

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

Jurisdiction and Local Assessment Criteria

Jurisdiction

Before assessment of a complaint begins, the relevant Standards Committee sub-committee should be satisfied that the complaint meets the following tests:

1. it is a complaint against one or more named Members of the authority or an authority covered by the standards committee;
2. the named Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
3. 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.

Assessment Criteria

All complaints falling within the jurisdiction of the Standards Committee will be assessed in accordance with the criteria below.

More than one criteria may be applicable to a complaint.

1. Capacity

Was the Member acting in his/her official capacity at the time of the alleged conduct?

If the answer is **no**, then unless there is some direct link between the activity and the Member's office, the Code did not apply to the Member at the time of the alleged conduct and therefore there can be no breach of the Code. The response of the sub-committee should therefore be: "The Member concerned was not acting in his/her official capacity at the time of the alleged conduct and therefore the Code of Conduct for Members did not apply to the Member at that time. Consequently no potential breach of the Code has been disclosed and the Standards Committee is unable to take any action in respect of the complaint."

The Code does not currently apply to Members' conduct outside of the performance of their functions as Members. Only if they have engaged in private conduct/activity which has a link with the functions of the office of member, might the conduct in question be covered by the Code.

NB: If certain legislative provisions are enacted in the future, then the Code will also apply to certain private conduct (which relates to paragraphs 3(2)(c) (intimidation), 5 (disrepute) or 6(a) (improperly conferring advantage/disadvantage) of the Code) which has led to a criminal conviction.

2. Triviality

Is the complaint too trivial to warrant further action?

If the answer is **yes**: “The matter is not considered to be sufficiently serious to warrant further action.”

3. Sufficient Information

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

If the answer is **no**, the response of the sub-committee should be: “The information provided was insufficient to make a decision as to whether the complaint should be referred for investigation or other action. So unless, or until, further information is received, the sub-committee is taking no further action on this complaint.”

4. Current Membership

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 sub-committee wish to refer the complaint to the monitoring officer of that other authority?

If the answer is **yes**: “Where the member is no longer a member of our authority but is a member of another authority, the complaint will be referred to the standards committee of that authority to consider.”

5. Prior Investigation/Action

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 answer is **yes**: “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.”

6. Passage of Time

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

If the answer is **yes**: “The period of time that has passed since the alleged conduct occurred was taken into account when deciding whether this matter should be referred for investigation or further action. It was decided under the circumstances that further action was not warranted.”

7. Underlying Motivation

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

If the answer is **yes**: “The matter appears to be simply malicious, politically motivated or tit-for-tat, and not sufficiently serious, and it was decided that further action was not warranted”.

8. Anonymous Complaints

Is the complaint under consideration anonymous?

If the answer is **yes**, the Assessment Sub-Committee will only refer such a complaint for investigation or some other action if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

9. Requests for Confidentiality

Has the complainant asked for his/her identity to be withheld?

If the answer is **yes**, the Assessment Sub-Committee will need to consider the request by the complainant for confidentiality alongside the substance of the complaint itself.

As a matter of fairness and natural justice, Members should usually be told who has complained about them. Requests for confidentiality should only be granted in exceptional circumstances and at the discretion of the Assessment Sub-Committee.

The following considerations may assist the Sub-Committee's deliberations in this respect:

- (a) Whether the complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed;
- (b) Whether 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 (NB: this should be covered by the Council's Whistle-Blowing Policy);
- (c) Whether the complainant suffers from a serious health condition and there are medical risks associated with his/her identity being disclosed. In such circumstances, the Assessment Sub-Committee may wish to request medical evidence of the complainant's condition;
- (d) Whether the disclosure of the complainant's identity is necessary for the investigation of the complaint; for example, this may be relevant in a bullying allegation. In such cases, the Assessment Sub-Committee may give the complainant the option of requesting a withdrawal of his/her complaint;
- (e) Whether it is possible to investigate the complaint without making the complainant's identity known;
- (f) Whether the public interest in proceeding with an investigation outweighs the complainant's wish to have their identity withheld from the subject Member.

Where the Assessment Sub-Committee decides to refuse a request by a complainant for confidentiality, it may, in the particular circumstances, decide to offer the complainant the option to withdraw the complaint, rather than proceed with their identity being disclosed.

10. Withdrawal of Complaints

Has the complainant indicated that s/he wishes to withdraw his/her complaint?

If the answer is **yes**, the Assessment Sub-Committee will need to decide whether to grant the request. The following considerations may assist the Sub-Committee's deliberations in this respect:

- (a) Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?

- (b) Is the complaint such that action can be taken on it, for example an investigation, without the complainant's participation?
- (c) 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 to withdraw the complaint?

Possible decisions

The sub-committee assessing a complaint 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, may be another authority, for investigation or other action;
- referral of the complaint to the Standards Board for England;
- no action should be taken in respect of the complaint.

August 2008