

SOUTH DERBYSHIRE DISTRICT COUNCIL

Procedure for Local Assessment of Complaints

Introduction

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 Council's Standards Committee that a Member of the Council, or a Member of one of the parish councils in the district of South Derbyshire, has acted in breach of the Code of Conduct for Members.

Any such complaint should be sent (using the Council's complaint form) to the Standards Committee c/o Andrea McCaskie, Monitoring Officer and Head of Legal and Democratic Services, South Derbyshire District Council, Civic Way, Swadlincote, Derbyshire, DE11 0AH.

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.

Updated: March 2009

Standards Sub-Committee (Initial Assessment)

1. A complaint will be acknowledged but the subject Member will not be advised that a complaint has been received, as only the Standards Sub-Committee (Initial Assessment) can provide a written summary of the allegation.
2. A Sub-Committee of the Standards Committee (known as “the Standards Sub-Committee (Initial Assessment)”) 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.
3. The Sub-Committee (Initial Assessment) must comprise, for the duration of the meeting, of three Members of the Standards Committee, including one elected District Council Member, one Parish Council Representative and one Independent Member. It must be chaired by an Independent Member. In the event that it is not possible to achieve this composition, a final decision on the make up of the Sub-Committee will be taken by the Monitoring Officer in consultation with the Chairman of the Standards Committee.
4. The Standards Sub-Committee (Initial Assessment) will receive a report from the Monitoring Officer which will 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.
5. The meeting and papers will not be open to the public. Neither the complainant nor the Member who is the subject of the complaint will be invited to attend.
6. The Sub-Committee will not be subject to the usual rules which apply to council committees or sub-committees concerning notice of meetings, circulation of agendas and documents and public access.
7. The Standards Sub-Committee (Initial Assessment) will decide either:
 - (a) to refer the complaint to the Council’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.
8. Where the complaint is against a person who is no longer a Member of the Council, 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.
9. 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 Decision Notice 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.

10. The Decision Notice will be sent as soon as possible, and generally within five working days of the Sub-Committee meeting, to the complainant and to the Member who is the subject of the complaint. It will also be given to any relevant Parish Council.
11. A summary will also be made available for inspection at the offices of the Council for 6 years beginning with the date of the meeting.
12. The summary will not be made available for inspection, or the decision notice given to any parish council concerned, until the Member who was the subject of the complaint has been given the Decision Notice.
13. In addition, the Decision Notice will contain a written summary of the allegation which 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. 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 Standards Sub-Committee (Consideration), whichever is the earlier.

Allegation referred to the Monitoring Officer

14. If the Standards Sub-Committee (Initial Assessment) refers the complaint to the Monitoring Officer, it may direct the Monitoring Officer either (i) to take steps other than an investigation ("other action") or (ii) to carry out an investigation.

Referral to Monitoring Officer for Other Action

15. The Sub-Committee may refer the complaint to the Monitoring Officer to take other action only after first consulting the Monitoring Officer.
16. The other action 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 action (not including an investigation), as appears appropriate to the Sub-Committee.
17. Where a matter is referred to the Monitoring Officer to take other action, 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; and
 - (iv) any Parish Council 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 Standards Sub-Committee (Initial Assessment) giving details of the action taken, or proposed, to comply with the direction.
18. If the Sub-Committee is not satisfied with the action specified in that report, it shall give a further direction to the Monitoring Officer.
19. If the Standards Sub-Committee (Initial Assessment) 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; and
 - (d) any Parish Council concerned.

Referral to the Monitoring Officer for Investigation

20. Where the Standards Sub-Committee (Initial Assessment) refers the complaint to the Monitoring Officer for investigation, this explains how the investigation will be conducted and how its results will then be considered by the Standards Sub-Committee at a hearing.
21. The Monitoring Officer may at any time refer the matter back to the Standards Sub-Committee (Initial Assessment) if:
- (a) as a result of new evidence or information, she 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 Council, and the Monitoring Officer considers that, in the circumstances, it is no longer appropriate to continue with an investigation.
22. If a matter is referred back to the Sub-Committee, it will reconsider and make one of the decisions set out in paragraph 7 above.

Note 1 - In forming an opinion for the purposes of paragraph 21(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 Council'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 Council's Code of Conduct or that of another relevant authority.

Note 2 - Where the Sub-Committee considers a matter referred back to it under this paragraph 21, it may direct that the matter should not be referred back to it again.

Allegation referred to the Standards Board for England

- 23. Where the Standards Sub-Committee (Initial Assessment) 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 Standards Committee.
- 24. 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.
- 25. If the Standards Board refers the allegation back to the Standards Committee, a Standards Sub-Committee (Initial Assessment) will be convened. This may, but need not, comprise the same Members as formed the original Standards Sub-Committee (Initial Assessment) for that complaint. It must then decide either:
 - (a) to refer the complaint to the Monitoring Officer for investigation or other action; or
 - (b) that no further action should be taken in respect of the complaint.
- 26. The complaint cannot be referred back again to the Standards Board.

Standards Sub-Committee (Review)

Procedure for review of complaints where there is a decision to take no action in respect of an allegation

1. If the Standards Sub-Committee (Initial Assessment) 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; and
 - (c) any parish council concerned.

The Decision Notice will be sent as soon as possible, and generally within 5 working days of the Sub-Committee meeting.

Right to request a review of the decision to take no action

2. The complainant may request the Standards Sub-Committee (Review) to review the decision not to take any action.
3. Any such request must be in writing, addressed c/o Andrea McCaskie, Monitoring Officer and Head of Legal & Democratic Services, and made within 30 days of the date of the notice referred to in paragraph 1 above.
4. 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 and also (if applicable) to any Parish Council concerned.
5. The Standards Sub-Committee (Review) will be appointed to review the decision not to take any action.
6. That Sub-Committee must also comprise, for the duration of the meeting, of three Members of the Standards Committee, including at least one elected District Council Member, a Parish Council representative and one Independent Member. It must be chaired by an Independent Member. Its Members, however, must not include Members who sat on the Standards Sub-Committee (Initial Assessment) whose decision is being reviewed. In the event that it is not possible to achieve this composition, a final decision on the make up of the Sub-Committee will taken by the Monitoring Officer, in consultation with the Chairman of the Standards Committee.
7. The meeting and papers will not be open to the public. Neither the complainant nor the Member who is the subject of the complaint will be invited to attend.
8. The Sub-Committee will not be subject to the usual rules which apply to Council Committees or Sub-Committees concerning notice of meetings, circulation of agendas and documents and public access.

9. The Standards Sub-Committee (Review) must either:
 - (a) refer the complaint to the Monitoring Officer for investigation or other action; or
 - (b) refer it to the Standards Board; or
 - (c) decide no action should be taken.
10. The Standards Sub-Committee (Review) must make such reference/decision within three months from receipt of the request for review, but it will seek to do so within an average time of 20 working days.
11. If the Standards Sub-Committee (Review) decides that no action should be taken, there is no further right of review.
12. 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 as soon as possible, and generally within 5 working days of the Sub-Committee meeting. The Parish Council will also be notified.
13. If the Sub-Committee decides to refer the complaint to the Monitoring Officer or the Standards Board, then the procedures outlined in the section on the Standards Sub-Committee (Initial Assessment), under headings 'Referral to Monitoring Officer for Other Action' (page 3), 'Referral to the Monitoring Officer for Investigation' (page 4) and 'Allegation referred to the Standards Board for England' (page 5) shall apply, as appropriate.
14. After making its decision, the Standards Sub-Committee (Review) will produce a Decision Notice 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.
15. The Decision Notice will be sent as soon as possible, and generally within 5 working days, to the complainant and to the Member who is the subject of the complaint. It will also be sent to any Parish Council concerned.
16. A summary will also be made available for inspection at the offices of the Council for six years beginning with the date of the meeting.
17. The summary will not be made available for inspection, or the Decision Notice given to any Parish Council concerned, until the Member who was the subject of the complaint has been given the Decision Notice.

Standards Sub-Committee (Consideration)

1. In the event of there being a local investigation, as outlined under the Standards Sub-Committee (Initial Assessment) section, heading 'Referral to the Monitoring Officer for Investigation' (page 4), the Standards Sub-Committee (Consideration) shall convene and consider the Investigator's Report and make one of the following findings:
 - (a) that it accepts the Monitoring Officer's finding of no failure to observe the Code of Conduct ("a finding of acceptance"); or
 - (b) that the matter should be referred for a hearing of the Standards Sub-Committee (Hearing); or
 - (c) that the matter should be referred to the Adjudication Panel for determination.
2. A Standards Sub-Committee (Consideration) may only make a finding under paragraph 1(c) above if:
 - (a) it has determined that the action it could take against the Member would be insufficient were a finding of failure to be made; and
 - (b) the president or deputy president of the Adjudication Panel has agreed to accept the referral.
3. As soon as possible, and generally within 5 working days, after making a finding of acceptance, the Standards Sub-Committee (Consideration) shall:
 - (a) give written notice of that finding to:
 - (i) the Member who is the subject of the finding of no failure;
 - (ii) any Ethical Standards Officer concerned;
 - (iii) the Standards Committee of any other authority concerned;
 - (iv) any Parish Council concerned; and
 - (v) the person who made the allegation that gave rise to the investigation; and
 - (b) subject to paragraph 4 below, arrange for a notice to be published stating that the Standards Sub-Committee (Consideration) have found that there has been no failure on the part of the Member concerned to comply with the Code of Conduct of the authority concerned or, as the case may be, with the Code of Conduct of any other authority concerned.
4. The notices referred to in paragraph 3(b) shall not be published if the Member concerned so requests.

5. Unless paragraph 4 applies, the notice referred to in paragraph 3(b) shall be published:
 - (a) in at least one newspaper circulating in the area of any authority concerned; and
 - (b) if considered appropriate by the Standards Sub-Committee (Consideration), on the website of any authority concerned; and
 - (c) if considered appropriate by the Standards Sub-Committee (Consideration), in any other publication.
6. A tribunal may be appointed from the Members of the Adjudication Panel to deal with a reference under sub-paragraph 1(c), as if the reference had been made under section 64(3)(b) of the Local Government Act 2000.
7. Where a tribunal appointed under paragraph 6 decides that a Member has failed to comply with the Code of Conduct of an authority, the Member may appeal to the High Court against that decision, or any other decision made by that tribunal.
8. The Standards Sub-Committee (Consideration) must comprise, for the duration of the meeting, of three Members of the Standards Committee, including at least one elected District Council Member, a Parish Council representative and one Independent Member. It must be chaired by an Independent Member. In the event that it is not possible to achieve this composition, a final decision on the make up of the Sub-Committee will be taken by the Monitoring Officer, in consultation with the Chairman of the Standards Committee.
9. The Standards Sub-Committee (Consideration) is subject to the usual rules which apply to Council Committees or Sub-Committees concerning notice of meetings, circulation of agendas and documents.
10. The meeting and papers will not be open to the public, under Paragraph 7c of Schedule 12A of the Local Government Act 1972. Neither the complainant, nor the Member who is the subject of the complaint, will be invited to attend.