

Eden District Council

Code of Conduct - Initial Assessment Procedure

Introduction

1. The initial assessment of allegations about the conduct of a Member is governed by this procedure operating through the Monitoring Officer.
2. The person making the complaint is referred to in this procedure as the Complainant and the person against whom the complaint is made is referred to as the Member.

Assessment Panel

3. Upon receipt of an allegation that a Member or Co-opted Member may have breached the Code of Conduct the Monitoring Officer will convene a meeting of an Assessment Panel (as soon as possible and in any event within 20 working days) to consider that allegation.
4. Before the assessment of a complaint begins the Monitoring Officer and the Assessment Panel shall be satisfied that the complaint meets the test and assessment criteria set out in the Appendix 1 to this procedure. If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code and the complainant must be informed that no further action will be taken in respect of the complaint.
5. If the Monitoring Officer and the Assessment Panel are satisfied that the complaint meets the test and assessment criteria set out in the Appendix 1 to this procedure the Assessment Panel may proceed to make an assessment of the complaint and then advise the Monitoring Officer:
 - a) to investigate the complaint;
 - b) to take other specified action; or
 - c) that no action should be taken in respect of the allegation.
6. If no action should be taken in respect of the allegation, notice must be given in writing to the complainant of the decision and the reasons for that decision.

Right of Review

7. If a decision is made that no action should be taken in respect of an allegation the complainant may ask for a review of the decision. Any request for a review must be in writing, and be made within 30 days of the date of the decision.
8. Information submitted in a request for a review should be focused solely upon the substantive allegations of the original complaint. If new allegations are raised in the review request, then these shall be dealt with in one of the following ways, to be determined by the Monitoring Officer:

- (a) The new allegations may be considered as part of the review of the original complaint, but only if they relate to the original complaint and only if the person against whom the complaint has had an opportunity to comment;
 - (b) The Review of the original complaint may be postponed until there has been an initial assessment of the new allegations, so that, if appropriate, all of the complaints can be considered together;
 - (c) The new allegations may be the subject of separate assessment and be dealt with independently from the Review of the original complaint.
9. Subject to paragraph 8 above, any request for a review will be considered by a Review Panel within 35 working days beginning with the date a request for a review is received.

Notifying the Member

10. Where appropriate, a copy of the complaint will be given to the Member.
11. If the Panel makes a decision that no action should be taken in respect of the allegation, it will give notice in writing to the Member of the decision and reasons for the decision.
12. If a request for a review of that decision is made, the Member will also be advised in writing of the request.
13. The requirement to notify the Member does not apply if it is determined that to do so would be contrary to the public interest or would prejudice the person's ability to investigate the allegation.

Referral to Monitoring Officer - Other Steps

14. If the Assessment Panel advises on the referral of an allegation to the Council's Monitoring Officer a request may be given to take steps other than the carrying out of an investigation or to carry out an investigation.
15. Those other steps are:
- a) arranging for the Member to attend a training course; or
 - b) arranging that the Member and Complainant engage in a process of conciliation; or
 - c) such other steps not including an investigation as appear appropriate.
16. Where a matter is referred to the Monitoring Officer under paragraphs 14 and 15 above, the Monitoring Officer shall deal with the matter in accordance with the request and shall give notice that the matter has been so referred to:
- i) the Member and to the Complainant; and
 - ii) any Parish Council concerned
- and will within three months of the request, or as soon as reasonably practicable thereafter, submit a written report giving details of the action taken or proposed to comply with the direction.
17. If the Panel is not satisfied with the action specified in the report, it shall give a further request to the Monitoring Officer.

18. If the Panel is satisfied with the action specified, the Monitoring Officer shall give written notice to that effect to:
 - a) the Member;
 - b) the Complainant; and
 - c) any Parish Council concerned.

Referral to Monitoring Officer for Investigation

19. If a matter is referred to the Council's Monitoring Officer for investigation then the Monitoring Officer, unless otherwise directed, shall inform:
 - a) the Member;
 - b) the Complainant; and
 - c) any Parish Council concerned that the matter has been referred for investigation.
20. If the matter is referred for investigation, then the Council's Procedure for the Local Investigation of Referred Complaints will be applied to such an investigation.

Local Initial Assessment Procedure

Initial Tests

Before an assessment of a complaint begins, the assessment panel and the Monitoring Officer should 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 for which the committee is responsible.
- 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.

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

1. **Circumstances where it may be decided that no action should be taken in respect of the allegation**

- 1.1 Where the complaint is about someone who is no longer a member of the Council or Parish Council.
- 1.2 Where the information provided by the complainant is not sufficient to enable the Panel to make a decision as to whether the complaint should be referred for investigation or other action.
- 1.3 Where a substantially similar allegation has previously been made by the complainant to the Accounts and Governance Committee, or the complaint has been the subject of an investigation in relation to the complaint (except where a Review Panel considers that a request for review contains new information and should be considered by an Assessment Panel rather than the Review Panel).
- 1.4 Where the complaint is about something that happened so long ago that there would be little benefit or purpose in pursuing the complaint.
- 1.5 Where the allegation is anonymous, unless it includes documentary or photographic evidence indicating a serious or significant matter.
- 1.6 Where the allegation discloses a potential breach of the Code of Conduct, but the Committee considers that the complaint is too trivial to merit further action.
- 1.7 Where the complaint appears to be malicious or politically motivated.

2. **Circumstances where the allegation may be referred to the Monitoring Officer for investigation**

- 2.1 Where the allegation discloses a potential breach of the Code of Conduct that the Committee considers sufficiently serious to justify an investigation.

3. **Circumstances where the allegation may be referred to the Monitoring Officer for training, conciliation or other steps as appropriate**

Note: This approach may be appropriate where it is believed 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 member breached the Code, and no conclusion will have been reached on whether the member failed to comply with the Code.

- 3.1 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.
- 3.2 Where it is apparent that the subject of the allegation has admitted making an error and the matter would not warrant a more serious sanction.
- 3.3 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.