

WIRRAL COUNCIL**STANDARDS COMMITTEE - INITIAL ASSESSMENT PANEL****Appendix**

Wirral Standards Committee – Terms of Reference of Panels (Sub-Committees)

Wirral Council is required to establish sub-committees of its Standards Committee to exercise certain functions under the Standards Committee (England) Regulations 2008. The terms of reference for the panels which will do so are set out below. Each panel shall be a sub-committee of the Standards Committee. Members of each panel must be a member of the Standards Committee.

A. Terms of Reference of the Standards Initial Assessment Panel

1. The Standards Initial Assessment Panel will, subject to paragraph 2 below, initially assess all written complaints received by Council's Monitoring Officer on the appropriate Complaints Form.
2. The Standards Initial Assessment Panel will only have jurisdiction to consider written allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Council's Code of Conduct for Members.
3. The Standards Initial Assessment Panel after consideration of a complaint may:-
 - i). decide that no action should be taken in respect of the allegation;
 - ii) ask for additional information from the complainant on the allegation before concluding the initial assessment;
 - iii). if applying the assessment criteria it considers an investigation should be carried out, refer the allegation to the Council's Monitoring Officer, with an instruction that he arranges for an investigation of the allegation or directs that he arranges training, conciliation or such other appropriate action as might be permitted by the relevant legislation;
 - iv). If, applying the matters set out in the Protocol for Dealing with Complaints it is appropriate, refer the allegation to the Standards Board for England for investigation; or
 - v). where the allegation is in respect of a person who is no longer a member of the Council, but is a member of another relevant authority (as defined in Section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other authority,

and shall authorise the Monitoring Officer to take all reasonable steps to implement its decision(s), with reasons, and to notify the person making the allegation and the member concerned of that decision.

4. In the event of there being a local investigation under paragraph 3(iii), the Standards Initial Assessment Panel shall determine, with reasons, whether:
 - i). it accepts the Monitoring Officer's finding of no failure to observe the Code of Conduct;
 - ii). the matter should be referred for a hearing of the Standards Committee; or
 - iii). the matter should be referred to the Adjudication Panel for determination.

5. The Standards Initial Assessment Panel shall also consider under Sections 1 and 2 of the Local Government and Housing Act 1989: -
 - (a) any application received from any officer of the Council for exemption from political restriction in respect of the post held by that officer and may direct the Council that the post shall not be considered to be a politically restricted post and that the post be removed from the list maintained by the Council under Section 2(2) of that Act; and
 - b) upon the application of any person or otherwise, consider whether a post should be included in the list maintained by the Council under Section 2(2) of the 1989 Act, and may direct the Council to include a post in that list.

6. **Composition** - The Standards Initial Assessment Panel shall comprise of 3 members. One of whom shall be an independent member of the Standards Committee who shall be the Chair of the Panel and two elected members of the Council who are members of the Standards Committee.

7. **Quorum** - The quorum for a meeting of the Standards Initial Assessment Panel shall be 3 members (with an independent member as Chair) who must be present throughout the course of the meeting.

8. **Frequency of Meetings** - The Standards Initial Assessment Panel will only meet if it needs to initially assess an allegation at that meeting or consider the outcome of an investigation under paragraph 4 above, or consider any application under paragraph 5 above.

WIRRAL COUNCIL

STANDARDS COMMITTEE - INITIAL ASSESSMENT PANEL

Appendix

Wirral Standards Committee Assessment Criteria

In considering whether or not a complaint should be investigated or no further action should be taken then the Initial Assessment Panel will consider the following criteria:

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

If the answer is **no**: "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 Initial Assessment Panel is taking no further action on this complaint."

2) 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 Initial Assessment Panel 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."

3) 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."

4) 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."

5): 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."

6) Does the complaint appear to be simply malicious, 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".

7) Has the Complaint been submitted anonymously?

If the answer is **yes** then the complaint will only be investigated in exceptional circumstances, for example if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

WIRRAL COUNCIL**STANDARDS INITIAL ASSESSMENT PANEL****Appendix****Protocol for Dealing with Complaints of Breach of Code of Conduct by Members****1) Receipt of Complaint by the Monitoring Officer**

On receipt of a complaint the Monitoring Officer must consider the Complaint. If the Complaint does not relate to member conduct then the Monitoring Officer will consider whether it should be dealt with through another process, for example the Corporate Complaints procedure. The Monitoring Officer may seek further clarification from the Complainant. If the matter clearly does not relate to the conduct of a member then the Monitoring Officer need not refer it to the Initial Assessment Panel and will notify the Complainant accordingly.

2) Further Clarification

If the substance of the Complaint is unclear from the form received the Monitoring Officer may seek clarification from the Complainant. This should not amount to an investigation but should merely be to seek clarification of any issues which are not clear from the Complaint Form.

3) Referral to the Initial Assessment Panel

On receipt of a complaint the Monitoring Officer shall arrange for an Initial Assessment Panel to be convened as soon as possible within 20 working days. The Monitoring Officer shall prepare a brief report setting out;

- a) whether the complaint falls within the jurisdiction of the Standards Committee;
- b) the relevant paragraphs of the Code of Conduct which the complaint relates to;
- c) if the complaint is lengthy or complex a summary of the key aspects;
- d) any further information available which might assist the Panel; for example;
 - (i) a copy of the member's declaration of office;
 - (ii) minutes of meetings;
 - (iii) a copy of the members entry in the register of interests;
 - (iv) information from Companies House or the Land Registry; and/or
 - (v) any other relevant documents which are easily obtainable.

4) Initial Tests

The Initial Assessment Panel must first consider whether the complaint meets 3 basic tests:

- a) is it a complaint against one or more named members of the authority;
- b) was the named member in office at the time of the alleged conduct and the Code of Conduct was in force at the time; and

- c) the complaint, if proven, would be a breach of the Code under which the member was operating at the time.

If the complaint fails **any** of these tests then it cannot be investigated as a breach and the complainant must be notified that no further action will be taken.

5) **Initial Assessment**

The Initial Assessment Panel will consider at the meeting whether or not to take any further action. In considering whether or not to do so it must consider the Assessment Criteria. The Initial Assessment Panel will base its decision purely on the information supplied by the complainant in the Complaint Form and any relevant information contained within the Monitoring Officer's covering report.

The Initial Assessment Panel may;

- a) determine that no further action should be taken;
- b) refer the matter to the Monitoring officer for investigation or alternative action;
- c) refer the complaint to the Standards Board for England ("SBE").

6) **Access to Information/Meetings**

Meetings of the Initial Assessment Panel and the Review Panel are not covered by the Rules on Access to Information that govern other meetings of committees. There is a responsibility to ensure confidentiality of the complainant and the member. For this reason and to ensure that there can be no suggestion of undue process the member who is the subject of the complaint will not be notified of the complaint until after the Initial Assessment Panel has considered the Complaint.

No officer or member of the Initial Assessment Panel shall disclose the existence or details of the Complaint to any other person other than those members or officers present at the Initial Assessment Panel Hearing.

The details of the date and time of meetings of the Initial Assessment and Review Panels will be published on the council's system in the usual way. However, no details of the complainant, the complaint or the member who is subject of the complaint will be published. The only people who will be present during any meeting of the Initial Assessment or Review Panels will be the members of the panels and the Monitoring Officer and/or his representative(s). The complainant and the member who is the subject of the complaint must not be present at any meeting of the Initial Assessment or Review Panel.

There will be no published minutes of the decisions of the Initial Assessment or Review Panels. However, written notifications must be sent to the relevant parties, this is considered further below.

7) **Referral to the SBE**

The Initial Assessment Panel may refer the matter to the SBE. The SBE will accept cases for investigation by an Ethical Standards Officer if it is considered to be in the public interest. The SBE Guidance states that in considering this it will take in to account:

- a) whether the status of the member involved would make it difficult for the complaint to be dealt with locally, e.g. if it is against the leader of the council, a group leader, a cabinet member or a member of the standards committee;
- b) whether the status of the complainant would make it difficult for the complaint to be dealt with locally, e.g. if the complainant is the leader of the council, a group leader, a cabinet member, a member of the standards committee, the Chief Executive, the Monitoring Officer or another senior officer;
- c) if there is a potential conflict of interest for so many members of the standards committee that it could not properly monitor the investigation;
- d) if there is a potential conflict of interest for the Monitoring officer or other officers and that suitable arrangements cannot be put in place to address the conflict;
- e) is the case so serious or complex or involving so many members that it cannot be handled locally;
- f) will the complaint require substantial amounts of evidence beyond that available for the authority's documents, members or officers;
- g) is there a substantial dysfunction in the governance of the authority or its standards committee;
- h) does the complaint relate to long term systemic member/officer bullying which could be more effectively investigated by someone outside of the authority;
- i) does the complaint raise significant or unresolved legal issues on which it would be helpful to gain a national ruling;
- j) might the authority be perceived by the public to have an interest in the outcome of the case, e.g. if the authority might be liable to be judicially reviewed if the complaint were upheld; and
- k) are there exceptional circumstances which would prevent the authority from investigating the complaint competently, fairly and in a reasonable period of time, or meaning that it would be unreasonable for local provision to be made for the investigation.

The Initial Assessment Panel will consider these factors in determining whether or not to refer any complaint to the SBE.

The SBE will normally make a decision on whether to accept a complaint within 10 working days. If the SBE declines to accept a case it will notify the authority setting out reasons why. If it is referred back then the Initial Assessment Panel must consider the Complaint again within 20 working days.

8) **Referral for Alternative Action**

The Initial Assessment Panel may refer the complaint to the Monitoring Officer to take alternative action. The Initial Assessment Panel must consult with the Monitoring Officer before doing so. The alternative action could be training, amendments to Council procedures or some form of mediation/conciliation.

9) **Taking no Further Action**

The Initial Assessment Panel may decide that no further action should be taken. The Initial Assessment Panel might do this on the basis that the complaint, even if substantiated, would not amount to a breach of the code. Alternatively it may conclude that a complaint, even if on the face of it would amount to a breach, should not be investigated. In reaching that decision the Panel must have regard to the assessment criteria.