

APPENDIX S: Annexe 1

Criteria for Assessment of Complaints against Members relating to the Code of Conduct

All the criteria used for the assessment of complaints against Members in respect of the Code of Conduct apply to all relevant codes not just those of Sevenoaks District Council.

Initial Intake test

Before assessment of a complaint begins, the complaint has to meet the following tests:

It is a complaint against one or more named Members of Sevenoaks District Council or one or more named Members of one of the Parish/Town Councils within the Sevenoaks District Council area.

The Subject Member was a Member at the time of the alleged conduct.

The Member was acting in their official capacity. (If there is ambiguity the box should still be ticked and the matter assessed).

The behaviour took place within the last 30 days.

The complainant has given their name and address.

The complaint is not an allegation that could constitute a criminal offence (Section 34 of the Localism Act 2011)

The complaint is not being dealt with by the police, ombudsman or another complaint process (in this case the complaint will not be processed until after the other process has been completed).

The complaint is not being made within 6 weeks prior to an election where the Member subject to the complaint or the complainant is a candidate (no action will be taken in relation to such a complaint within this period)

The complaint is not the same or substantially similar to a complaint that has already been assessed even if this was prior to 1st July 2012.

The complaint is a substantive allegation under the Code rather than a service, officer or a statement of policy disagreement or a disagreement within another organisation, such as a political group (in this case the complainant may be directed to refer the complaint to another organisation).

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If the complaint fails one or more of these tests it cannot be considered for Assessment and the complainant will be informed that no further action will be taken in respect of the complaint. The Subject Member concerned will also be told of the complaint and that it had failed the Initial Intake test. The relevant Clerk will be informed of a complaint relating to a Town or Parish Councillor when a complaint passes the Initial Intake Test. The Monitoring Officer may advise the complainant that the complaint needs to be referred elsewhere, if appropriate.

Assessment test

The Subject Member concerned will be informed of the complaint by being sent a copy of the complaint together with all supporting documentation and given the opportunity to respond.

The allegations will then be considered by the Monitoring Officer, together with the appointed Independent Person. A complaint will be considered in relation to the following criteria: -

Sufficiency of Complaint

- Does the complaint state sufficient and detailed information as regards the allegation and alleged misconduct to sustain a breach of the Code of Conduct
- Does the complaint and related documents include sufficient independent evidence supporting the claim and establishing the facts on which it is based such as witness statements and documentary evidence to show a reasonable prospect of establishing a breach of the Code of Conduct
- Can it be shown that the Subject Member was acting in a public capacity
- Can it be shown that the behaviour falls within the relevant Code of Conduct

Evidence

- Is the evidence sufficiently reliable i.e. is it first hand evidence or hearsay evidence
- What weight can be given to the evidence
- Is the evidence relevant to the alleged breach
- Could any further evidence be revealed by an investigation

Suitability for Investigation

- Is it sufficiently serious
- Would an investigation serve any useful purpose
- Have the circumstances changed
- Is it serious enough to warrant a sanction

- Is the conduct seriously and unreasonably disrupting the business of the authority
- How long ago did the alleged conduct occur
- Is an investigation likely to prove on the balance of probability that a breach took place
- Is it likely that an investigation will prove only a technical or inadvertent breach
- Has the same or a substantially similar complaint already been the subject of an investigation
- Is the complaint really about dissatisfaction with a Council decision
- Is the complaint about the administrative practices of the Council rather than a Member's behaviour

Extenuating Circumstances

- Has the issue been publicised in the local press
- Is the complaint malicious
- Is the complaint minor
- Is the complaint tit for tat
- Is the case politically motivated

Possible Defences

- Was the breach made in all innocence i.e. without knowledge
- Are there strong mitigating circumstances
- Was there provocation

In order to facilitate the making of a decision the following definitions are given: -

- Lack of respect means derogatory comments that are aimed at a person or their personal qualities. However, Members should be able to express disagreement publically with each other and have the freedom to disagree with the views and opinions of others.
- Bullying or intimidation means offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate, or injure the recipient (Advisory, Conciliation and Arbitration Service (Acas)). Such conduct is unlikely to be considered as bullying when it is an isolated incident of a minor nature or when the behaviour by both the complainant and the Subject Member contributed equally to the breakdown in relations.

The Monitoring Officer will evaluate and weigh up the above criteria in reaching a decision. The Monitoring Officer will make one of the following decisions: -

- No further action

- Attempt informal resolution
- Recommend formal investigation

The complainant, the Subject Member concerned and the relevant Town/Parish Clerk (if applicable) will be informed of the outcome.

There may be certain complaints where the Monitoring Officer feels the need to make a referral to the Standards Assessment Working Party. Such referrals will take place according to the criteria set out below.

Criteria for referral to the Standards Assessment Working Party

- It is of an extremely sensitive nature or other similarly exceptional circumstances exist which justify departure from the arrangements and the Monitoring Officer and Independent Person must set those reasons out so they can be scrutinised.
- It involves the Leadership of the Council or the Opposition
- It involves the Chairman of the Council
- Complaints are from the Chief Executive, Section 151 Officer or the Monitoring Officer
- There is a significant conflict of interest on the basis that the Monitoring Officer has previously advised the Member on the matter.