

Humberside Police Authority Standards Committee
Protocol for Handling Complaints of Member Misconduct

Introduction

1. This protocol sets out in detail the procedures the Standards Committee and its Sub-Committees will adopt when handling any complaints of breach of the Members Code of Conduct.

Preliminary Matters

2. The Chief Executive of Humberside Police Authority is also its Monitoring Officer. The Authority could receive indications of dissatisfaction in a variety of ways covering a broad range of issues. This could include complaints about the level of the policing precept as part of the council tax, complaints about the quality of policing services, or about the conduct of an officer or the conduct of a Police Authority Member. This protocol is only concerned with the latter (i.e. Member Conduct) and, furthermore only that conduct which is contrary to the Members' Code of Conduct. The law changed on 8 May 2007, so if the conduct complained of relates to activities before that date it will be dealt with, but not under this procedure. The Monitoring Officer will therefore act as a gatekeeper to ensure that only allegations that, if true, are within (or could be within) the Code of Conduct are taken forward under this protocol.
3. Complainants will be encouraged to provide their complaint in the form shown in Table A below. However, if there are disability-related or other good reasons why the complainant cannot provide the complaint in that format, the Monitoring Officer will accept receipt of the complaint in any appropriate medium and commit it to writing.
4. Anonymous complaints will not be accepted or considered unless documentary or photographic proof is provided indicating a serious or significant matter.

Table A – Model Complaint Form

[Please refer to attached complaint form].
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Stage 1 – Initial Handling of the Complaint

5. The Monitoring Officer will acknowledge receipt of the complaint within 5 working days and send the complainant a copy of this protocol.
6. The Monitoring Officer will normally notify the Member who is the subject of the complaint ('the subject member') that a complaint has been received, its brief nature and the necessary paragraphs of the Code. Unless the complainant has requested confidentiality (which is a matter for the Standards (Assessment) Sub-Committee to determine),

the Monitoring Officer will inform the 'subject member' of the name of the complainant. Again, this will be within 5 working days of receiving the complaint. The Monitoring Officer will gather any formal information relevant to the Complaint within the Authority's possession, such as minutes of meetings, a copy of the register of interests, a copy of the subject member's undertaking to abide by the Code of Conduct etc. and other easily obtainable relevant information such as Companies House or Land Registry entries.

7. Where the subject member is a member of another relevant authority and the complaint potentially affects the member in that other capacity, the Monitoring Officer will contact the Monitoring Officer of the other Authority to check if (s)he has received a similar allegation.
8. The Monitoring Officer will call a meeting of the Assessment Sub-Committee to take place within 20 working days of receipt of the complaint. If further information is required from the complainant the 20 day period does not commence until the Monitoring Officer has received all the relevant information.
9. This Sub-Committee will comprise 3 Members, chosen on a rotational basis by the Chief Executive and Monitoring Officer including at least one Lay Member and one Full Member of the Authority. The Chair of the Assessment Sub-Committee will be a Lay Member. The meeting will be held in private and neither the complainant nor the subject member will be allowed to attend. When it meets the Assessment Sub-Committee considers the matter in accordance with Table B below.

Table B – Procedures for the Standards (Assessment) Sub-Committee

B1	The Sub-Committee will take into account Part III of the Local Government Act 2000, as amended, the Standards Committee (England) Regulations 2008 and any guidance issued by the Standards Board for England with regard to the initial assessment of complaints about Members.
B2	The Standards (Assessment) Sub-Committee will, subject to paragraph B3 below, receive and consider all written complaints that members or co-opted members of the authority have failed, or may have failed to comply with the Authority's Code of Conduct. Only complaints which are in writing and submitted on the appropriate complaint form (see Table A) for such purposes or submitted by way of letter/fax/e-mail setting out the relevant information will be considered. There are alternative arrangements in the event that the complainant has a disability which means they are unable to provide a complaint in a written form.
B3	The Standards (Assessment) Sub-Committee will only have jurisdiction to consider written complaints that a full or co-opted Member of the Authority has failed, or may have failed, to comply with the relevant

Code of Conduct for Members.

- B4** The Standards (Assessment) Sub-Committee must consider the complaint and, applying relevant criteria, must take one of the following decisions:
- (i) Refer to the Standards Board for England (e.g. serious cases)
 - (ii) Refer to the Monitoring Officer:
 - a) for investigation; or
 - b) with instruction that (s)he takes alternative action permitted by regulations (e.g. mediation, training or an apology)
 - (iii) Refer to the Monitoring Officer of another Authority
 - (iv) The subject of no further action
- B5** If the complaint is in respect of a person who is no longer a Member of the Authority, but is a member of another relevant authority (as defined in Section 49 of the Local Government Act 2000), the Sub-Committee must refer the allegation to the Monitoring Officer of that other authority for investigation.
- B6** In respect of paragraph B4, the Sub-Committee will give a written summary of the complaint to the subject member and include reasons for the initial assessment decision. Written notification of the initial assessment decision will be given to the complainant together with appropriate reasons for the initial assessment decision. The Sub-Committee will consider any request for anonymity by the complainant. This written summary will normally be made available to the public, in accordance with section 57C of the Local Government and Public Involvement in Health Act 2007 and regulation 8 of the Standards Committee (England) Regulations 2008.
- B7** The Assessment Sub-Committee shall authorise the Monitoring Officer to take all reasonable steps to implement its decision, with reasons, and to notify the complainant and the subject member of that decision.
- B8** In the event of a decision to refer the complaint to the Monitoring Officer for action other than investigation the Monitoring Officer will subsequently make a report to the full Standards Committee giving details of the action taken regarding the direction. The Committee shall:
- (i) if satisfied with the action specified in the report, give appropriate notice of that fact to the complainant and the subject member; or
 - (ii) if not satisfied with the action specified in the report, give a further direction to the Monitoring Officer.
- B9** The Assessment Sub-Committee shall have liberty to review these procedures from time to time as they see fit.

B10 The Monitoring Officer has delegated authority to amend this procedure where appropriate.

10. In assessing the complaint the Standards (Assessment) Sub-Committee will consider the criteria referred to in Table C below:

Table C – Criteria for Assessing a Complaint

C1 Applying the following criteria will ensure that only the most serious of cases which are in the public interest and appropriate should be referred for investigation or other action. The criteria are based upon those tests applied by the Standards Board for England when considering complaints and its guidance to authorities. These criteria set a high threshold for considering complaints and should be adhered to by the Standards (Assessment) Sub-Committee as well as the Standards (Review) Sub-Committee. Assessing all new complaints against these criteria will ensure that complainants are confident that complaints about member conduct are taken seriously and dealt with appropriately.

C2 The Sub-Committee will apply the following initial tests:

- (i) The complaint must be against one or more named Members of the Authority. It is important to identify whether the member has given an undertaking to abide by the Code, because if no undertaking has been provided within the rules under the Local Government Acts 2000 and 1972, the member ceases to be a member of the Authority. The Monitoring Officer should provide the Committee with relevant information concerning this issue.
- (ii) The named member must have been in office at the time of the alleged conduct and the Code of Conduct must have been in force at the time.
- (iii) The complaint, if proven, must be a breach of the Code under which the member was operating at the time of the alleged misconduct.

C3 If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant must be informed that no further action will be taken in respect of the complaint.

C4 If the complaint meets all of these tests, the following criteria should be applied when assessing complaints:

- (i) Is there enough information to enable the Sub-Committee to assess the complaint and decide that the complaint should be referred for investigation or other action? If there is insufficient information to make this decision the decision

- of the Sub-Committee should be to take no further action and inform the complainant that if they wish to provide further information, it will be considered afresh.
- (ii) Is the complaint about someone who is no longer a member of the Authority, but is a member of another authority? If so, the Sub-Committee will refer the complaint to the Monitoring Officer of that other authority to consider.
 - (iii) Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities? If yes, the matter has already been the subject of a previous investigation or other action then there is nothing more to be gained by further action being taken.
 - (iv) Is the complaint about something that happened so long ago that there would be little benefit in taking action now?
 - (v) Is the complaint so trivial to warrant further action?
 - (vi) Does the complaint appear to be simply malicious, politically motivated or 'tit-for-tat'?
 - (vii) Is the conduct part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Authority and there is no other avenue left to deal with it, short of investigation?
 - (viii) Does the complaint concern the Members' private life when they are not carrying out the business of the Authority, or where they have not misused their position as a Member?
 - (ix) Does the complaint appear to be actually about the dissatisfaction with an Authority decision rather than member conduct?
 - (x) Would the status or number of the subject member(s) make it difficult for the Standards Committee to deal with the complaint?
 - (xi) Would the status of the complainant make it difficult for the Standards Committee to deal with the complaint? e.g. is the complainant a member of the Standards Committee, the Monitoring Officer or other senior officer?
 - (xii) Is there a breakdown in relationships within the Authority or is there governance dysfunction in the Authority?

11. The Monitoring Officer will provide the complainant and subject member with notification of the Sub-Committee's decision with reasons within 5 working days of the meeting.

Stage 2 – Opportunity to Appeal against Assessment Sub-Committee's decision

12. The Assessment Sub-Committee can make one of four decisions (see B4 above). If the decision is to begin an investigation or take some other action, or is to refer the matter to the Standards Board for

England, there is no appeal mechanism and the matter moves to stage 3 (see below).

13. The Assessment Sub-Committee can decide that no further action is required in respect of a complaint after carefully applying the assessment criteria. Any decision should normally be made within 20 working days. When writing to the complainant the Monitoring Officer will set out clearly the reasons for the decision and inform the complainant of his/her right to ask the Standards (Review) Sub-Committee to reconsider the complaint. Such a request (i.e. to appeal) must reach the Monitoring Officer within 30 calendar days beginning with the date of the decision letter to the complainant. Upon receipt of such a request the Monitoring Officer will convene a meeting of the Standards (Review) Sub-Committee within a maximum of 3 months of receiving the request and should aim to complete the review within an average of 20 working days. The Review Sub-Committee should apply the same assessment criteria that was used for the initial assessment. The Monitoring Officer will inform the subject member of the review request. If the complainant has submitted fresh allegations or fresh evidence regarding the matter this will be treated as a new complaint and be submitted to the Standards (Assessment) Sub-Committee.
14. The Standards (Review) Sub-Committee will comprise 3 members, chosen on a rotational basis by the Chief Executive and Monitoring Officer and must include at least one Lay Independent Member and one full Police Authority Member and must be chaired by a Lay Independent Member. No member who took part in the original decision will form part of the Review Sub-Committee to determine its review decision. The meeting will be held in private and neither the complainant nor subject member may attend. When it meets the Review Sub-Committee considers the matters in accordance with Table D below.

Table D – Procedures for the Standards (Review) Sub-Committee

<p>D1 The Sub-Committee will take into account Part III of the Local Government Act 2000 as amended, the Standards Committee (England) Regulations 2008 and any guidance issued by the Standards Board for England with regard to the review of assessment of complaints about members of relevant authorities.</p> <p>D2 The Sub-Committee's duty is to consider the complaint afresh, applying the relevant criteria, and making one of the following decisions:</p> <ul style="list-style-type: none">(i) Refer to the Standards Board for England (e.g. serious cases)(ii) Refer to the Monitoring Officer:<ul style="list-style-type: none">a) for investigation; orb) with instruction that (s)he takes alternative action
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permitted by regulations (e.g. mediation, training or an apology)

- (iii) Refer to the Monitoring Officer of another Authority
- (iv) The subject of no further action

- D3** If the complaint is in respect of a person who is no longer a member of the Authority, but is a member of another relevant authority (as defined in section 49 of the Local Government Act 2000), the Sub-Committee must refer the allegation to the Monitoring Officer of that other authority for investigation.
- D4** In respect of the decision made (see D2) the Sub-Committee will provide a written summary of the complaint to the subject member and the complainant including both the decision and the reasons for the decision. The Review Sub-Committee should send out its decision notice within 5 working days of the decision being made. The Sub-Committee will consider any request for anonymity from the complainant. This written summary will normally be made available to the public in accordance with section 57C of the Local Government and Public Involvement in Health Act 2007 and regulation 8 of the Standards Committee (England) Regulations 2008.
- D5** The Sub-Committee shall authorise the Monitoring Officer to take all reasonable steps to implement its decision, with reasons, and to notify the complainant and the member concerned of that decision.
- D6** In the event of a decision to refer the complaint to the Monitoring Officer for action other than investigation (such as training or conciliation etc) the Monitoring Officer will subsequently make a report to the full Standards Committee giving details of the action taken regarding the direction. The Committee shall:
- (i) if satisfied with the action specified in the report, give appropriate notice of that fact to the complainant and the subject member; or
 - (ii) if not satisfied with the action specified in the report, give a further direction to the Monitoring Officer.
- D7** The Sub-Committee shall have liberty to review these procedures from time to time.
- D8** The Monitoring Officer has delegated authority to amend this procedure where appropriate.

15. In assessing the Review request, the Standards (Review) Sub-Committee will consider the assessment criteria referred to in Table C above.

16. There is no further review entitlement if the Review Sub-Committee decides that no action should be taken in respect of the complaint. This does not preclude any party taking judicial review in respect of the decision.

Stage 3 – Actions arising from the decision to pursue the complaint

a) Referral to the Standards Board for England

17. Where the relevant Sub-Committee has decided to refer the complaint to the Standards Board for England, the Monitoring Officer will write within 5 working days to the Standards Board for England with the decision and reasons for the decision. This should include the paragraph or paragraphs of the Code of Conduct that it believes the allegation refers to and the reasons why it cannot be dealt with locally. This could be due to public interest considerations which could make it difficult for the Authority to deal with the case fairly and speedily.
18. When the Standards Board for England has investigated the matter it will normally hand the investigation report to the Monitoring Officer to present to the Standards Committee, whereupon the procedure from paragraph 24 below takes effect.

b) Referral to the Monitoring Officer for action other than investigation

19. Where the relevant Sub-Committee has decided that the matter be referred to the Monitoring Officer for action other than investigation, the Monitoring Officer will notify the complainant and subject member of the proposed next steps. After implementation of the action, or within 3 months of the Sub-Committee's decision, whichever is sooner, the Monitoring Officer will convene a meeting of the full Standards Committee and present to it a report detailing how successfully the action proposed has been carried out.
20. Where possible, the Monitoring Officer will provide a draft of the report to the complainant and subject member for their comments to be incorporated before presentation to the Committee.

c) Referral to the Monitoring Officer for investigation

21. Where the relevant Sub-Committee decides that a complaint should be referred to the Monitoring Officer for investigation the Monitoring Officer must write to the complainant and subject member advising who will be responsible for conducting the investigation.
22. The Monitoring Officer will not normally personally undertake the investigation but will manage the investigation process by appointing an investigator, setting the terms of reference of the investigation and monitoring its progress. The investigator could be the Deputy

Monitoring Officer or a Monitoring Officer appointed from one of the police authorities within the region.

23. The investigator's report will conclude either that:
 - a) there has been a failure to comply with the Code of Conduct; or
 - b) there has not been any failure to comply with the Code of Conduct.
24. The Monitoring Officer will convene a meeting of the Standards Committee to receive the Investigation report. The statutory timescale for this to take place is 90 calendar days after the Sub-Committee's decision to refer for investigation, but the Monitoring Officer will convene the meeting as soon as practicable after the investigation has been completed.
25. The meeting of the Standards Committee will normally consider the report in exempt session so the public will not be present. Normally the complainant and subject member will not be invited to the meeting.
26. If the Committee decides there has been no failure to comply with the Code of Conduct it will give written notice of the finding to the complainant and subject member. Regulation 17 also provides that normally a public notice will be placed in at least one local newspaper and the web page of any authority concerned.
27. If the Committee decides there has been a failure to comply with the Code, it will normally determine that the matter be considered at a hearing of the Committee on a future date no later than 3 months from the date the Monitoring Officer's report was completed. However, if the nature of the complaint is so serious that the Committee would not have sufficient sanction powers if a finding of failure to comply with the Code was made, the Committee can refer the matter for determination to the Adjudication Panel for England, provided that the Adjudication Panel has agreed to accept the referral.
28. Any hearing by the Standards Committee should be conducted having regard to any relevant guidance issued by the Standards Board for England and the subject member should be afforded at least 14 days notice.
29. The Monitoring Officer will contact the subject member regarding arrangements for the hearing including representation, witnesses to be called and other procedural matters. The hearing will normally be held in exempt session. However, the subject member and complainant will normally be invited to attend throughout the hearing other than when the Committee goes into decision making mode. At the close of the hearing the Committee will make its decision whether it finds failure to comply with the Code or not.

30. Regulation 20 provides for the notification of findings of the Standards Committee following a hearing. There are broadly 3 decisions the Committee can make:
- a) finding of no failure to comply with the Code;
 - b) finding of failure to comply with the Code but that no action needs to be taken in respect of the matters considered; or
 - c) finding of failure to comply with the Code and that a sanction be imposed.
31. The sanctions a Standards Committee can impose are set out in Table E below:

Table E – List of Possible sanctions a Standards Committee can impose
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<p>Regulation 19(3) of the Standards Committee (England) Regulations 2008 provides for the following sanctions (one or a combination):</p>
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| <ul style="list-style-type: none"> • censure of that member; • restriction for a period not exceeding six months of that members' access to the premises of the Authority or that members' use of the resources of the Authority, provided that those restrictions- <ol style="list-style-type: none"> (i) are reasonable and proportionate to the nature of the breach; and (ii) do not unduly restrict the person's ability to perform the functions of a member; • partial suspension of that member for a period not exceeding six months; • suspension of that member for a period not exceeding six months; • that the member submits a written apology in a form specified by the Standards Committee; • that the member undertakes such training as the Standards Committee specifies; • that the member participate in such conciliation as the Standards Committee specifies; • partial suspension of the member for a period not exceeding six months or until such time as the member submits a written apology in a form specified by the Standards Committee; |
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- partial suspension of the member for a period not exceeding six months or until such time as the member has undertaken such training or has participated in such conciliation as the Standards Committee specifies;
- suspension of the member for a period not exceeding six months or until such time as the member has submitted a written apology in a form specified by the Standards Committee;
- suspension of the member for a period not exceeding six months or until such time as that member has undertaken such training or has participated in such conciliation as the Standards Committee specifies.

32. After making a finding the Standards Committee shall give written notice of the finding and the reasons for it to the subject member and the complainant in accordance with regulation 20.

Stage 4 – Appeals from the Standards Committee Findings or Sanctions

33. Where a failure to comply with the Code of Conduct was found (see 30 b and c above) then the subject member concerned may apply for permission to appeal against the finding or sanction imposed.
34. The subject member must give notice in writing to the President of the Adjudication Panel to seek permission to appeal and, if appropriate apply for the suspension of any sanction imposed under Stage 3 until such time as any appeal is determined.
35. The notice must be received by the Adjudication Panel within 21 days of the member's receipt of the notice under regulation 20 (see 30 above).
36. An application for permission to appeal or to suspend a sanction shall be determined by the president (or deputy president as the case may be) of the Adjudication Panel and they shall have regard to whether there is a reasonable prospect of the appeal being successful.
37. The president (or deputy president) shall, within 21 days of receipt of a notice send notice of their decision to the subject member and if the decision is to refuse permission to appeal or for suspension of a sanction then they shall give the reasons for the decision.
38. The conduct of appeals and the composition of appeals tribunals are set out in regulations 22 to 25 of the Standards Committee (England) Regulations 2008.

**Approved by Humberside Police Authority Standards Committee
12 December 2008**