

Assessment Criteria for the Assessment Sub-Committee and the Review Sub-Committee to consider when dealing with complaints against Members under the Code of Conduct

The Sub-Committee needs to consider on every occasion the following extract from the Council's Constitution, when dealing with any complaints received:

The Constitution already specifies (at Article 13.2) that "All decisions of the Council will be made in accordance with the following principles:

- (a) due regard to all relevant considerations and disregard to all irrelevant factors;
- (b) proportionality (i.e. the action must be proportionate to the desired outcome);
- (c) lawfulness and financial propriety and prudence;
- (d) due consultation and the taking of professional advice from officers;
- (e) respect for human rights;
- (f) a presumption in favour of openness;
- (g) clarity of aims and desired outcomes; and
- (h) an explanation of options considered and reasons for decisions."

The purpose of the initial assessment decision or review is simply to decide whether any action should be taken on the complaint – either as an investigation or some other action. The Assessment and Review Sub committees make no findings of fact.

1. CRITERIA FOR DEALING WITH COMPLAINTS RECEIVED

The Sub-Committee needs to consider the following issues in deciding how to deal with all complaints received:

- 1.1 The Sub-Committee must bear in mind the importance of ensuring that complainants are confident that complaints about Member conduct are taken seriously and dealt with appropriately.
- 1.2 The Sub-Committee must also bear in mind that deciding to investigate a complaint or to take other action will cost both public money and the officers' and elected members' time.
- 1.3 The Sub-Committee must be satisfied that it has sufficient information to make a decision (as to what option it chooses to dispose of the complaint).
- 1.4 If the complaint is about someone who is no longer a Member of Calderdale Council or Parish or Town Council, but who remains a member of another authority, the Sub-Committee must be satisfied that it wishes to refer the complaint to the Monitoring Officer of that other authority.

2. CRITERIA FOR REFERRING MATTERS TO THE STANDARDS BOARD FOR ENGLAND

The Sub-Committee must consider the following issues in deciding whether to refer a complaint to the Standards Board for England for investigation:

- 2.1 The status of the member or members who have been complained about, or the number of members about whom the complaint is made.
- 2.2 Whether the member is a group leader, elected leader or mayor, a member of the Council's Cabinet or Standards Committee, and if so, whether the status of the complainant or complainants would make it difficult for the Standards Committee to deal with the complaint.
- 2.3 Whether there is a potential conflict of interest of so many members of Standards Committee that it could not properly monitor the investigation, if undertaken by the Monitoring Officer.
- 2.4 Whether 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 that potential conflict.
- 2.5 Whether complaint is so serious or complex, or involving so many members, that it cannot be handled locally.
- 2.6 Whether the complaint will require substantial amounts of evidence beyond that available from the Council's documents, its members or officers.
- 2.7 Whether the complaint alleges substantial governance dysfunction in the Council or its Standards Committee.
- 2.8 Whether the complaint relates to long-term or systemic member/officer bullying which could be more effectively investigated by someone outside the Council.
- 2.9 Whether the complaint raises significant or unresolved legal issues on which a national ruling would be helpful.
- 2.10 Whether the perception of the public might be that the Council has an interest in the outcome of a complaint (for example if the Council could be liable to judicial review if the complaint is upheld).
- 2.11 Whether there are any exceptional circumstances which would prevent the Council or its Standards Committee investigating the complaint competently, fairly and in a reasonable period of time, or it would be unreasonable for local provision to be made for an investigation.
- 2.12 If the Sub-Committee believes that a complaint should be investigated by the Standards Board, it must refer the matter to the Standards Board, along with the relevant paragraph or paragraphs of the Code of Conduct, together with the reasons why the complaint cannot be dealt with locally.

3. REFERRAL FOR OTHER ACTION

The Sub-Committee must consider the following issues in deciding whether to refer a matter to the Monitoring Officer for other action:

- 3.1 When the Sub-Committee considers a complaint (either an individual complaint or a series of complaints), it may decide that other action, not an investigation should be taken, and it will instruct the Monitoring Officer to carry this out. In making this decision, the Sub-Committee must consider the practicalities of the situation, taking into account the needs of the authority and of the parish and town councils within the Borough.
- 3.2 It is not possible to set out all the circumstances where other action may be appropriate but the Sub-Committee must consult the Monitoring Officer before reaching a decision to take other action.
- 3.3 If the Sub-Committee decides to propose that a complaint should be dealt with through referral to the Monitoring Officer for other action, the parties involved will be asked to confirm in writing that they will co-operate with the process proposed. The Monitoring Officer will write to the relevant parties outlining:
 - what is being proposed
 - why it is being proposed
 - why they should co-operate
 - what the Sub- Committee hopes to achieve.
- 3.4 If any of the relevant parties decline to co-operate, then the Sub-Committee will be notified and reconsider the complaint but exclude the possibility of referring the matter to the Monitoring Officer for other action.

4. REFERRAL FOR LOCAL INVESTIGATION

A Sub-Committee may decide to refer a complaint to the Monitoring Officer for investigation. The Monitoring Officer must investigate the complaint and refer the outcome of the investigation to the Hearings Panel for investigation.

5. CRITERIA FOR CONSIDERING THAT NO ACTION SHOULD BE TAKEN

The Sub-Committee must consider the following criteria in considering whether to take no action upon receipt of a complaint:

- 5.1 If the complaint has already been the subject of an investigation or other action relating to the Code of Conduct or the subject of an investigation by other regulatory or statutory authorities including the Ombudsman, the Sub-Committee must consider whether it wishes to add to the investigations held and what benefit or value for money would be gained by further action.
- 5.2 The Sub-Committee must consider the date of the alleged incident giving rise to the complaint and consider whether any benefit would now be derived from taking action, given the length of time since the event and the date of the alleged incident.

- 5.3 The Sub-Committee must consider whether a complaint is trivial, malicious, politically motivated, less serious, vexatious or tit-for-tat, such that further action is not warranted.
- 5.4 The Sub-Committee must consider whether the complaint has been made anonymously. If so, the Sub-Committee will only refer such a complaint for investigation or other action if it is accompanied by documentary or photographic evidence indicating that the matter is exceptionally serious.

6. DEALING WITH REQUESTS THAT THE NAME OF THE COMPLAINANT SHOULD NOT BE DISCLOSED

The Sub-Committee must consider the following criteria in considering whether to take a decision not to name a complainant:

- 6.1 The starting point is that in the interests of fairness and natural justice, Members/Councillors who are complained about have a right to know who has made the complaint, and be provided with a summary of the complaint.
- 6.2 Complainants can make a request for confidentiality but this will not automatically be granted. The Sub-Committee will consider whether there is a good reason to withhold the identity or the details of a complainant.
- 6.3 The Sub-Committee will consider the request for confidentiality and any information provided in support, alongside the details of the complaint and decide whether to grant the request. It will give reasons for its decision.
- 6.4 If the request for confidentiality is not granted, the Sub-Committee will normally allow a complainant to withdraw a complaint.
- 6.5 In exceptional circumstances the Sub-Committee may have no choice but to disclose a complainant's personal and complaint details, and proceed with an investigation (or other action). This will only be the case if the allegation(s) made are very serious and the Sub-Committee will provide its reasons to the complainant for making this decision.

7. CRITERIA FOR THE REVIEW SUB-COMMITTEE

The Review Sub-Committee must apply the same criteria used for the initial assessment of complaints, and requests that the name of the complainant should not be disclosed as set out above, and has the same options in dealing with a complaint as the Assessment Sub-Committee.

- 7.1 There may be cases where further information is 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 must consider carefully if it is more appropriate to pass this to the Assessment Sub-Committee to be handled as a new complaint. If the Review Sub-Committee so decides, the Review Sub-Committee will decide that the review request has not been granted.

- 7.2 The Review Sub-Committee must take account of the views of the complainant if the complainant alleges :
- 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
- 7.3 If more information or new information of any significance is available to the Review Sub-Committee, and this information is not merely a repeat complaint, the Review Sub-Committee must consider whether the additional or new information means that the matter should be treated as a new complaint rather than a request for review. If the Review Committee decides that it is more appropriate to pass the matter to the Assessment Sub-Committee to be handled as a new complaint, the Review Sub-Committee will decide that the review request has not been granted.