

APPENDIX C TO REPORT SC/19/1

DEVON & SOMERSET FIRE & RESCUE AUTHORITY

MEMBERS' CODE OF CONDUCT

GUIDE TO MAKING A COMPLAINT

1. Summary

- 1.1 This guide provides information on making a complaint against certain types of inappropriate behaviour by Members - elected Councillors appointed to the Authority by constituent authorities. The guide explains:
- who you can complain about;
 - what you can complain about; and
 - what will happen to your complaint.
- 1.2 If you have any questions or difficulties arising from this guide – for example, if English is not your first language – then please contact the Monitoring Officer to the Authority on Exeter (01329) 872200.

2. Background

- 2.1 The Devon & Somerset Fire & Rescue Authority is a stand-alone local authority. As such, the law requires that it has its own Members' Code of Conduct and arrangements in place for dealing with any allegations that a Member has failed to follow this Code. The Code is also required to include appropriate provisions relating to the registration and disclosure of pecuniary and other interests.
- 2.2 A copy of the Members' Code of Conduct as approved by the Authority can be found on the website (www.dsfire.gov.uk) or is available on request from:
- The Monitoring Officer
Devon and Somerset Fire and Rescue Authority
Service Headquarters
The Knowle
Clyst St. George
EXETER EX3 0NW
Tel: (01392) 872200
e-mail: membercomplaints@dsfire.gov.uk
- 2.3 The Authority is made up of a total of elected councillors (Members) appointed to it by four constituent authorities (Devon and Somerset County Councils; Plymouth City Council and Torbay Council). All Members are required to follow the Authority's approved Members' Code of Conduct. Details of those Members currently serving on the Authority can be found on the Authority's website.
- 2.4 The Authority also has – as required by law – an “independent person” whose role is set out in Section 3 below. The “independent person” is not a Member or employee of the Authority or its constituent authorities.

3. The “Independent Person”

- 3.1 The Localism Act 2011 requires the Authority to have at least one “Independent Person” whose views:
- (a). must be sought by the Authority before it makes any determination on an allegation it has decided to investigate;
 - (b). may be sought in other circumstances; and
 - (c). may be sought by a Member subject to an allegation of failure to follow the Code.
- 3.2 In relation to (b), this Authority has determined that the views of the Independent Person must be sought by the Monitoring Officer when making the initial decision about any complaint received (see Section 10 below).
- 3.3 There is no right for a complainant to seek the views of the Independent Person and no such contact will be permitted. The Independent Person does not represent and nor are they an advisor either to any Member subject to a complaint or the Authority as a whole. The Independent Person must remain completely impartial and objective and cannot take sides. Their only role is to assess complaints and form a view on them.

4. The Standards Committee

- 4.1 This forms part of the Authority’s arrangements for dealing with complaints that a Member may have failed to follow its approved Code of Conduct. Its membership and Terms of Reference can be found on the Authority’s website and its functions are outlined elsewhere in this document. It should be noted that while the Standards Committee may be required to seek the views of the Independent Person, the Independent Person is neither a member nor co-opted member of the Committee.
- 4.2 Meetings of this Committee are also governed by legislation. Members of the press and public can normally attend to observe, but not partake in, the proceedings unless one of the statutory exemptions applies under which the press and public can be excluded from the meeting.

5. Who and What You CAN Complain About

- 5.1 You can only use this complaints procedure to complain that a Member, in their official capacity (i.e. when acting or purporting to act as a Member of the Authority) may have failed to follow the Authority’s approved Members’ Code of Conduct. The Code **does not** extend to behaviour in a Member’s private life. ***Please remember that a “Member” is an elected councillor appointed to the Authority by one of its constituent authorities (Devon and Somerset County Councils; Plymouth City Council and Torbay Council).***
- 5.2 Your complaint may be that the Member has:
- failed to treat others with respect;
 - acted in a way that that amounts to, or which may reasonably be construed as. unlawfully discrimination against someone;
 - bullied someone;

- intimidated, or attempted to intimidate, a person involved in an allegation against them;
- compromised the impartiality of those who work for, or on behalf of, the Authority;
- disclosed confidential information;
- prevented someone from gaining access to information to which they are lawfully entitled;
- brought an office of, or the Authority itself, into disrepute;
- used their position as a Member improperly to confer or secure an advantage or disadvantage;
- not used the resources of the Authority in accordance with its requirements
- disregarded advice when reaching decisions
- failed to give reasons for decisions where there is a statutory requirement to do so;
- failed to act appropriately in relation to a disclosable pecuniary interest as defined by the Code (**NOTE: please see Section 16 of this Guide**).

6. What CANNOT be dealt with under this procedure

6.1 This procedure *cannot* be used for:

- complaints where a Member is not named;
- complaints that are NOT in writing;
- incidents or actions that are not covered by the Authority's approved Members' Code of Conduct (e.g. that the complaint concerns acts carried out in the Member's private life);
- incidents that are about a fault in the way the Authority has or has not done something. This is known as maladministration and may be a matter for the Local Government Ombudsman;
- complaints about people employed by this Authority;
- incidents that happened before OR after the person complained of was a Member of the Authority;
- incidents that happened before the Authority adopted its approved Members' Code of Conduct;
- complaints about the way in which the Authority conducts and records its meetings.

7. How Do I Make a Complaint?

- 7.1** Your complaint **MUST** be in writing – this includes fax and electronic submissions. If, however, this would be difficult for you (for example, because of a disability or if English is not your first language) then please contact the Monitoring Officer to the Authority (whose contact details are provided above).

- 7.2 If you are complaining about more than one Member, you must submit a separate complaint for each Member complained about, specifying how you feel the Member concerned has failed to follow the Code.
- 7.3 A complaints form is available on the Authority website (www.dsfire.gov.uk) or on request from the Monitoring Officer to the Authority (e-mail: membercomplaints@dsfire.gov.uk). If you wish to make a complaint you are encouraged to use this form although you may prefer to write a letter setting out your complaint. If you choose to write a letter, it is important that you include in it **all** of the following information:-
- your name, address and other contact details (telephone number(s), e-mail address etc.);
 - your status (e.g. member of the public; local authority member; Authority employee; monitoring officer; Member of Parliament);
 - the name of the Member who the complaint is about;
 - details of how the Member has failed to follow the Code with, where possible, dates, witness details and other supporting information.
- 7.4 To assist the Authority with its monitoring, you are also asked to include brief details of your ethnic origin (e.g. British; Irish; Other White Background; White and Black Caribbean etc)¹.

Please note that your identity will normally be disclosed to the Member about whom you are complaining. This information may, however, be withheld from that Member in exceptional circumstances and at the discretion of the Monitoring Officer, in consultation with the Independent Person, if the following criteria are met:-

- ***you have reasonable grounds for believing that you will be at risk of physical harm if your identity is disclosed; and/or***
- ***you are an officer (i.e. employee of the Authority or a constituent authority) who works closely with the Member who is the subject of the complaint and you are afraid of the consequences to your employment or of losing your job if your identity is disclosed; and/or***
- ***you suffer from a serious medical condition and there are medical risks associated with your identity being disclosed. In this event, medical evidence of your condition will be required.***

8. Anonymous Complaints

- 8.1 Anonymous complaints will only be considered for investigation if the complaint includes photographic and/or documentary evidence indicating an exceptionally serious or significant matter.

¹ For full details of ethnic origin classifications used by the Authority, please refer to the Members' Code of Conduct Complaints Form

9. What will happen to my complaint?

9.1 On receiving your complaint, the Monitoring Officer will:

- aim to acknowledge it within three working days; and
- send a copy of your complaint to the Independent Person and gather any other information deemed necessary to make, in consultation with the Independent Person, an initial decision on whether or not the complaint should be investigated or some other form of action taken (for example, whether a mutually agreeable local settlement can be achieved). The Monitoring Officer will aim to reach this initial decision within an average of 20 working days.

10. How will this initial decision be made?

(a). Initial Criteria

10.1 Before any other assessment of the complaint begins, the Monitoring Officer will need to be satisfied that your complaint meets **ALL** of the following criteria:

- it is a complaint against one or more **named** Members of the Authority; **and**
- the **named** Member was in office at the time of the alleged conduct **and** the Code of Conduct was in force at the time; **and**
- the complaint, if proven, would be a breach of the Code.

10.2 If your complaint fails to meet one or more of these criteria it cannot be progressed as a potential breach of the Code and you will be informed that no further action will be taken in respect of your complaint.

(b). Other Assessment Criteria (The Public Interest Test)

10.3 If your complaint meets the above criteria, it may be that the Monitoring Officer, following consultation with the Independent Person, may still decide to take no further action in respect of your complaint if it is felt that to do so would not be in the public interest. This is likely to be the case where one or more of the following applies:

- your complaint falls within any of the areas that CANNOT be dealt with under this procedure - see Section 6 of this guide;
- if the Member you are complaining about has remedied or made reasonable endeavours to remedy the matter and the complaint does not disclose sufficiently serious potential breaches of the Code to merit further consideration;
- if your complaint discloses such a minor or technical breach of the Code that it would not be in the public interest to pursue it;
- it is felt you have not provided sufficient information on which to base a decision on whether the complaint should be investigated or some other action taken;
- your complaint is about someone who is no longer a Member of this Authority BUT is a Member of another Authority. In this case, your complaint may be referred to the Monitoring Officer of the other authority concerned;
- your complaint has been the subject of an investigation or other action relating to the Code of Conduct, or by other regulatory authorities, and there is nothing to be gained by further action being taken;

- your complaint appears to be simply malicious, politically motivated or “tit-for-tat”;
- your complaint is about something that happened six months or more ago and it would be unfair, unreasonable or otherwise not in the public interest to pursue the matter unless the Monitoring Officer feels there are exceptional reasons to pursue it;
- it would otherwise be inappropriate to expend the Authority’s resources on determining the complaint, having regard to its circumstances, any previous related complaint and the public interest.

11. What happens next?

- 11.1 As indicated, the Monitoring Officer will aim to make the initial decision within an average of 20 working days of receiving the complaint.
- 11.2 If your complaint is rejected following the initial decision, then no further action will be taken and you will be written to advising of this.
- 11.3 If your complaint is not rejected at the initial decision stage, then the following procedure will apply:
- you will receive written confirmation of this;
 - the Member who you are complaining about (“the subject member”) will be sent a copy of your complaint. Please note that your identity will normally be disclosed unless the Monitoring Officer (following consultation with the Independent Person) feels that there are exceptional circumstances for not doing so – please refer to the note at Section 7.4 of this document;
 - the subject member:
 - will be given the opportunity to speak to the Independent Person in response to the complaint made; and
 - be asked to provide to the Monitoring Officer and Independent Person, within ten working days of receiving the complaint, a brief written response to it. This brief written response should be restricted to two sides of A4 paper but copies of supporting documents and witness statements may be attached. Please note that the Authority will not be obliged to take any account of any late submission made by the subject member;
 - the Independent Person will:
 - within five working days of being sent the subject member’s written submission; or
 - in any event, by no later than fifteen working days after submission of the complaint to the subject membernotify the Monitoring Officer of their view of the complaint
 - the Monitoring Officer, following consultation with the Independent Person, will reach a finding on the complaint and will, within five working days of reaching the finding, write to you to set out this finding.

12. What finding might be reached?

12.1 On conclusion of the procedure as outlined in Section 11 above, one of the following findings will be reached by the Monitoring Officer (following consultation with the Independent Person):

(a). No conclusive evidence of breach of Code of Conduct, with no further action to be taken

12.2 This finding will be made when, on the basis of all the available facts (i.e. the complaint, any submission of the subject member and any other material gathered in relation to the complaint), it is not possible to determine either whether there has or may have been a breach of the Code and, taking account of the public interest, there is nothing to suggest that there would be benefit in taking any further action.

(b). No conclusive evidence of breach of Code of Conduct, but action other than an investigation may be appropriate

12.3 This finding will be made when, on the basis of all the available facts (i.e. the complaint, any submission of the subject member and any other material gathered in relation to the complaint), it is not possible to determine either whether there has or may have been a breach of the Code and:

- taking account of the public interest, the allegation does not merit investigation; **but**
- the allegation discloses an underlying issue that some other action (e.g. a written apology; and/or mediation; and/or or training on the Code or other Authority procedures) may be helpful or desirable.

12.4 In deciding whether action other than an investigation may be appropriate, the Monitoring Officer will consider:

- (i) whether taking the other action would provide an opportunity to resolve the issue, prevent similar issues arising in future and/or promote good governance; and/or
- (ii) whether the issue arose from a poor understanding by the subject member either of the Code or other relevant Authority procedures.

(c). Finding of no breach of the Code of Conduct

12.5 This finding will be reached when application of the balance of probabilities to all the available facts indicates no breach of the Code of Conduct. If no breach has occurred, then a sanction cannot be imposed but some other action – as outlined in paragraph 12.3 - may still be considered.

(d). Finding of breach of the Code of Conduct without referral for investigation

12.6 This finding will be made where:

- on application of the balance of probabilities to the available evidence, it is clear that the Code has been breached; **or**
- the subject member has admitted to the breach (irrespective of whether or not they have offered to remedy the breach); **and**
- in either case the Monitoring Officer is of the view that, taking account of the public interest, it is unlikely that an investigation would establish any further, independent, relevant evidence relating to the complaint and where the cost of undertaking an investigation cannot be justified.

12.7 Where a breach of the Code is found but it is not felt that an investigation should be undertaken, then the Monitoring Officer:

- may determine, following assessment of the available evidence, that no further action should be taken as there would be no benefit in doing so (for example, if the the breach is trivial, **or** of a technical nature **or** arose from an innocent mistake **and** has only limited or no impact); **or**
- may determine that some other action should be taken (see paragraph 12.3 above); **or**
- may refer the matter to the Authority's Standards Committee to consider whether a sanction should be imposed.

(e). Finding of breach of the Code of Conduct with referral for investigation

12.8 A complaint will usually be referred for investigation in cases where:

- the subject member has denied the allegation which, on the basis of the initial evidence available, indicates a potential breach of the Code; **and**
- the potential breach is so significant that further investigation should be undertaken to establish the facts as fully as possible so as to determine, on the balance of probabilities, whether there has been a breach of the Code and if so what sanction or other action might be appropriate.

13. What if some action short of investigation is proposed that either I am not satisfied with or the Member I am complaining about is not satisfied with (or refuses to co-operate with)?

13.1 In this event, the matter will be referred to the Authority's Standards Committee. You will be notified of the date and time of the Committee and may attend to observe (but not take part in) the proceedings unless one of the statutory reasons for excluding you from the meeting applies. You will be notified in advance if this is the case.

13.2 The Committee will consider the issue and decide what, if any, action should be undertaken. If the Committee feels some action should be undertaken, this may include imposing a different sanction on the Member about whom you have complained or requiring the matter to be investigated more formally.

13.3 You will be notified in writing in due course of the decision of the Committee and the reasons for the decision.

14. What if my complaint is referred for investigation?

14.1 You will be written to confirming this decision. The actual time taken for the investigation may vary depending on the complexity and seriousness of the complaint.

- 14.2 The investigation will conclude by the production of a report by the Monitoring Officer for consideration by the Standards Committee unless your complaint relates to an alleged breach of the Code in respect of disclosable pecuniary interests – please see Section 16 of this guide below. You will be notified in writing of the date of the Standards Committee and sent a full copy of the Monitoring Officer's report unless this reveals any sensitive or confidential information, in which case you may be sent an edited version (omitting the sensitive information). If you are sent an edited version, this will be made clear in the letter accompanying the report.
- 14.3 You may attend to observe, but not take part in, the proceedings unless one of the statutory reasons for excluding you from the meeting applies. You will be notified in advance if this is the case. The Committee will, at the meeting, consider the Monitoring Officer's report and allow the Member who is the subject of the complaint to put forward his/her case. The Committee will then, in consultation with the Independent Person, decide what, if any, action needs to be taken.
- 14.4 You will be notified in writing of the decision of the Committee and its reasons for this decision usually within five working days of the date of the meeting.

15. What sanctions might the Standards Committee impose?

- 15.1 If, following consideration of a complaint, the Committee finds that, on the balance of probabilities, a breach of the Code has occurred then it may (following consultation with the Independent Person) decide to impose one of the following sanctions:
- a. censure the subject member. The Committee will determine the terms and manner of this censure (which may include, but is not limited to, notifying the subject member's appointing constituent authority and/or arranging for details of the censure to be published in local media circulating in the area of the Authority);
 - b. recommend to the full Authority that the subject member be removed from any Committees, Sub-Committees, Working Parties or outside bodies to which they have been appointed or nominated by the Authority;
 - c. withdraw any Authority facilities that may have been provided to the subject member (e.g. e-mail accounts);
 - d. exclude the subject member from the Authority's premises (save to the extent that the subject member requires access to attend meetings of the full Authority or any Committee etc. to which the subject member may have been appointed by the Authority);
 - e. instruct the Monitoring Officer to arrange for training for subject member.

16. What if my complaint is about a Member not following the rules on disclosable pecuniary interests?

- 16.1 The Localism Act 2011 has introduced a new criminal offence for failure to follow the statutory rules in relation to disclosable pecuniary interests. Such interests are defined in Regulations and are set out in the Members' Code of Conduct approved by the Authority. In addition to registering such interests, Members are required to disclose them at meetings where matters in which they have such an interest are being discussed and are not permitted to take part in any discussions or decision making, or seek to influence any decision, on such matters.
- 16.2 Action, in the form of a prosecution, in relation to a breach of the Code of Conduct relating to disclosable pecuniary interests may only be instigated by the Director of Public Prosecutions. Consequently, should your complaint relate to a proposed breach of the Code dealing with disclosable pecuniary interests, then – after any internal investigation felt necessary to establish the facts of the case – it may be referred to the police (together with the outcome of any internal investigation so conducted) to determine the matter. You will be notified of this.