

(Draft) Guide to Standards Committee Processes and Framework

Role and function of the Standards Committee

One of the functions of Herefordshire Council's Standards Committee is to assess and review complaints about members of Herefordshire Council and the county's town and parish councils and, where appropriate, to conduct hearings. The committee can consider only complaints that allege that a member has failed to comply with the council's Code of Conduct (see Appendix 1).

The Standards Committee comprises an independent chairman, two members of the council, two town or parish council representatives and other independent members. At least a quarter of the Standards Committee must be independent members. The Standards Committee is supported by the council's monitoring officer. The **monitoring officer** has a number of functions relating to the standards committee, including investigating complaints.

Making a complaint

1. Complaints against councillors must be made in writing to the Standards Committee (e-mails and faxes are permissible). There is a complaint form for this purpose which is available on the council's web site or which may be obtained contacting the monitoring officer at the council. The Council can provide help if the complainant is unable to make the complaint in writing because of a disability. (see Appendix 2)
2. When a complaint is received, the monitoring officer considers it to see whether it falls properly within the standards committee's remit – that is, that it relates to a potential failure to comply with the Code of Conduct. If the monitoring officer decides that the complaint is clearly not about member conduct, s/he does not have to pass it to the Standards Committee.
3. If any aspect of the complaint is unclear, council officers may contact the person making the complaint for clarification before the complaint is referred to the assessment sub-committee.
4. If the monitoring officer decides that the complaint is about member conduct and could, therefore, indicate a failure to comply with the Code of Conduct, the monitoring officer refers the complaint to the standards committee. The standards committee appoints an **assessment sub-committee** to consider the complaint and decide how it should be dealt with.
5. The person making the complaint is referred to as the **complainant** and the member about whom the complaint is made is referred to as the **subject member**. The monitoring officer will acknowledge receipt of the complaint to the complainant, and may also inform the subject member that a complaint has been received. However, the monitoring officer does not, at this stage, give the subject member details of the complaint. Only the standards committee has the power to disclose the details of the complaint to the subject member.
6. If the complainant has asked that their identity should not be disclosed to the subject member, the monitoring officer will not disclose it to the subject member at this stage. However, the standards committee believes that, in the interests of fairness and natural justice, members who are complained about have a right to know who has made the complaint. The committee will consider a request for confidentiality from the complainant where:
 - a) the complainant has good reason to believe that they will be at risk of physical harm;
 - b) the complainant is an officer who works closely with the member and there is a reasonable fear of intimidation or recrimination;
 - c) the complainant suffers from a serious health condition which might already be affected. In such cases the assessment sub-committee may request medical evidence.

7. The assessment sub-committee will not automatically grant a request for confidentiality, but will consider a request for confidentiality alongside the substance of the complaint. The committee will advise the complainant of their decision on the request for confidentiality and, if the request is not granted, they will normally allow the complainant the option of withdrawing the complaint.
8. In exceptional circumstances, where the matter complained about is very serious, the assessment sub-committee can proceed with an investigation or other action and disclose the complainant's identity even if the complainant has expressly asked the committee not to do so.
9. There are sub committees established to support the work of the Standards Committee. These sub-committees must have at least three members of the standards committee, and must be chaired by an independent member. For specific matters, at least one of the council members must be present, and for matters relating to a parish or town council, at least one parish or town member must be present for any decision to be made.

The assessment sub-committee

10. The assessment sub-committee comprises at least three members. The assessment sub-committee normally meets within 20 working days of the date the complaint is received. The meeting is not held in public. The assessment sub-committee will issue a decision notice setting out its decision, normally within five working days. It may decide:
 - that no action should be taken;
 - to refer the complaint to the monitoring officer for action other than investigation;
 - to refer the complaint for investigation.

Assessment sub-committee decides to take no further action

11. If the assessment sub-committee decides to take no further action, the decision notice will be sent to the complainant and the subject member within five working days of the date the decision was made. The complainant may ask for a review of a decision to take no further action. A request for a review must be received within 30 days of the date of the decision notice.
12. If a request for a review is received, the standards committee will notify all parties, and set up a **review sub-committee**. The review sub-committee comprises will comprise at least three members. Members of the original assessment sub-committee will not sit on the review sub-committee.
13. The review sub-committee will meet within three months of the date they receive a request for a review. The review sub-committee will consider the complaint as in paragraphs 10 above and 15 to 21. They will notify all parties of their decision normally within five working days.
14. If the review sub-committee decides that no further action should be taken, the complainant has no further right to request a review of the decision.

Assessment sub-committee decides to refer the complaint to the monitoring officer for other action

15. Where the assessment sub-committee decides to refer a complaint to the monitoring officer for other action, the sub-committee does not make any decision about whether there has been a failure to comply with the Code of Conduct. Other action may be appropriate in cases where, for example, the complaint suggests that there may be a general problem of misunderstanding of a particular part of the Code of Conduct or where the complaint is part of a wider pattern of similar complaints.
16. Other action might be, for example, training, re-training, mediation or other action to address the cause of the complaint.

17. The assessment sub-committee will send a decision notice to the complainant, the subject member and, if appropriate, the town or parish clerk. When the assessment sub-committee decides to refer the complaint to the monitoring officer for action other than investigation, there is no right to request a review of the decision.
18. The monitoring officer will report back to the standards committee normally within three months of receiving the decision, notifying the outcome of the other action or proposals for other action.

Assessment sub-committee decides to refer the complaint for investigation by the monitoring officer or Standards for England

19. If the assessment sub-committee decides to refer the complaint for investigation, it will send a decision notice to the complainant and the subject member, giving details of who the complaint will be referred to for investigation. This will be normally be to the council's monitoring officer but, in special cases, may be the ethical standards officer of the Standards for England.
20. If the complaint is referred to the monitoring officer for investigation, the monitoring officer will write to the subject member and the complainant advising them who will be conducting the investigation. This will be either the monitoring officer or an investigation officer appointed by the monitoring officer.
21. If the complaint is referred to the Standards for England for investigation, the monitoring officer will write to the subject member and the complainant advising them who will be conducting the investigation. This will be the **ethical standards officer** of the Standards for England. (see paragraphs 46-58)

Investigation by the council's monitoring officer or investigation officer appointed by the monitoring officer

22. The monitoring officer or investigation officer will normally complete their investigation within six months of the date of the assessment sub-committee decision. When the monitoring officer has completed an investigation, s/he will make a report on the findings of the investigation. The monitoring officer's investigation will result in one of the following findings:
 - that there has been a failure to comply with the Code; or
 - that there has not been a failure to comply with the Code.
23. The monitoring officer will normally write a draft report before completing a final report. The draft report will be sent to the complainant and the subject member for comment, and the monitoring officer will consider all the comments before completing the final report.
24. The monitoring officer will send the final report to the subject member and the standards committee. A copy may also be made available to the complainant. The standards committee appoints a consideration sub-committee to consider the monitoring officer's report.

Consideration sub-committee

25. The consideration sub-committee comprises at least three members and may be open to the public.

Consideration sub-committee decides that there was no failure to comply with the Code of Conduct

26. If the consideration sub-committee decides that there has been no failure to comply with the Code of Conduct, they arrange for a notice to be published in the local press, unless the subject member does not wish the matter to be publicised.

Consideration sub-committee decides that there was a failure to comply with the Code of Conduct

27. If the consideration sub-committee decides that there has been a failure to comply with the Code of Conduct, they decide whether the local standards committee should hear the case, or

it should be referred to the First-tier Tribunal (Local Government Standards in England), for hearing.

28. A complaint would be referred to the First-tier Tribunal only in the most serious cases, where there was likely to be a finding that there had been a failure to comply with the Code, and, if there was such a finding, the standards committee would be unable to impose an appropriate sanction. The most severe sanction that can be imposed by the standards committee is a six-month suspension from the member's current office; the First-tier Tribunal has the power to disqualify a member from holding office in any authority.

Standards Committee hearing

29. The Standards Committee hearing must take place within three months of the receipt of the monitoring officer's report following investigation or, where the investigation was conducted by an ethical standards officer of the Standards for England, within three months of the date the monitoring officer receives the ethical standards officer's report.
30. The hearings sub-committee comprises of at least three members and is usually held in public.
31. The report by the monitoring officer or the ethical standards officer will be sent to the subject member and, if appropriate, the town or parish clerk. The hearing must take place at least 14 days after the date the subject member receives the report.
32. The process of preparing for the hearing is the **pre-hearing process**. At least two weeks before the hearing date, a copy of the pre-hearing process summary will be sent to everyone involved with the complaint. The summary will give details of:
- the date, time and place for the hearing;
 - the allegation;
 - the facts that are agreed and the facts that are disputed;
 - who will attend the hearing, including any representatives and witnesses;
 - the procedure for the hearing.
33. The Standards Committee will try to complete the hearing in one sitting and to avoid any late night or lengthy hearings. After the hearing, the standards committee will arrange for a summary of the decision and their reasons for making the decision to be published in at least one independent newspaper, the council's website and any other publication it considers appropriate.

Standards Committee decides there has been no failure to comply with the Code

34. If the standards committee finds that there has been no failure to comply with the Code of Conduct, the subject member may ask that the decision is not publicised in local newspapers.

Standards Committee decides that there has been a failure to comply with the Code, but that no action is needed

35. If the standards committee decides that there has been a failure to comply with the Code, but that no action will be taken, the summary will give the decision, an outline of the process and the reasons for the decision. It will also state that the subject member has a right to appeal to the First-tier Tribunal against the decision that they have failed to comply with the Code.

Standards Committee decides that there has been a failure to comply with the Code, and that sanctions should be imposed

36. If the standards committee decides that there has been a failure to comply with the Code, and that a sanction should be imposed, the summary will give the decision, an outline of the

process, what sanction has been imposed and the reasons for the decision. It will also state that the subject member has a right to appeal to the First-tier Tribunal against the decision that they have failed to comply with the Code.

Sanctions

37. The Standards Committee will decide on sanctions ensuring that they are reasonable and proportionate to the subject member's behaviour. The committee can impose the following sanctions, including a combination of sanctions:
- censure of the member;
 - reasonable restrictions on the member's access to council premises or resources for up to six months, provided the restriction does not unduly restrict the member's ability to carry out their functions as a member;
 - partial suspension for up to six months;
 - full suspension for up to six months;
 - requirement for the member to write an apology as specified by the committee;
 - training as specified by the committee;
 - participation in conciliation, as specified by the committee;
 - full or partial suspension for up to six months until the member has provided the apology, undertaken training or participated in conciliation.

If the subject member appeals against the decision of the standards committee, they may ask to have any sanction suspended pending the outcome of the appeal.

Appeals

38. Members found by the standards committee to have failed to comply with the Code of Conduct have a right to apply to the First-tier Tribunal for permission to appeal against the decision. There is a standard form for this purpose which the First-tier Tribunal must receive within 28 days of the date the subject member receives the standards committee decision. If the tribunal gives permission for the appeal, they will treat the application as the appeal.
39. The member may:
- appeal against the finding and request a suspension of any sanction imposed pending an appeal hearing; or
 - appeal only against the sanction imposed.
40. Once permission to appeal has been given, the Tribunal will send the standards committee a copy of the appeal and of any accompanying documents. The standards committee must send or deliver a response to the Tribunal within 28 days of receiving the appeal. The standards committee must copy the response and any accompanying documents to the appellant. The appellant should submit any reply within 14 days of receiving it, but must not raise any new issues.
41. With the consent of the parties, the tribunal can determine the matter without a hearing if it is satisfied that it can properly do so. Where appeals are determined without a hearing the tribunal may nevertheless refer the matter to an oral hearing if it considers that it is not appropriate to make a determination on the written evidence available.
42. If the tribunal decides to hold an oral hearing, their website lists all scheduled tribunals and the date, time and place fixed for the hearings. The hearing is usually held public. It is open to the Tribunal to decide if all or part of the hearing should be held in private.

43. The decision will usually be given at the hearing and a written notice of the decision will be issued immediately. A fuller written decision will be issued as soon as practicable after the hearing – usually within 14 days. A copy of the decision will be posted on the Tribunal's website after the parties have been notified.
44. The tribunal can uphold or reject the finding which is the subject of the appeal. Where the finding is upheld the appeals tribunal may confirm or vary any sanction imposed by the standards committee. The tribunal has the same range of sanctions available to it as were available to the standards committee.
45. Where a tribunal rejects the findings of a Standards Committee, the standards committee's sanction ceases to have effect from the date of the tribunal's decision.

Process for complaint referred to Standards for England

46. The Standards for England can decide to:

- take no action;
- refer the complaint back to the monitoring officer for other action
- refer the complaint back to the assessment sub-committee to reconsider; or
- refer to an ethical standards officer to investigate the complaint.

They will notify the local standards committee of their decision, normally within ten working days. There is no right of appeal against the Standards Board for England decision.

Standards for England decides that no further action should be taken

47. If the Standards for England decides that no action should be taken, it will inform the local standards committee. The assessment sub-committee will send a decision notice to the complainant and the subject member and, if appropriate, the town or parish clerk, within five working days of receiving the decision.

Standards for England refers the complaint to the monitoring officer for other action

48. If the ethical standards officer of the Standards for England decides to refer a complaint to the monitoring officer for other action, the ethical standards officer does not make any decision about whether there has been a failure to comply with the Code of Conduct. The complaint will be dealt with as in paragraphs 14 to 17 above.

Standards for England refers the complaint back to the assessment sub-committee

49. If the Standards for England refers the complaint back to the assessment sub-committee, it might give directions to the standards committee on how to proceed. Otherwise, the assessment sub-committee will reconsider the case as in paragraphs 9 to 20 above.

Standards for England decides to investigate the complaint

50. If the Standards for England decides to investigate the complaint, they will appoint an ethical standards officer to conduct the investigation. The investigation will normally be completed within six months of the date of the assessment sub-committee's decision. The ethical standards officer may decide:

- that there has been no failure to comply with the Code of Conduct;
- that there has been a failure to comply with the Code of Conduct but no action needs to be taken;
- that the matter should be referred for a hearing by a local standards committee;
- that the matter should be referred for a hearing by the First-tier Tribunal.

51. The ethical standards officer will send a draft decision document to the subject member, the complainant and monitoring officer. The document will contain the proposed finding and the reasons for the finding. The subject member, complainant and monitoring officer will have 10 working days in which to make comments on the draft document. The ethical standards officer will consider all comments received on the draft document before issuing their final decision.
52. Where appropriate, the ethical standards officer will advise the parish or town clerk that the draft decision has been issued, but they do not send clerks a copy of the decision letter or report or invite comments.
53. Once all comments on the draft have been considered, the ethical standards officer will send a final report or letter to the subject member, the complainant, the monitoring officer, the town or parish clerk and any witnesses.
54. Although the parties have the opportunity to comment on the ethical standards officer's draft report or letter, there is no right of appeal against anything in the final report.

Ethical standards officer decides there has been no failure to comply with the Code of Conduct

55. The ethical standards officer will send their report to the monitoring officer. The monitoring officer will notify all parties of the decision.

Ethical standards officer decides that there has been a failure to comply with the Code of Conduct but that no action should be taken

56. The ethical standards officer will send their report to the monitoring officer. The monitoring officer will notify all parties of the decision.

Ethical standards officer decides that the matter should be referred for a hearing by a local standards committee

57. The ethical standards officer will send their report to the monitoring officer. The monitoring officer will notify all parties of the decision, and the standards committee will appoint a **consideration sub-committee** to consider the report.

Ethical standards officer decides that the matter should be referred for a hearing by the First-tier Tribunal

58. The monitoring officer will notify all parties of the decision, and the complaint will be referred to the First-tier Tribunal (Local Government Standards in England) for hearing.

Making a complaint

Should I complain?

If you are considering making a complaint about a member of Herefordshire Council or any of the town or parish councils within the county, you need to consider the following points:

Is your complaint about the conduct of a member of Herefordshire Council or any of the town or parish councils within the county?

Your complaint must be about one or more named members of Herefordshire Council or a Parish Council or Town Council in Herefordshire. The Standards Committee cannot deal with complaints about:

- dissatisfaction with a decision or action of the council or one of its committees;
- a service provided by a council, or its procedures
- the actions of people employed by a council.

For Herefordshire Council, these matters are dealt with by the Council's complaints procedure, accessible at www.herefordshire.gov.uk or by the Local Government Ombudsman at www.lgo.org-uk.

Was the member in office at the time the conduct occurred?

Your complaint must be about conduct that occurred while the member complained about was in office. Conduct of an individual before he or she was elected, co-opted or appointed to a council, or after he or she has resigned or otherwise ceased to be a member, cannot be considered by the standards committee.

Is your complaint that the member's conduct breached, or may have breached, the members' Code of Conduct?

Your complaint must be that the member has, or may have, breached the Code of Conduct. See the outline of the Code of Conduct, or a copy of the Code of Conduct and frequently asked questions about the Code of Conduct are available at www.standardsboard.gov.uk. Contact the council's Assistant Chief Executive (Legal and Democratic) if you need any further information.

How do I complain?

Your complaint must be in writing. If a disability prevents you from making your complaint in writing, please contact the monitoring officer at the address below for help.

There is a form that you can complete to make your complaint. This is available from the monitoring officer, or may be downloaded from the council's website. You may write a letter of complaint, but using the form will ensure that you have included all the information we need.

What happens once you submit your complaint?

When we receive your complaint we will write to you to let you know we have received it. We will also tell the member that you are complaining about that we have received a complaint, and, in most cases, who made the complaint. We will advise the member which paragraphs of the Code of Conduct it is alleged have been breached.

Your complaint will be considered by the **standards committee**. The standards committee will set up a subcommittee, called the **assessment sub-committee**. The assessment sub-committee will meet to decide whether your complaint can be dealt with by the standards committee – that is, whether it falls within the jurisdiction of the standards committee. They will normally meet within 20 working days of the date we receive your complaint. Meetings of the assessment sub-committee are not held in public so you will not be able to attend. We will write to you to let you know the outcome of the meeting, normally within five days.

Assessment sub-committee decision

If the assessment sub-committee decides that there is no potential breach of the Code of Conduct, they will not refer your complaint for investigation or other action. They will write to you to tell you the decision and the reasons for it. If you are unhappy with the decision not to take any action, you may have a right to ask for a review of that decision. The letter will explain this and tell you how to ask for a review.

If the assessment sub-committee decides that there may have been a breach of the Code of Conduct, they will either refer your complaint for investigation or refer it to the monitoring officer for other action. They will send you a notice telling you the decision. The notice will also be sent the member you have complained about and, if they are a member of a town or parish council, the town or parish clerk. We will send these letters within five working days of the assessment sub-committee reaching its decision.

What is meant by ‘other action’?

The assessment sub-committee may decide to refer your complaint for ‘other action’ instead of referring it for investigation. ‘Other action’ is a deliberately broad term that may include, for example, requiring the person you have complained about to apologise or to undergo training, or to agree to mediation. The sub-committee will consider the circumstances of your complaint when deciding whether other action is appropriate. If the sub-committee decides to refer your complaint for other action we will explain what this involves.

How should I set out my complaint?

It is very important that you set your complaint out fully and clearly, and provide as much information as possible at the outset and recommend that you use our complaint form. You should also provide any documents or other material that you wish the sub-committee to consider, where possible.

In the summary you should tell us exactly what each person you are complaining about said or did that has caused you to complain. If you are sending supporting documentation please cross-reference it against the summary of your complaint.

You should be as detailed as possible and substantiate your complaint where you can. Although you are not required to prove your complaint at this stage of proceedings, you do have to demonstrate that you have reasonable grounds for believing that the member(s) complained about has breached the Code of Conduct.

Contact details:

The Monitoring Officer
Herefordshire Council
Brockington
35 Hafod Road
Hereford, HR1 1SH

Tel: 01432 260200
e-mail: monitoringofficer@herefordshire.gov.uk

The Code of Conduct

All councils must have a Code of Conduct that governs the behaviour of their members. The Code must include the provisions of the Model Code of Conduct approved by Parliament, which was issued on 4 April 2007.

The Code covers all elected, co-opted and independent members of local authorities, including parish councils, fire, police and national park authorities.

The Code consists of **general obligations** and obligations relating to **interests**.

General obligations

1. There is a general obligation to treat others with respect. In particular, council members must not:
 - do anything that could be in breach of any equality legislation;
 - bully anyone;
 - intimidate anyone who might be a complainant or witness to a complaint
 - intimidate anyone who is involved in the administration of an investigation of a complaint or proceedings following a complaint;
 - do anything that might compromise the impartiality of anyone working for the council.
2. There is a general obligation that members must not disclose information given to them in confidence, or information that could reasonably be thought to be confidential. Members may disclose such information only if they:
 - have the consent of someone authorised to give consent;
 - are required by law to disclose it;
 - need to disclose it to someone who is giving professional advice, but then only if that person agrees not to disclose it to anyone else;
 - consider the disclosure to be reasonable and in the public interest, and the member makes the disclosure in good faith and in compliance with reasonable requirements of the council.
3. Members must not prevent anyone having access to information if the person is entitled by law to have access to it.
4. There is a general obligation that members must not behave in a way that could reasonably be regarded as bringing their position as a member or the council into disrepute.
 - Members must not use, or try to use, their position as a member to give themselves or anyone else any advantage or disadvantage;
 - When members are using the council's resources, or authorising someone else to use the council's resources, they must act in accordance with the council's reasonable requirements;
 - When members are using the council's resources, or authorising someone else to use the council's resources, they must make sure that the resources are not used improperly for political purposes (including party political purposes).

Interests

6. Members attending council meetings must inform the meeting if they have a personal interest in any of the business being discussed at the meeting. Personal interests include membership of outside bodies where the member has a position of control or management, involvement in any business or employment, involvement with anyone who has given the member gifts or hospitality. There would also be a personal interest where any business being discussed at the meeting might affect the member or someone connected with the member, personally or financially.
7. Members must register any interests in the council's register of members' interests.