

Complaints under Members' Code of Conduct

Assessment criteria

1. Introduction

The following criteria have been agreed to assist the Monitoring Officer (and exceptionally, the Standards Complaints Panel) in making an initial assessment of a Standards complaint and deciding what action, if any, to take.

Each complaint will be assessed on its own merits. These guidelines should ensure consistency in the 'light touch' local arrangements which Cheshire West and Chester Council (CWaC) have agreed. The Monitoring Officer may consult the Independent Person before making a decision.

2. Is the complaint a Standards complaint against a member?

A complaint will only be assessed as a Standards complaint if:

- it is a complaint about the conduct of one or more named members of CWaC or one or more members of a town or parish council in the borough of Cheshire West and Chester; and
- the named member was in office at the time of the alleged conduct.

Otherwise, the complainant will be notified that no further action will be taken.

A complaint will not be considered as a Standards complaint if:

- the complaint is about a council decision, the way the council conducts or records its meetings or the way the council has or has not done something; or
- the complaint falls within the council's complaints procedure
- the complaint is about a council officer e.g. a CWaC employee or a parish council clerk.

The Code of Conduct applies whenever the member is "acting as a member of the authority". A complaint will not be considered as a Standards complaint where it is clear it is about a member's private life or about conduct other than when "acting as a member of the authority".

3. Circumstances where it is likely that no action will be taken on a Standards complaint

- More than six months has passed since the alleged conduct occurred
- The complaint appears to be about the political policies or performance of a councillor in their role.
- Complaints made by one councillor about another councillor's conduct which arises from political disagreement, interpersonal conflict or the normal conduct of council business.
- The complaint relates to the expression of political views, criticism or debate by a councillor. Councillors are elected representatives and are legally entitled to a high level of protection for political speech. In accordance with the right to freedom of expression under Article 10 of the European Convention on Human Rights, the standards regime will not normally be used to restrict or sanction legitimate political expression, even where such comments are strongly worded, controversial or critical of others. Complaints engaging political expression are therefore unlikely to result in further action unless the conduct, if proven, would amount to a serious breach of the Code of Conduct.
- The complaint is vexatious or frivolous or complaints that are intended to insult individuals
- Minor or "tit for tat" complaints that do not justify the time and resource of an investigation.

- The complaint has been made anonymously and/or there is insufficient evidence to decide whether to investigate or take other action or refer the matter to the police or other regulatory agency
- The same or a substantially similar complaint has already been the subject of an initial assessment by the Monitoring Officer.
- An apology has been given and accepted, following the complaint
- The complaint is about someone who is no longer a member of CWaC or of a town or parish council in the borough of Cheshire West and Chester

4. Circumstances where it may be appropriate to arrange 'other action' or to refer the matter to the relevant group leader or parish/town council chairman

- The alleged behaviour indicates a lack of understanding of the Code of Conduct
- There has been the same breach of the Code by several members indicating a poor understanding of the Code
- The complaint indicates a general breakdown of relationships at a council
- There appears to be misunderstanding of protocols and procedures
- An investigation would serve no useful purpose or the conduct is not serious enough to warrant a sanction
- The complaint may be symptomatic of more widespread issues within the council

'Other action' includes:

- arranging for appropriate training
- arranging for the member and complainant to engage in a process of conciliation
- arranging mediation
- any other steps (not including an investigation) which may appear appropriate.

5. Considerations before referring a complaint for investigation

There must be prima facie evidence of a breach of the Code of Conduct to refer the matter for investigation. An allegation is unlikely to be investigated unless it is alleged the subject member has misused their position as a member.

The Monitoring Officer must be mindful of the public money which may be incurred in arranging a formal investigation of a complaint. Investigations are costly and time consuming and in some circumstances, complaints may be more effectively dealt with by informal resolution or other action. The Monitoring Officer will not refer complaints for investigation where the complaint is not sufficiently serious to justify the cost of an investigation or it is not in the public interest to investigate.

Neither the Monitoring Officer nor the Standards Complaints Panel has the power to impose any sanction in relation to a member of a town or parish council in CWAC; they can only make recommendations to the relevant council.