

DEVON & SOMERSET FIRE & RESCUE AUTHORITY

MEMBERS' CODE OF CONDUCT

A GUIDE TO MAKING A COMPLAINT

1. Introduction

- 1.1 This guide provides information on how you can complain 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
- 1.2 If you have any questions or difficulties arising from this guide – for example, if English is not your first language – then please phone the Monitoring Officer to the Authority on Exeter (01329) 872200 or use the e-mail address shown in paragraph 2.2 below.
- 1.3 Information on how your complaint will be dealt with once you have submitted it can be found in the separate document “Procedures for Dealing with Complaints”.

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.
- 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. 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 appearing 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. unlawful discrimination against someone;
 - bullied or harassed 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.

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. In doing this, it is helpful if you can clearly set out, by reference to the Code, those parts of the Code you consider the Member has not followed and provide as much evidence as you can as to how they have not followed 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.

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.***

- 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.

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