



## **TYNE AND WEAR FIRE AND RESCUE AUTHORITY**

### **PROCEDURE FOR THE LOCAL ASSESSMENT OF COMPLAINTS**

#### **1. Introduction**

- 1.1 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 Authority's Governance Committee that a member or co-opted member of the Authority, has acted in breach of the Code of Conduct for Members.
- 1.2 Any such complaint should be sent (using the Form attached as Appendix 1) to the Chair of the Assessment Sub-Committee, The Governance Committee, c/o The Monitoring Officer, Tyne and Wear Fire and Rescue Authority, PO Box 100, Civic Centre, Sunderland, SR2 7DN.
- 1.3 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 Central Government or is in line with statutory Guidance issued by the Standards Board for England.
- 1.4 No member or officer will participate in the assessment process if they have a personal conflict of interest in the matter.

#### **2. Initial Notification of Complaint**

- 2.1 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 Governance 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).

- 2.2 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 as referred to in paragraph 3.1 below.

### 3. **Initial Assessment**

- 3.1 A sub-committee of the Governance 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 it 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 Governance Committee, including at least one elected Authority member and one Independent Member. It must be chaired by an Independent Member.

The Sub-Committee will normally comprise three members of the Governance Committee, being one Independent Member and two members of the Authority, from different Political Groups. These members will be selected on a rotation basis by the Deputy Clerk but wherever possible the Independent Member will be the Chair of the Governance Committee who will also act as the Chair of the Sub-Committee. All members must be present for the duration of the meeting.

- 3.2 The Assessment Sub-Committee will receive a report from the Monitoring Officer which will indicate if the complaint is within the jurisdiction of the Sub-Committee and 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.

- 3.3 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 authority committees or sub-committees concerning notice of meetings, circulation of agendas and documents and public access.

- 3.4 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 Authority or a Co-opted Member to whom the Code of Conduct applies
- 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.

- 3.5 Where the above tests are satisfied the Assessment Sub-Committee will decide either:

- (a) to refer the complaint to the Authority’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.

- 3.6 Where the complaint is against a person who is no longer a Member of the Authority, 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.
- 3.7 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.

That 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 also be made available for inspection at the offices of the Authority for 6 years beginning with the date of the meeting.

The summary will not be made available for inspection, until the member who was the subject of the complaint has been given a written summary of the decision.

- 3.8 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 a person's ability to investigate the allegation. In considering this the Sub-Committee will consider the risk of intimidation and whether early disclosure of the complaint may lead to evidence being compromised or destroyed. 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 Governance 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").

##### 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; and
  - (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
  - (c) Within 3 months after the day on which the direction was received, or as soon as is reasonably practicable thereafter, the Monitoring Officer 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.
- 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

#### 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 relevant procedures will be followed.
- 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 Authority, 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 3.5 above.

- 4.2.3 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 Authority'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 Authority's Code of Conduct or that of another relevant authority.

4.2.4 Where the Sub-Committee considers a matter referred back to it, it may direct that the matter should not be referred back to it again.

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

5.1 Where the Assessment Sub-Committee decides to refer the complaint to the Standards Board, the Standards Board will either:

- (a) refer it to one of its Ethical Standards Officers for investigation, or
- (b) decide no action should be taken in respect of the complaint, or
- (c) refer it back to the Governance Committee.

5.2 If the Standards Board decides no action should be taken, it must take reasonable steps to give written notice of the decision and the reasons for it to:

- (a) the complainant, and
- (b) the person who was the subject of the complaint.

5.3 If the Standards Board refers the allegation back to the Governance Committee, an Assessment Sub-Committee will be convened. This may, but need not, comprise the same members as formed the original Assessment Sub-Committee for that complaint. 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.

The complaint cannot be referred back again to the Standards Board.

5.4 If the Standards Board refers the allegation to one of its Ethical Standards Officers, it will be dealt with in accordance with the approved procedures.

## 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 Governance 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 Governance 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 Governance Committee, including at least two elected members 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 three members of the Governance Committee, being an Independent Member and two members of the Authority, from different Political Groups (if practicable). These members will be selected on a rotation basis by the Deputy Clerk taking account of availability and any potential conflicts of interest. The Independent Member will act as the Chair of the Sub-Committee.

- 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 Authority committees or sub-committees concerning notice of meetings, circulation of agendas and documents and public access.

- 6.2.5 The Review Sub-Committee will consider the matter afresh and 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 a reference/decision within 3 months from receipt of the request for review, but it will seek to do so within an average time of 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.

That 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 also be made available for inspection at the offices of the Authority for 6 years beginning with the date of the meeting.

The summary will not be made available for inspection, until the member who was the subject of the complaint has been given a written summary of the decision.

## **7. Withdrawing Complaints**

- 7.1 If a complainant requests to withdraw his/her complaint before the Assessment Sub-Committee has made a decision on it, then the Sub-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?

## **8. Confidentiality**

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.

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 their employment will be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.

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.

If the Assessment Sub-Committee decides to refuse a request from 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

## **9. Complaints about Members of more than one Authority**

Where a complaint is received about a Councillor who is known to be a member of another 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.

## Assessment Criteria

The following criteria will be taken into account in deciding what action, if any, to take:

- 1. Has the complainant submitted enough information to satisfy the Assessment Sub-Committee that the complaint should be referred for investigation or other action?**

If not:

The information provided is insufficient to make a decision. So unless, or until, further information is received, the Assessment Sub-Committee will take no further action on the complaint.

- 2. Is the complaint about someone who is no longer a member of the Authority, but is a member of another authority? If so, does the Assessment Sub-Committee wish to refer the complaint to the monitoring office of that other authority?**

If yes:

The complaint will be referred to the Governance Committee of that other authority to consider.

- 3. Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?**

If yes:

There may be nothing more to be gained by further action being taken.

- 4. Is the complaint about something which happened so long ago that there would be little benefit in taking action now?**

If yes:

Further action may not be warranted.

- 5. Does the complaint appear too trivial to justify the cost or inconvenience of further action?**

If yes:

Further action will not be warranted.

- 6. Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?**

If yes:



Further action will not normally be warranted.

## **7. Is the complaint anonymous?**

If yes:

No action will normally be taken unless there are compelling reasons to suggest otherwise, eg if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

## **6. Is it appropriate to refer the matter to the Standards Board?**

- Does the Committee believe that the status of the member or members, or the number of members about whom the complaint is made, would make it difficult for it to deal with the complaint?

Eg is the member a group leader or member of the Governance Committee?

- Does the Committee believe that the status of the complainant or complainants would make it difficult for the committee to deal with the complaint?

Eg is the complainant a group leader, or a member of the Governance Committee, the Chief Executive, the Monitoring Officer or other senior officer?

- Does the Committee believe that there is a potential conflict of interest of so many members of the Governance Committee that it could not properly monitor the investigation?
- Does the Committee believe 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?
- Is the case so serious or complex, or involving so many members, that it cannot be handled locally?
- Will the complaint require substantial amounts of evidence beyond that available from the Authority's documents, its members or officers?
- Is there substantial "governance dysfunction" in the Authority or its Governance Committee?
- Does the complaint relate to long-term or systemic member/officer bullying which could be more effectively investigated by someone outside the Authority?
- Does the complaint raise significant or unresolved legal issues on which a national ruling would be helpful?

- Might the public perceive the Authority to have an interest in the outcome of a case?

Eg if the Authority could be liable to be judicially reviewed if the complaint is upheld.

- Are there exceptional circumstances which would prevent the Authority or its Governance 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?