

ROSSENDALE BOROUGH COUNCIL

PROCEDURE FOR THE ASSESSMENT, REFERRAL AND INVESTIGATION OF COMPLAINTS OF BREACH OF THE CODE OF CONDUCT

Introduction

1. This procedure applies when a complaint is received that a Councillor, Co-opted Member or Parish Councillor has or may have failed to comply with the Members Code of Conduct.
2. The person making the complaint will be referred to as “the complainant” and the person against whom the complaint is made will be referred to as the “subject member.”
3. The procedure will also apply if a complaint is referred back to the Standards Committee by the Standards Board for England.
4. No Member or Officer will participate in any stage of the assessment process if he or she has or may have any personal conflict of interest in the matter.

Assessment Sub-Committee

5. Upon receipt of a complaint that a Councillor, Co-opted Member or Parish Councillor has failed or may have failed to comply with the Members Code of Conduct, the Monitoring Officer will liaise with the Committee and Members Services Manager or her representative to convene as soon as possible and in any event within 20 working days a meeting of an Assessment Sub-Committee.
6. The Assessment Sub-Committee will comprise three members of the Standards Committee, including an Independent Member who will act as Chairman. Where the complaint relates to a Parish Councillor, the Assessment Sub-Committee will include a parish member of the Standards Committee. The Sub-Committee will be convened on an ad hoc basis, and members will be appointed by the Monitoring Officer or her representative on a rotational basis, taking account of availability, and on the basis that so far as possible the Assessment Sub-Committee will not include a councillor of the same group as the subject member or the complainant.
7. The Assessment Sub-Committee will be advised by the Monitoring Officer, the Deputy Monitoring Officer or another Legally qualified officer .
8. The purpose of the Assessment Sub-Committee will be to decide whether any action should be taken on the complaint, either as an investigation or some other action. The Assessment Sub-Committee will not make any findings of fact.
9. The Assessment Sub-Committee will receive in advance of the meeting a copy of the complaint, together with a pre assessment report prepared by the Monitoring Officer or her representative which will set out the following details:
 - Whether the complaint is within the jurisdiction of the Standards Committee;
 - The paragraphs of the Code of Conduct the complaint may refer to, or the paragraphs the complainant has identified;
 - A summary of key aspects of the complaint if it is lengthy or complex;

- Any further information that the Officer has obtained to assist the Assessment Sub-Committee with its decision. This may include minutes of meetings, a copy of a member's entry in the register of interests, information from Companies House or the Land Registry, or other easily obtainable documents;
- Any clarification obtained by the Officer from the complainant if the complaint was unclear.

It should be noted, however, that pre-assessment inquiries will be limited, and will not be carried out in such way as to amount to an investigation.

The Assessment Process

10. The Assessment Sub-Committee will first consider whether the complaint meets the following tests:

- The complaint is against one or more named members or co-opted members of the Council or a parish council within its district;
- The subject 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 of Conduct under which the subject member was operating at the time of the alleged misconduct.

If the complaint fails and one or more of these tests, then it cannot be investigated as a breach of the Code of Conduct the decision of the Assessment Sub-Committee must be that no further action will be taken. The complainant must be informed that no further action will be taken in respect of the complaint.

11. If the complaint meets the above tests, then the Assessment Sub-Committee will proceed to consider whether to refer it to the Monitoring Officer, to refer it to the Standards Board for England, or whether no action should be taken. In making its decision, the Sub-Committee will take account of Assessment Criteria which are to be approved by the Standards Committee, and which will from time to time be reviewed by the Standards Committee.

12. The Assessment Sub-Committee will, unless there are exceptional circumstances, reach a decision within 20 working days of receipt of the complaint.

13. If the Assessment Sub-Committee decides to take no action over a complaint, then it will arrange for notice of that decision, including the reasons for it, to be given to the complainant, the subject member, and, if the subject member is a parish councillor, to the clerk to the relevant parish council. This will be done within five working days after the date of the meeting.

14. If the Assessment Sub-Committee decides to refer the complaint to the Monitoring Officer or to the Standards Board for England, it will arrange for a summary of the complaint to be sent to the complainant and the subject member stating what the allegation is, and the type of referral that has been made. This will be done within five working days after the date of the meeting.

15. However, the Assessment Sub-Committee may decide not to give the subject member a summary of the complaint if it considers that doing so would or might be against the public interest or would or might prejudice any future investigation. In considering this, the Sub-Committee will take advice from the Monitoring Officer, and will consider in particular whether it is likely that the subject member or other

person may seek to intimidate, or influence or pressurise the complainant or any witnesses involved or whether early disclosure of the complaint may lead to evidence being compromised or destroyed. The Sub-Committee will balance whether the risk of the case being prejudiced by the subject member being informed of the details of the complaint at that stage may outweigh the fairness of notifying the subject member.

The Review Process

16. If the Assessment Sub-Committee decides not to take any action on a complaint, then the complainant has a right to request a review of that decision, and will be so advised when notified of the decision.
17. When a request for review is received, the Monitoring officer will liaise with the Committee and Members Services Officer or her representative to convene as soon as possible and in any event within 20 working days a meeting of a Review Sub-Committee. The subject member will be informed when a review has been received
18. The Review Sub-Committee will comprise three members of the Standards Committee, including an Independent Member who will act as Chairman. None of these Members will have been members of the Assessment Sub-Committee that considered the original complaint. Where the complaint relates to a Parish Councillor, the Review Sub-Committee will include a parish member of the Standards Committee. The Sub-Committee will be convened on an ad hoc basis, and members will be appointed by the Monitoring Officer or her representative on a rotational basis, taking account of availability, and on the basis that so far as possible the Review Sub-Committee will not include a councillor of the same group as the subject member or the complainant.
19. In addition to the documents referred to in paragraph 9 above, the Review Sub-Committee shall have a copy of the Assessment Sub-Committee's decision notice, but will consider the complaint afresh, using the Assessment Criteria referred to in paragraph 11 above. The Review Sub-Committee has the same range of decisions available to it as the Assessment Sub-Committee and will follow the process outlined above in paragraphs 10-15 above.
20. Where on a request for review further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint, the Review Sub-Committee will consider if it is more appropriate to pass this to an Assessment Sub-Committee as a new complaint. In this instance, the Review Sub-Committee will make a formal decision that the review request will not be granted. Within 5 working days of making its decision both the complainant and the subject member will be provided with notice in writing of both the decision and reasons for the decision .In the event that a Parish Councillor is involved the Parish Council will be informed .

Withdrawing Complaints

21. If a complainant asks to withdraw the complaint prior to the Assessment Sub-Committee having made a decision on it, the Assessment Sub-Committee will decide whether or not to grant the request. In making its decision, the Sub-Committee will consider:
 - Whether the public interest in taking some action on the complaint outweighs the complainant's wish to withdraw it;

- Whether the complaint is such that action can be taken on it without the complainant's participation;
- Whether there is an identifiable underlying reason for the request to withdraw the complaint, and in particular whether there is any evidence that the complainant may have been intimidated, influenced or pressurised by the subject member or other person to withdraw the complaint, or any witnesses involved may have been intimidated, influenced or pressurised.

Confidentiality

22. If a complainant has asked for his or her identity to be withheld, this request will be considered by the Assessment Sub-Committee at the same time as it considers the complaint.
23. As a matter of fairness and natural justice, the subject member should usually be told who has complained about them. However, in exceptional circumstances, the Assessment Sub-Committee may grant confidentiality if it is satisfied that the complainant has reasonable grounds for believing that he or she or any witness involved will be at risk of physical harm, or his or her employment will be jeopardised if his or her identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the complainant's identity being disclosed.
24. The Assessment Sub-Committee will also take into account whether it would be possible to refer the complaint without making the complainant's identity known, and, in particular, whether the complainant's participation would be required if the complaint were referred.
25. If the Assessment Sub-Committee decides to refuse a request by a complainant for confidentiality, it may offer the complainant the option to withdraw, rather than proceed with his or her identity being disclosed. The Assessment Sub-Committee will balance whether the public interest in taking action on a complaint may outweigh the complainant's wish to have his or her identity withheld from the subject member

Complaints about Members of more than one Authority

26. Where a complaint is received about a councillor, a co-opted Member or parish councillor who is known to be a member of another authority, for example, the County Council, the Monitoring Officer will before the meeting of the Assessment Sub-Committee establish whether a similar allegation has been made to the other authority. In the light of information from and in co-operation with the other authority, the Assessment Sub-Committee will consider which authority should deal with the complaint.