

NORTH NORFOLK DISTRICT COUNCIL

CODE OF CONDUCT

LOCAL ASSESSMENT FRAMEWORK – PROCESS AND PROCEDURES

1.0 Publicising the complaints process

1.1 Complaints must be submitted in writing to the Monitoring Officer, North Norfolk District Council, Council Offices, Holt Road, Cromer.

1.2 The Council will publicise where complaints can be sent to and the complaints process in the following ways;

- On the website.
- Notices on Council noticeboards
- Notify Parish Clerks within the District
- From time to time place notices in appropriate publications, including Outlook

2.0 Making a complaint

2.1 Complainants can submit complaints in writing, by email or by fax to the Monitoring Officer.

2.2 A complaint form is attached at Appendix 1 which details the information required.

2.3 Complaints will be considered about councillors, members and co-opted members of North Norfolk District Council and parish and town councils in North Norfolk. A co-opted member is a voting member of a council or one of its committees, who was appointed to their position rather than being elected.

2.4 The Standards Committee will not investigate the following:

- complaints where a member is not named
- complaints that are not in writing
- incidents or actions that are not covered by the Code of Conduct
- incidents that are about a fault in the way the council has or has not done something. This is known as maladministration and may be a matter for the Local Government Ombudsman
- complaints about people employed by councils
- incidents that happened before a member was elected
- incidents that happened either before the council adopted its local Code of Conduct or before 5 May 2002, whichever is earlier
- complaints about the way in which the council conducts and records its meetings

2.5 On receipt of a complaint the Monitoring Officer will consider whether the complaint should be directed to the Assessment Sub Committee or whether another course of action is appropriate.

2.6 If the complaint is clearly not about member conduct, then the Monitoring Officer does not have to pass it to the Assessment Sub-Committee.

2.7 Where complaints are made verbally the Monitoring Officer will ask the complainant if they want to formally put the matter in writing to the Standards Committee. If the complainant does not then the Monitoring Officer will consider the options for informal resolution to satisfy the complainant.

3.0 Acknowledging receipt of a complaint

3.1 The Monitoring Officer has a discretion to acknowledge receipt of complaint and to tell the subject member that a complaint has been made about them. When doing this the Monitoring Officer will apply the Standards Committees procedures with regard to withholding summaries (see below).

3.2 The notification will state;

- a complaint has been made
- state 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)
- the relevant paragraphs of the Code of Conduct that may have been breached.
- that a written summary of the allegation will only be provided to the subject member once the assessment sub-committee has met to consider the complaint.
- date of this meeting, if known.

4.0 Pre-assessment reports and enquiries

4.1 The Monitoring Officer or other officer, will prepare a short summary of a complaint for the assessment sub-committee to consider. This will include;

- whether the complaint is within jurisdiction
- the paragraphs of the Code of Conduct the complaint might relate 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 obtaining a copy of a declaration of acceptance of office form and

an undertaking to observe the Code, minutes of meetings, a copy of a member's entry in the register of interests, information from Companies House or the Land Registry, other easily obtainable documents

4.2 Officers may also contact complainants for clarification of their complaint if they are unable to understand the document submitted. Pre-assessment enquiries will not be carried out in such a way as to amount to an investigation. For example, they should not extend to interviewing potential witnesses, the complainant, or the subject member.

4.3 Officers will not seek opinions on an allegation rather than factual information as this may prejudice any subsequent investigation.

5.0 Initial tests

5.1 Before assessment of a complaint begins, the Assessment Sub-Committee will need to be satisfied that the complaint meets the following tests:

- it is a complaint against one or more named members of the authority or an authority covered by the standards committee
- the named 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 member was operating at the time of the alleged misconduct

5.2 If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant will be informed that no further action will be taken in respect of the complaint.

6.0 Assessment criteria

6.1 The Assessment Sub-Committee has adopted the following criteria against which it assesses new complaints and decides what action, if any, to take. These criteria reflect local circumstances and are intended to be simple, clear and open and to ensure fairness for both the complainant and the subject member.

6.1.1 Has the complainant submitted enough information to satisfy the assessment sub-committee that the complaint should be referred for investigation or other action?

The complaint will not be referred for action unless sufficient evidence is provided to the Assessment Sub Committee.

6.1.2 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 officer of that other authority?

Where the member is no longer a member of the Council or one of our Parish or Town Councils but is a member of another authority, the complaint will be referred to the standards committee of that authority to consider.

6.1.3 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 the matter of complaint has already been subject to a previous investigation or other action and there is nothing more to be gained by further action being taken then the no further action will be taken.

6.1.4 Is the complaint about something that happened so long ago that there would be little benefit in taking action now?

If the period of time since the alleged conduct occurred is considerable then it is likely that further action was not warranted.

6.1.5 Is the complaint too trivial to warrant further action?

Complaints which are considered trivial by the Assessment Sub Committee will not be considered further.

6.1.6 Does the complaint appear to be simply malicious, politically motivated, vexatious or tit-for-tat?

If the matter appears to be simply malicious, politically motivated, vexatious or tit-for-tat, and not sufficiently serious, it is likely that no further action will be warranted.

6.1.7 Is the complaint anonymous?

Anonymous complaints will only be referred for investigation or some other action if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

7.0 Initial assessment decisions

7.1 The Assessment Sub-Committee will endeavour to complete its initial assessment of an allegation within an average of 20 working days, to reach a decision on what should happen with the complaint.

7.2 The Assessment Sub-Committee is required to reach one of the three following decisions on a complaint about a member's actions in relation to the Code of Conduct:

- referral of the complaint to the monitoring officer of the authority concerned, which under section 57A(3) of the Local Government Act 2000, as amended which may be another authority
- referral of the complaint to the Standards Board for England
- no action should be taken in respect of the complaint

7.3 Referral for local investigation

7.3.1 When the Assessment Sub-Committee considers a new complaint, it can decide that it should be referred to the Monitoring Officer for investigation.

7.3.2 The Monitoring Officer will write to the relevant parties informing them of the decision and, if appropriate, advising who will be responsible for conducting the investigation.

7.4 Referral to the Standards Board for England

7.4.1 In most cases, the Council will be able to deal with the investigation of complaints concerning our own Members and the parish and town Councils we are responsible for. However, there will sometimes be issues in a case, or public interest considerations, which make it difficult for the the Council to deal with the case fairly and speedily. In such cases, the Assessment Sub-committee may wish to refer a complaint to the Standards Board to be investigated by an ethical standards officer.

7.4.2 If the Assessment Sub-Committee believes that a complaint should be investigated by the Standards Board, it will take immediate steps to refer the matter.

7.5 Referral for other action

7.5.1 When the Assessment Sub-Committee considers a new complaint, it can decide that other action to an investigation should be taken and it can refer the matter to the Monitoring Officer to carry this out. It may not always be in the interests of good governance to undertake or complete an investigation into an allegation of misconduct. The Assessment Sub-Committee will consult its Monitoring Officer before reaching a decision to take other action.

7.5.2 It is not possible to set out all the circumstances where other action may be appropriate, but an example is where the authority to which the subject member belongs appears to have a poor understanding of the Code and authority procedures. Evidence for this may include:

- a number of members failing to comply with the same paragraph of the Code
- officers giving incorrect advice
- failure to adopt the Code
- inadequate or incomplete protocols for use of authority resources

7.5.3 Other action may also be appropriate where a breakdown in relationships within the authority is apparent, evidence of which may include:

- a pattern of allegations of disrespect, bullying or harassment
- factionalised groupings within the authority
- a series of 'tit-for-tat' allegations
- ongoing employment issues, which may include resolved or ongoing employment tribunals, or grievance procedures

7.5.6 The Assessment Sub-Committee will consider other action on a practical basis, taking into account the needs of the councils which they serve.

7.5.7 Complaints that have been referred to the Monitoring Officer for other action should not then be referred back to the Standards Committee if the other action is perceived to have failed.

7.5.8 The Assessment Sub-Committee will require the parties involved to confirm in writing that they will co-operate with the process of other action proposed. The Monitoring Officer will write to the parties outlining:

- what is being proposed
- why it is being proposed
- why they should co-operate
- what the standards committee hopes to achieve

7.5.9 The following are some examples of alternatives to investigation:

- arranging for the subject member to attend a training course
- arranging for that member and the complainant to engage in a process of conciliation
- instituting changes to the procedures of the authority if they have given rise to the complaint

7.6 Decision to take no action

7.6.1 The Assessment Sub-Committee can decide that no action is required in respect of a complaint. For example, this could be because the Assessment Sub-Committee does not consider the complaint to be sufficiently serious to warrant any action.

- 7.6.2 Where no potential breach of the Code of Conduct is disclosed by the complaint, no matter what its source or whoever the subject member, no action can be taken by the standards committee in respect of it. The matter of referral for investigation or other action therefore does not arise.
- 7.6.3 The complainant will be advised of their right to ask for a review of a decision to take no action. They will be told that they can exercise this right by writing to the standards committee with their reasons for requesting a review. The complainant will also be advised of the date by which their review request should be received by the standards committee which is 30 working days after the initial assessment decision is received.

7.7 Notification requirements – local assessment decisions

- 7.7.1 If the Assessment Sub-Committee decides to take no action over a complaint, then within 5 working days of making the decision it will give notice in writing of the decision and set out clearly the reasons for that decision. Where no potential breach of the Code is disclosed, the Assessment Sub-Committee will explain in the decision notice what the allegation was and why they believe this to be the case. This notice will be given to the relevant parties to the complainant and the subject member. A copy of the decision notice will be given to the parish or town clerk if the subject member is a parish or town councillor.
- 7.7.2 If the Assessment Sub-Committee decides that the complaint should be referred to the Monitoring Officer or to the Standards Board for England, it will send a summary of the complaint to the relevant parties.
- 7.7.3 The summary will state what the allegation was and what type of referral it made, for example whether it referred the complaint to the monitoring officer or to the Standards Board for investigation. The decision notice will not explain why a particular referral decision has been made.

- 7.7.4 After it has made its decision, the Assessment Sub-Committee does not have to give the subject member a summary of the complaint, if it decides that doing so would be against the public interest or would prejudice any future investigation for example where it is considered likely that the subject member may intimidate the complainant or the witnesses involved. It could also happen where early disclosure of the complaint may lead to evidence being compromised or destroyed. In making this decision the Assessment Sub-Committee will seek the advice of the Council's Monitoring Officer.
- 7.7.5 The Monitoring Officer will carry out an assessment of the potential risks to the investigation. This is to determine 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. An example of this is allowing the subject member to preserve any evidence. The Monitoring Officer will then advise the Assessment Sub-committee accordingly.
- 7.7.6 The Assessment Sub-Committee can use its discretion to give limited information to the subject member if it decides this would not be against the public interest or prejudice any investigation. Any decision to withhold the summary will be kept under review as circumstances change.

8. Review

8.1 Reviews of 'no further action' decisions

- 8.1.1 If the Assessment Sub-Committee decides not to take any action on a complaint, then the complainant has a right of review over that decision.

- 8.1.2 The Review Sub-Committee will carry out its review within a maximum of three months of receiving the request (usually within 20 working days).
- 8.1.3 Members of the Assessment Sub-committee who made the original decision must not take part in the review of that decision. A separate Review Sub-Committee, made up of members of the Standards Committee, will consider the review.
- 8.1.4 The review sub-committee will apply the same criteria used for initial assessment. The Review Sub-Committee has the same decisions available to it as the Assessment Sub-Committee.
- 8.1.5 Further information might be made available in support of a complaint that changes its nature or gives rise to a potential new complaint. In such cases, the Review Sub-Committee should consider carefully if it is more appropriate to pass this to the Assessment Sub-Committee to be handled as a new complaint. In this instance, the Review Sub-Committee will still need to make a formal decision that the review request will not be granted.
- 8.1.6 For example, a review may be more appropriate if a complainant wishes to challenge that:
- not enough emphasis has been given to a particular aspect of the complaint
 - there has been a failure to follow any published criteria
 - there has been an error in procedures

8.2 Notification requirements – reviews of local assessment decisions

- 8.2.1 When a review request is received from the complainant, the subject member will be notified. When the Review Sub-Committee reviews the

Assessment Sub-Committee's decision it has the same decisions available to it that the assessment sub-committee had. It could be decided that no action should be taken on the complaint. In this case, the Review Sub-Committee will send out its decision notice within five working days of the decision being made to the complainant and the subject member.

8.2.2 If it is decided that the complaint should be referred to the Monitoring Officer or to the Standards Board for England, the standards committee will write to the relevant parties telling them this and letting them have a summary of the complaint.

8.2.3 The decision notice will not explain why that particular referral decision has been made as it might prejudice the investigation or other action.

9. Access to meetings and decision making

9.1 Initial assessment decisions, and any subsequent review of decisions to take no further action on a complaint, will be conducted in closed meetings. These are not subject to the notice and publicity requirements under Part 5 of the Local Government Act 1972.

9.2 A standards committee undertaking its role in the assessment or review of a complaint is not subject to the following rules:

- rules regarding notices of meetings
- rules on the circulation of agendas and documents
- rules over public access to meetings
- rules on the validity of proceedings

9.3 Following an Assessment or Review Sub-Committee has considered a complaint a written summary will be produced which will include:

- the main points considered

- the conclusions on the complaint
- the reasons for the conclusion

9.4 The summary may give the name of the subject member unless doing so is not in the public interest or would prejudice any subsequent investigation.

9.5 The written summary will be made available for the public to inspect at the authority's offices for six years and given to any parish or town council concerned.

9.6 In limited situations, a standards committee can decide not to give the written summary to the subject member when a referral decision has been made. If this is the case the written summary will be given to the town or parish council at the same time the summary is given to the subject member during the investigation process.

10. Withdrawing complaints

10.1 There may be occasions when the complainant asks to withdraw their complaint prior to the assessment sub-committee having made a decision on it.

10.2 In these circumstances, the assessment sub-committee will decide whether to grant the request. They will consider the following:

- 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 subject member, or an associate of theirs, to withdraw the complaint?

11. Confidentiality

- 11.1 As a matter of fairness and natural justice, a member should usually be told who has complained about them. However, there may be instances where the complainant asks for their identity to be withheld. Such requests will only be granted in exceptional circumstances and at the discretion of the Assessment Sub-Committee. The Assessment Sub-committee will consider the request for confidentiality alongside the substance of the complaint itself.
- 11.2 Requests will be judged on the following criteria;
- The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed.
 - The complainant is an officer who works closely with the subject member and they are afraid of the consequences to their employment or of losing their job if their identity is disclosed
 - The complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed. In such circumstances, medical evidence may be requested of the complainant's condition.
- 11.3 In certain cases, such as allegations of bullying, revealing the identity of the complainant may be necessary for investigation of the complaint. In such cases the complainant will also be given the option of requesting a withdrawal of their complaint.
- 11.4 When considering requests for confidentiality, the Assessment Sub-Committee will also consider whether it is possible to investigate the complaint without making the complainant's identity known.
- 11.5 If the Assessment Sub-Committee decides to refuse a request by a complainant for confidentiality, it will offer the complainant the option to

withdraw, rather than proceed with their identity being disclosed. In certain circumstances, the public interest in proceeding with an investigation may outweigh the complainant's wish to have their identity withheld from the subject member. The assessment sub-committee will decide where the balance lies in the particular circumstances of each complaint.

12 Members with conflicts of interest

Note: this section does not deal with any interests which may arise under the Code of Conduct, which members must also keep in mind and deal with as appropriate.

12.1 A member of the standards committee who was involved in any of the following decisions **can** be a member of the committee that hears and determines the complaint at the conclusion of an investigation:

- the initial assessment decision
- a referral back for another assessment decision
- a review of an assessment decision

12.2 The assessment decision relates only to whether the complaint discloses something that needs to be investigated or referred for other action. It does not determine whether the conduct took place or whether it was a breach of the Code.

12.3 The standards committee hearing the case will decide on the evidence before it as to whether the Code has been breached and, if so, if any sanction should apply.

- 12.4 The assessment process must be conducted with impartiality and fairness. There may be cases where it would not be appropriate for a member to be involved in the process, even if not disqualified from doing so by law.
- 12.5 Any member who is a complainant or one of the following should not participate in the assessment process:
- anyone closely associated with
 - someone who is a complainant
 - a potential witness or victim relating to a complaint
- 12.6 In certain situations, a standards committee member might initially be involved with the initial assessment of a case that is then referred to the Standards Board for England or to the Council's Monitoring Officer. The case might then be referred back to the standards committee to consider again. In such circumstances, the member may continue their participation in the assessment process. However, a standards committee member who is involved at these assessment stages of the process, either initially or following a referral back from the Standards Board or monitoring officer, should not participate in the review of that decision.

13. Officers with conflicts of interest

- 13.1 An officer who has previously advised a subject member or who has advised the complainant about the issues giving rise to a complaint should consider whether they can properly take part in the assessment process. The officer should also consider whether they should stand aside due to their prior involvement, which has been such that others involved may view them as biased. If the officer has taken part in supporting the assessment or hearing process then they should not be involved in the investigation of that matter.

13.2 The Monitoring Officer will act as the main adviser to the standards committee unless the monitoring officer has an interest in a matter that would prevent them from performing the role independently.

13.3 If the monitoring officer is unable to take part in the assessment process, their role will be delegated to another appropriate officer of the authority, such as the deputy monitoring officer. Similarly, the role of any other officer who is unable to take part in the assessment process should be taken by another officer.

14. Personal conflicts

14.1 Members and officers should take care to avoid any personal conflicts of interest arising when participating in the consideration of a complaint that a member may have breached the Code of Conduct. The provisions of the authority's Code relating to personal and prejudicial interests apply to standards committee members in meetings and hearings.

14.2 These may include consideration of the following:

- The complaint is likely to affect the well-being or financial position of that member or officer or the well-being or financial position of a friend, family member or person with whom they have a close association.
- The member or officer is directly or indirectly involved in the case in any way.
- A family member, friend or close associate of the member or officer is involved in the case.
- The member or officer has an interest in any matter relating to the case. For example, it concerns a member's failure to declare an interest in a planning application in which the member or officer has an interest. This is despite the fact that the outcome of any investigation or other action could not affect the decision reached on the application.

14.3 Anyone who has a prejudicial interest or who is involved with a complaint in any way should not take part in the assessment or review sub-committee. Decisions made in an assessment or review sub-committee should not be influenced by anything outside the papers and advice put before the members in that committee. The members should not discuss complaints with others who are not members of the committee which deals with the assessment or review. Discussions between members should only take place at official meetings.