conduct that might apply
- (c) Any other factual information that is reasonably available and that might assist the Sub-Committee
- (d) If the councillor serves on two or more authorities whether a similar complaint has been made to that other authority.

Where a number of similar complaints are made at or about the same time, the report will summarise these collectively.

However, at this stage further enquiries may only be made for the purpose of clarification of the complaint.

The Sub-Committee will try to meet and consider all written complaints referred to it within 20 working days of receipt by the Borough Solicitor.

Assessment Criteria

(a) Initial Test

The Sub-Committee will carry out an initial test to establish whether it has jurisdiction over the complaint by determining whether;

- It is a complaint against one or more named members of Stevenage Borough Council;
- The named member(s) was in office at the time of the alleged misconduct and the code of conduct was in force at that time and
- The complaint, if proven, would be a breach of the Code of Conduct.

If any of the above elements of the test are failed the Sub-Committee cannot authorise investigation and the complainant will be notified that no further action will be taken.

(b) Public Interest

Once the Sub-Committee has established that it has the power to consider the complaint it will consider the matters set out below. Underpinning its consideration will be an assessment of the public interest in investigating a complaint taking into account the cost and time involved.

(c) Adequacy of Information

The Sub-Committee will then consider the adequacy of the information provided by the complainant. If the complaint does not contain sufficient detail to determine whether the matter should be referred for investigation the complainant will be advised that no further action will be taken unless and until such additional information as the Sub-Committee considers necessary is provided.

(d) Former Councillors

If the complaint is about someone who is no longer a member of an authority within its jurisdiction, but is a member of another authority the Sub-Committee will consider whether to refer the matter to the Monitoring Officer of that other authority.

(e) Previous Action under the Code of Conduct or by other regulatory authorities

If the complaint has already been the subject of a previous investigation or some other action relating to the Code of Conduct, or a related regulatory process, the matter will not usually be referred for further action.

(f) Repeated Complaints

The Borough Solicitor will not refer to the Sub-Committee a complaint that is the same or substantially the same as one previously made by the complainant.

(g) *Timing of the Alleged Conduct*

The Sub-Committee will consider the timing of the alleged misconduct when deciding whether to refer the matter for investigation or further action. If there are significant delays between the incident(s) complained of and the complaint the matter will not ordinarily be considered further unless there are strong reasons for the delay.

(h) *Trivial Matters*

No further action will be taken if the Sub-Committee consider that the matter is not sufficiently serious to warrant further action.

(i) *Ulterior Motive*

No further action will be taken if the Sub-Committee considers that the complaint is motivated by malice, political motivation or is part of a tit for tat exchange.

(j) *Complaints Previously Assessed by the Standards Board for England*

No action will be taken in respect of complaints that are the same or substantially the same as complaints previously assessed by the Standards Board for England as not warranting investigation.

(k) *Members of Two or More Authorities*

Where a complaint is made about a Member who is also a member of another authority, the Borough Solicitor, having consulted with the Monitoring Officer of the other authority, shall advise the Sub-Committee on which council should assume responsibility for the complaint.

Initial Assessment Decision

The Sub-Committee shall make one of the following decisions:

- (1) Referral of the complaint to the Borough Solicitor (Monitoring Officer) of either Stevenage Borough Council or another authority where appropriate
- (2) Referral of the complaint to the Standards Board for England (in accordance with the criteria set out below)
- (3) No further action.

Referral to the Standards Board for England

The Sub-Committee shall use its discretion in determining whether to refer a complaint to the Standards Board for England but in any event shall not refer a complaint unless it considers that one of the following criterion apply:

- (a) Where the status of the Member complained about would make it difficult for the committee to deal with the complaint
- (b) Where the status of the complainant would make it difficult for the committee

- to deal with the complaint
- (c) Where a number of committee members have a conflict of interest that would prevent it from properly discharging its duties or reasonably give the appearance that it could not do so.
 - (d) Where there is a potential conflict of interest of the Borough Solicitor or other officers and suitable alternative arrangements cannot reasonably be put in place.
 - (e) Where the complaint is so serious that if proven, the powers of the Standards Committee would not be adequate to deal with it.
 - (f) Where the complaint is so complex or involves so many members that it cannot be handled locally within the Council's available resources.
 - (g) Where the complaint relates to systemic or long term governance issues requiring an independent investigation.
 - (h) Where the complaint raises an unresolved legal issue that is a point of public interest and on which a national ruling would be helpful.
 - (i) Where the Council could reasonably be perceived as having an interest in the case sufficient to indicate actual or apparent bias.
 - (j) Where there are exceptional circumstances that would prevent a competent, fair and timely investigation and determination being undertaken locally.

The Standards Board for England has a discretion to decline to investigate the complaint and to refer it back to the Standards Committee. Where it does so, the Assessment Sub-Committee will reconsider the complaint again within 20 working days taking into account any direction given by the Standards Board.

Referral to the Borough Solicitor

The Sub-Committee may refer a matter to the Borough Solicitor for investigation or for some other action to be taken. The Sub-Committee will consider the appropriateness of other actions based on the facts of the case but it is more likely to be appropriate where there is a pattern of poor relationships or failings in governance.

'Other Action' is an alternative to investigation and will only be pursued following consultation with the Borough Solicitor on its suitability in the circumstances.

Although the Sub-Committee shall retain the discretion to determine what form the other action shall take, ordinarily it will be confined to either:

- (1) Training for the Member(s)
- (2) Mediation between the complainant and the Member
- (3) Advice on changes to procedures of the Council if they are relevant to the complaint.

Mediation

Where mediation is proposed, the Sub-Committee shall first seek the written consent of the complainant, the Member concerned and any third party that would need to participate.

In any case where a complaint is referred for other action the complainant and the Member shall be advised that the matter shall not be reconsidered again for investigation except;

- (1) Where the Member complained or refuses to cooperate with mediation, the Sub-Committee shall reconsider whether to investigate and the failure to cooperate shall be viewed as an aggravating factor.
- (2) Where a complainant refuses to cooperate in mediation, the Sub-Committee shall reconsider whether to investigate and the failure to cooperate shall be viewed as a mitigating factor in favour of the Member
- (3) Where both parties refuse to cooperate, the Sub-Committee shall reconsider whether to investigate and in doing so shall discount the refusals of the parties.

In the above cases the Sub-Committee will try to reconsider the complaint within 20 working days of the deadline given to the parties to state whether they will cooperate with mediation.

Decision Notices

The decision notice must set out the reasons for that decision and be provided to the complainant and the Member concerned. The Borough Solicitor will usually send this letter within 5 working days of the decision of the Sub-Committee.

The complainant should be advised of their right to request a review of the decision by setting out in writing the grounds upon which a review is sought within 30 working days of receipt of the initial assessment decision.

If the decision is to refer the complaint to the Borough Solicitor or the Standards Board for England the decision notice must summarise the complaint, the type of referral made and the reason for it.

The Sub-Committee may decide not to provide a summary of the complaint to the Member complained about (ie the decision notice) but only where it decides that to do so would be against the public interest or may prejudice any future investigation. The advice of the Borough Solicitor must first be obtained and the Sub-Committee must satisfy itself that sufficient evidence exists to justify the application of one of the above grounds. The Sub-Committee must also consider whether more limited information can be provided to the Member, and any restriction on the provision of information to the councillor must be kept under review by the Borough Solicitor. Where the Borough Solicitor considers that the reasons for withholding the information no longer apply the Assessment Sub-Committee shall reconsider the decision.

Where a decision is taken to withhold the decision notice from the Member subject to the complaint, the notice will not be published for public inspection until the information is provided to the Member.

Review of No Further Action Decisions

The Review Sub-Committee shall meet within 3 months of receiving a request to review the decision of the Assessment Sub-Committee not to investigate a case. (The Review Sub-Committee has been established for the sole purpose of reviewing on request decisions of the Assessment Sub-Committee.)

The Review Sub-Committee shall apply the same criteria used for initial assessment and provide the same information to the parties.

When a request for a review is received, the Borough Solicitor shall write to the complainant acknowledging the request and explaining the process for determination. The Member subject to the complaint will be similarly advised.

Initial Test

The Review Sub-Committee will initially determine whether the request is appropriate for the purpose of considering a review. A review will be undertaken where the grounds are:

- (a) That insufficient emphasis has been given to a particular aspect of the complaint
- (b) There has been a failure to follow published criteria
- (c) The Assessment Sub-Committee based its decision on a misunderstanding of the complaint.

However, if further information is provided with the complaint that was not available to the Assessment Sub-Committee, the Review Sub-Committee shall decline to review the original decision if the effect of the new information is to substantially change the nature of the complaint. In these cases the complaint will be referred back to the Assessment Sub-Committee for consideration as a new complaint.

The Review Sub-Committee has the same powers as are available to the Assessment Sub-Committee.

A decision shall be sent to the parties within 5 working days of the meeting wherever possible.

Access to Documents and Meetings of the Assessment and Review Sub-Committees

Meetings of the Assessment and Review Sub-Committees shall be held in private and the committee papers will not be published. However, a written summary of complaints considered by the Sub-Committee will be published and which will include:

- (1) The main points considered
- (2) The conclusions on the complaint
- (3) The reasons for the conclusion

The summary will not name the Member subject to the complaint only where to do so would in the view of the Assessment Sub-Committee prejudice any subsequent investigation or otherwise would not be in the public interest. The summary shall be available for inspection for 6 years following the decision.

Withdrawing Complaints

Where a complainant decides to withdraw a complaint, the matter will be referred to the Assessment Sub-Committee, which will ordinarily formally close the matter by deciding that

no further action be taken. However, the Sub-Committee may continue to assess a complaint or else continue with an investigation or monitor other action already sanctioned where:

- (a) there are other complainants in respect of the same matter, and/or;
- (b) sufficient evidence in relation to the complaint is capable of being gathered without the participation of the complainant who has withdrawn the complaint, and;
- (c) the public interest still warrants assessment or investigation or other action in respect of the complaint.

Confidentiality

Except in exceptional circumstances, the identity of complainants will be disclosed to the Member subject to the complaint. A request from a complainant to preserve anonymity shall be considered by the Assessment Sub-Committee when it assesses the complaint. The Sub-Committee shall only consider granting anonymity to the complainant where one of the following grounds applies:

- (a) The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed.
- (b) The complainant is an officer who has reasonable grounds for believing that they will be subject to intimidation, bullying or threats in connection with their employment.
- (c) The complainant suffers from a serious medical condition and there are medical risks associated with the disclosure of their identity. Medical evidence will be required in respect of this ground.

In each of the above cases the Sub-Committee may only grant a request if they consider that a fair investigation can still be conducted.

If the Sub-Committee decline a request for anonymity the complainant shall be given the option of withdrawing the complaint as an alternative to the disclosure of information.

Anonymous Complaints

Anonymous complaints will not be considered further unless the complainant provides independent evidence, capable of verification and which discloses potentially serious wrongdoing.

Standards Committee
July 2008