

Part 4.1 Members' Code of Conduct

Code of Conduct Complaint Assessment Criteria

Before any assessment is made the Monitoring Officer must 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.

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 formal action will be taken in respect of the complaint.

As part of its consideration the Monitoring Officer will promote confidence in the system by demonstrating that the processes and procedures take complaints seriously and are dealt with appropriately, fairly and in a balanced way. However, as part of that consideration regard will be had to the fact that deciding to investigate a complaint or take other action will cost both public money and the officers' and Members' time. This will be an important consideration where the matter is relatively minor.

Submission of information

The Monitoring Officer will only consider cases where he/she is satisfied that there is sufficient information to ensure we can fulfil our role to treat complaints seriously and for them to be dealt with appropriately, fairly and in a balanced way. If the Monitoring Officer is not satisfied that there is enough information to make a decision as to whether the complaint should be referred for investigation or other action he/she will advise the complainant that no further action will be taken on the complaint.

Identity of person complained against

If the complaint is about someone who is no longer a Member of the Authority but is a Member of another authority the complaint will be referred to that authority to consider.

Nature of complaint

If the complaint has already been the subject of an investigation or other action relating to the Code of Conduct or been the subject of an investigation by other

regulatory authorities then the complainant will be advised that there is nothing to be gained by further action being taken.

Timing between alleged breach and receipt of complaint

If the complaint relates to something that happened so long ago that there would be little benefit in taking action now then the complainant will be advised accordingly. Any notification will make it clear that the period of time that has passed since the alleged conduct occurred was taken into account when deciding whether the matter should be referred for investigation or further action. In the light of this no further action would be warranted.

Trivial complaints

If the complaint is considered to be trivial then the complainant will be notified that it was not considered sufficiently serious to warrant further action.

Malicious, politically motivated or tit for tat complaints

If the matter is considered to fall within these categories then the complainant will be notified that it appears simply to fall into the relevant category and was not considered sufficiently serious to warrant further action.

Anonymous complaints

The Monitoring Officer will not entertain anonymous complaints.

Confidentiality of complainant in the public interest

To ensure that as many complaints as possible will be considered the Monitoring Officer is authorised to keep the identity of the complainant confidential where the Monitoring Officer is of the opinion that this is in the public interest.

Multiple complaints

It is not uncommon that one event gives rise to similar complaints from a number of different complainants. The regime is concerned with individual Member's potential breach of the Code of Conduct and so each separate complaint must be considered.

Initial assessment decisions

The purpose of such decisions is to reach a decision on what should happen with the complaint. In undertaking its function one of the following decisions will be reached:

- informal resolution of the complaint;
- referral of the complaint to the Monitoring Officer for further investigation;
- no action be taken.

In considering the decisions available we will have regard to the following:

- the public interest;
- any difficulty in dealing with the case fairly and speedily;
- the status of the Member;
- the status of the complainant;
- whether there is a potential conflict of interest of so many Members of the standards committee that it could not properly monitor the investigation;
- 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 the conflict;
- the seriousness or complexity of the case;
- whether the complaint relates to long -term or systematic/officer bullying which could be more effectively investigated by someone outside the authority.

There is a presumption in favour of local informal resolution wherever possible. This course will be dependent upon the nature of the complaint and will take into account the needs of Swale Borough Council and the parish and town councils which they serve.

Certain complaints will lend themselves to being resolved in this way. For instance they may indicate a wider problem of lack of knowledge or understanding of the Code or where a training need amongst a group of councillors is identified.

A proactive approach can be a good way to resolve matters that are less serious.

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.

If other action is proposed then all parties will be asked to confirm in writing that they will cooperate with the process.

Where a formal investigation finds evidence of failure to comply with the Code of Conduct there may well still be an opportunity for local resolution, avoiding the necessity of a local hearing. If this is an appropriate course of action and the complainant is satisfied with the outcome, then the Monitoring Officer will consult with the Independent Person before agreeing any local resolution.

Any decision to take no action will have regard to the assessment criteria set out. There has to be a potential breach of the Code for any action to be considered.