

DEVON & SOMERSET FIRE & RESCUE AUTHORITY

MEMBERS' CODE OF CONDUCT

PROCEDURES FOR DEALING WITH COMPLAINTS

1. Summary

- 1.1 This guide outlines what happens when a complaint is received that a Member of the Devon & Somerset Fire & Rescue Authority (in other words, a councillor appointed to serve on the Authority) has failed to follow the Authority's Approved Code of Members' Conduct.
- 1.2 Guidance on how to submit a complaint and what can and can't be complained about is contained in the separate document "A Guide to Making a Complaint".

2. First Stages

(a). Initial Assessment

- 2.1 On receiving the complaint, the Monitoring Officer will consider whether it meets 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.
- 2.2 If the complaint fails to meet one or more of the criteria it cannot be progressed as a potential breach of the Code and the complainant will be informed that no further action will be taken.
- 2.3 If the complaint satisfies all of the above criteria, the complainant will be written to – usually within five working days from receipt of the complaint – to confirm this. The Monitoring Officer will then, in consultation with the Independent Person, undertake a further assessment of the complaint to apply the "public interest" test.

(b). Further Assessment – the "Public Interest" Test

- 2.4 If the complaint meets all of the initial assessment criteria, it may be that the Monitoring Officer, following consultation with the Independent Person, may still decide not to progress the 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:
- the complaint falls within any of the areas that CANNOT be dealt with under this procedure (please see Section 6 of "A Guide to Making a Complaint");
 - the Member complained 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;
 - the 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 that the complainant has not provided sufficient information on which to base a decision on whether the complaint should be investigated or some other action taken;
- the complaint is about someone who is no longer a Member of this Authority BUT is a Member of another Authority. In this case, the complaint may be referred to the Monitoring Officer of the other authority concerned;
- the 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;
- the complaint appears to be simply malicious, politically motivated or “tit-for-tat”;
- the 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.

2.5 The Monitoring Officer will, in consultation with the Independent Person, decide whether the complaint should be progressed (that is, it would be in the public interest to do so) - usually within three working days from the date of the letter confirming that the complaint has met the initial criteria (see paragraph 2.3 above).

3. What happens next?

3.1 If it is felt that that the complaint should not be progressed (that is, it would not be in the public interest to do so), then the complainant will be informed that no further action will be taken.

3.2 If the Monitoring Officer decides, following consultation with the Independent Person, that the complaint should be progressed, then:

- the complainant will be notified of this;
- the Monitoring Officer will gather any other information deemed necessary to make a decision on whether the complaint should be investigated or whether some other form of action can be taken (for example, whether a mutually agreeable settlement can be achieved);
- the Member complained about (“the Subject Member”) will be sent a copy of the complaint. Please note that the complainant’s 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 7.3 of “A Guide to Making a Complaint”;
- the Subject Member:
 - will be given the opportunity to speak to the Independent Person in response to the complaint made; and

- will 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 Member

notify the Monitoring Officer of their view of the complaint

3.3 The Monitoring Officer will then, following consultation with the Independent Person, reach a finding on the complaint and will, within five working days of reaching the finding, notify both the complainant and the Subject Member of this.

4. Findings that may be reached

4.1 On conclusion of the procedure as outlined in Section 3 above, one of the following findings will be reached by the Monitoring Officer (following consultation with the Independent Person). In each case, the finding will be made on the "balance of probabilities" – in other words, is it more likely or not that something has happened?

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

4.2 This finding will be reached when, having considered all the available facts (i.e. the complaint, any submission of the Subject Member and any other material gathered in relation to the complaint), there is no evidence to suggest that any breach of the Code of Conduct has happened. If no breach has occurred, then a sanction cannot be imposed.

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

4.3 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, there is nothing to suggest that there would be benefit in taking any further action.

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

4.4 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 where 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.

- 4.5 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.

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

- 4.6 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.

- 4.7 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 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 (paragraph 4.5 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

- 4.8 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.

5. Notification of finding reached

- 5.1 The complainant and Subject Member will be notified in writing, usually within five working days of the decision, to inform them of the finding and what action (if any) is proposed.

5.2 Additionally, in the case of a finding of a breach of the Code where some action other than an investigation is proposed, then – subject to the complainant and the Subject Member being satisfied with the other action proposed – a Decision Notice will also be produced and published on the Authority’s website. This Decision Notice will give details of the breach of the Code together with what other action was decided.

6. Procedure in the event of the complainant or Subject Member being dissatisfied with a finding of Code breach with “other action” proposed

6.1. In this event, the matter will be referred to the Authority’s Standards Committee. The complainant and Subject Member will be notified of the date and time of the Committee. The Subject Member may attend to observe (but not take part in) the proceedings. The complainant may also attend to observe (but not take part in) the proceedings unless one of the statutory reasons for excluding them from the meeting applies. The complainant will be notified in advance if this is the case.

6.2. 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 Subject Member or requiring the matter to be investigated more formally.

6.3. The complainant and Subject Member will be notified in writing, again usually within five working days, of the decision of the Committee and the reasons for the decision. Additionally, a Decision Notice will be produced and published on the Authority’s website.

7. Referral of Complaint for Investigation

7.1 Both the complainant and Subject Member will be sent written confirmation of this decision. The actual time taken for the investigation may vary depending on the complexity and seriousness of the complaint.

7.2 The investigation will conclude by the production of a report (“the investigation report”).

8. Decision on Investigation Report

8.1. If the investigation report concludes that there has been a breach of the Code and sets out indicative sanctions for this, the matter will be decided by a Hearing Panel comprising five Members of the Standards Committee selected by the Monitoring Officer in consultation with the Committee Chair.

8.2. If the investigation report concludes no breach of the Code or where no further action is recommended, then the Monitoring Officer will (in consultation with the Independent Person) decide the matter.

9. Hearing Panel

9.1. The Panel will consider the investigation report and allow the Subject Member to put forward their case.

- 9.2. The Panel will in the first instance decide whether or not, on the balance of probabilities, the Subject Member has breached the Code of Conduct. In doing so, the Panel will take into account the views of the Independent Person.
- 9.3. If it is decided that the Subject Member has breached the Code of Conduct, the Panel will then go on to decide what sanction or other action (if any) is required. Again, in doing so the Panel will take into account the views of the Independent Person.
- 9.4. These decisions referred to in paragraphs 9.2 and 9.3 above will be taken in private, but subsequently announced to those present at the Panel meeting.
- 9.5. The complainant may attend to observe, but not take part in, the Panel meeting (excluding the decision making) unless there is a statutory reason for excluding them from the meeting. The complainant will be notified in advance if this is the case.
- 9.6. The complainant and Subject Member will be notified in writing of the date of the Panel. The Subject Member will be sent a copy of the full investigation report. The complainant may also be sent a copy of the full investigation report unless this reveals any sensitive or confidential information, in which case the complainant may be sent an edited version (omitting the sensitive information). If the complainant is sent an edited version, this will be made clear in the letter accompanying the report.

10. Sanctions following a Hearing

- 10.1. If the Hearings Panel decides, on the balance of probabilities and having taken into account the views of the Independent Person, that a breach of the Code has occurred then it may decide (again, taking account of the views of the Independent Person) to impose one of the following sanctions:
 - a. censure the subject member. The Hearings Panel 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.

11. Decision Notice

- 11.1. In all cases where a complaint has been subject to investigation, the Monitoring Officer will – once the matter has been decided – produce a Decision Notice containing the following information:
 - a brief statement of the facts of the complaint;

- the aspects of the Code concerned;
 - the decision reached;
 - the reasoning of the decision maker;
 - what sanction or other action (if any) was decided; and
 - the view of the Independent Person.
- 11.2. A copy of the Decision Notice will be published on the Authority's website, with a copy sent to the complainant and to the Subject Member – usually within five working days of the decision being reached.
- 11.3. Where the investigation report concludes there has been no breach of the Code or no further action is recommended, then the Subject Member will not be named in the resulting Decision Notice.

12. Complaints about disclosable pecuniary interests

- 12.1. The Localism Act 2011 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.
- 12.2. Any complaint alleging a breach of the Code of Conduct relating to disclosable pecuniary interests can only be dealt with by the Director of Public Prosecutions. Consequently, any such complaint will – subject to satisfying the first stages and after any internal investigation felt necessary to establish the facts of the case – be sent to the police (together with the outcome of any internal investigation so conducted) to deal with the matter. The complainant will be notified in writing of this.