

Appendix A

THE LOCAL FILTER PROCEDURE

General rules

Quorum

1. The quorum for the assessment, review, consideration and hearing sub-committees will be an independent member and two other members from different political parties. The meeting will be chaired by the independent member. All members of the sub-committees will be members of the standards committee and must have completed the relevant training.
2. Member allocation will be determined by the constitutional team drawn from the pool according to availability based on an allocation procedure approved by the standards committee.

Declaration of interest

3. The provisions of the Council's Code of Conduct apply and members will need to declare any personal and prejudicial interest in respect of the complaint at any standard committee meetings and hearings. When members' availability is sought they will be provided with the name of the complainant and subject member and other relevant information to determine whether there are any prejudicial interests. A reserve system will be used as backup.

Voting

4. Each sub-committee member will have one vote, and all matters/issues will be decided by a simple majority of votes cast with no casting vote for the chair. Abstentions will not be permitted.

Procedure for the Initial assessment

5. Complaints should be in writing and addressed to the Standards Committee of the Council. However, an oral complaint will be accepted where the complainant is unable to write due to a physical or mental disability or there is a language barrier. Where an oral complaint is received it will be transcribed and read back to the complainant over the phone and sent to them for their approval. Anonymous complaints will only be referred for assessment if they include documentary evidence or photographic evidence indicating an exceptionally serious or significant matter.
6. All complaints received will be logged and acknowledged. The subject member will usually be informed that a complaint has been received against him/her unless this will not be in the public interest or it would prejudice the future investigation of the complaint.

7. An assessment will be undertaken as to whether the complaint falls within the jurisdiction of the standards committee.
8. An assessment sub-committee meeting will be convened. This meeting will not be subject to the notice and publicity requirements under Part 5A of the Local Government Act 1972 and will be held in private.

Initial tests

9. Upon receipt of a complaint, the monitoring officer will review it to ensure that the complaint is one that can be properly considered under the Local Filter Procedure. This process will take place before the assessment sub-committee's consideration of the initial tests.
10. In the first stage of the assessment of a complaint the assessment sub-committee will need to be satisfied that:
 - I. The complaint is against one or more named members of the council.
 - II. The named member was in office at the time of the alleged misconduct and the Code of Conduct was in force at the time.
 - III. The complaint if proven will be a breach of the Code.
11. If the complaint fails to meet one or more of these tests, it cannot be investigated as a breach of the Code and the complainant will be informed that no further action will be taken in respect of the complaint.

Criteria for assessment

12. If the initial test is passed, the sub-committee will assess the complaint and decide what action, if any, to take against the following criteria. These are aimed at ensuring fairness to both the complainant and the subject member and are as follows:
 - I. Has the complainant submitted enough information to satisfy the assessment sub-committee that the complaint should be referred for investigation or other action?

If the answer is no, the complainant should be informed that there is insufficient information to enable an investigation to be carried out and that no further action will be taken unless or until further information is received within 5 WORKING DAYS from the date of postage
 - II. Is the complaint about someone who is no longer a member of the council but is a member of another authority? If so, does the assessment sub-committee wish to refer the complaint to the monitoring officer of that other authority?

If yes, refer the complaint to the monitoring officer of that other authority for consideration.
 - 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, there would be no point in taking further action in relation to the matter.

- IV. Is the complaint about something that happened so long ago that there would be little benefit in taking action now?

If yes, no further action.

- V. Is the complaint not serious enough to warrant further action?

If yes, no further action will be taken on the complaint.

- VI. Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?

If yes and the allegation is not sufficiently serious, then no further action should be taken.

- VIII. If the complaint is anonymous, does it include documentary or photographic evidence indicating an exceptionally serious matter?

If so, the matter should be referred for an investigation or some other action.

- IX. Is the complaint from the same complainant and the same or similar to one that has been previously judged as not having breached the code?

If yes, no further action

- X. Is the complaint vexatious?

If yes, no further action.

N.B The assessment criteria can be reviewed and amended by the Standards Committee from time to time as necessary but not during consideration of a matter.

Initial assessment decision

13. The assessment sub-committee should complete its initial assessment of a conduct allegation within an average of 20 WORKING DAYS from the receipt of the complaint.
14. The assessment sub-committee is required to reach one of the four following decisions:
- I. Referral to the monitoring officer for an investigation.
 - II. Referral of the complaint to Standards for England.
 - III. No action should be taken in respect of the complaint.
 - IV. Referral to the monitoring officer for other action.

Referral to the monitoring officer for investigation

15. The assessment sub-committee may refer a complaint to the monitoring officer for investigation where it believes this is warranted according to the criteria set out at (numbered paragraphs).
16. The monitoring officer on receipt of the referral must write to the relevant parties informing them of the decision and, if practicable, advise who will be responsible for conducting the investigation.

Referral to Standards for England

17. Where there are difficult issues or public interest considerations, the sub-committee may refer the complaint to Standards for England for consideration.
18. The assessment sub-committee may take the following matters into consideration when making a referral to Standards for England:
 - I. Whether the status of the member or the number of members about whom the complaint is made would make it difficult for them to deal with the complaint. For example, is the member a group leader, a member of the executive or standards committee?
 - II. Whether the status of the complainant would make it difficult for the standards committee to deal with the complaint. For example is the complainant a group leader, a member of the executive, or standards committee, the chief executive, monitoring officer or other senior officer.
 - III. Whether there is a potential conflict of interest of so many of the members of the standards committee that it could not properly monitor the investigation.
 - IV. Whether the standards committee believes that there is a potential conflict of interest of the monitoring officer or other officers and that suitable alternative arrangement cannot be put in place to address the conflict.
 - V. Where the case is so serious or complex or involves so many members that it cannot be handled locally.
 - VI. Where the complaint requires substantial amounts of evidence that is not available from the authority's documents, its members or officers.
 - VII. Where there is substantial governance dysfunction within the council or its standards committee.
 - VIII. Where the complaint relates to a long term or systemic member/officer bullying which could be more effectively investigated by someone outside the authority.
 - IX. Where the complaint raises an unresolved legal issue on which a national ruling would be helpful.
 - X. Where the public might perceive the council to have an interest in the outcome of the case. For example, if the council could be liable to be judicially reviewed if it upheld the complaint.

- XI. Where there are other exceptional circumstances which would prevent the standards committee investigating the complaint competently, fairly and in a reasonable period of time or within its available resources.

Decision to take no action.

19. The assessment sub-committee can decide that no action is required in respect of the complaint, for example, where the sub-committee does not consider the complaint to be serious enough to warrant any action or a long time has passed since the alleged conduct took place.

Referral to the monitoring officer for other action

20. When an assessment sub-committee considers a complaint, it can decide as an alternative to an investigation that some other course of action should be taken by the monitoring officer. The suitability of other action is dependant on the nature of the complaint and may be appropriate where the matter is less serious or is the most simple and cost effective way of resolving the matter. Examples of when this would be appropriate include where the authority to which the subject member belongs appears to have a poor understanding of the code and the authority's procedures. This may be evidenced by:

- I. A number of members failing to comply with the same paragraph of the code
- II. Officers giving incorrect advice
- III. Failure to adopt the code
- IV. Inadequate or incomplete protocols for the use of the authority's resources.

21. Other action may also be appropriate where a breakdown in relationship within the authority is apparent. Evidence of this may include:

- I. A pattern of allegations of disrespect, bullying or harassment.
- II. Factionalised groupings within the authority.
- III. A series of "tit-for-tat" allegations.
- IV. Ongoing employment issues, which may include resolved or on-going employment tribunals, or grievance procedures.

22. If the monitoring officer embarks on a course of other action, it should be emphasised to the parties concerned that no finding has been made on whether the subject member has failed to comply with the code.

23. Complaints that have been referred to the monitoring officer for other action cannot be referred back to the standards committee if the other action is perceived to have failed. The decision to take other action closes the opportunity to investigate. The assessment sub-committee should communicate this clearly to the parties from the outset and may find it helpful to ask the parties to confirm in writing that they would be willing to co-operate with the process of other action.

24. Examples of alternatives to investigations are:

- Arranging for the subject member to attend a training course.

- Arranging for the subject member and complainant to engage in a process of conciliation.
- Arranging for the subject member to apologise to the complainant.
- Instituting changes to the procedures of the authority if they have given rise to the complaint.

N.B The sub-committee **must** consult the monitoring officer before reaching a decision to take other action.

Notification of the decision

25. In any decision to take no action, the assessment criteria must be adhered to.
26. The assessment sub-committee should aim to send out its decision notice to the complainant and the subject member within 5 WORKING DAYS of the decision being made together with the reasons for the decision.
27. Where no potential breach of the code has been disclosed, the sub-committee must explain in the decision notice what the allegation was and the reasons for their decision.
28. If the decision is that no action should be taken, the sub-committee must advise the complainant of their right to request a review. This must be lodged within 30 DAYS from the date of receipt of the decision notice.
29. The review request must be in writing to the standards committee and set out the reasons for the request.
30. If the sub-committee decides that the complaint should be referred to the monitoring officer or Standards for England, it must send a summary of the allegation to the relevant parties. The sub-committee does not have to give the subject member a summary of the complaint if it decides that doing so would be against the public interest or would prejudice any future investigation, for example, where the sub-committee considers that the subject member may intimidate the complainant or witnesses or compromise or destroy evidence.
31. The assessment sub-committee will need to seek advice from the monitoring officer when deciding whether or not the summary should be withheld.

Review of “no further action” decisions

32. Where the complainant exercises their right to a review of a no further action decision, the procedure detailed below will be followed:
 - a) The request for a review will be logged and acknowledged by the designated officer;
 - b) The designated officer will check that the request has been received within the statutory time limit of 30 DAYS. If not, the complainant will be informed and advised that it will not be considered.

- c) If the request is received within the time limit, a review sub-committee will be convened to review the decision.
- d) The allocation procedure will be used to allocate members to sub-committees. Members of the assessment sub-committee who took part in the original decision must not take part in the review decision.
- d) The designated officer will notify all the relevant parties of the review request.
- e) This review meeting will be held in private and not be subject to the notice and publicity requirements under Part 5A Local Government Act 1972.
- f) It is a statutory requirement that the review sub-committee carries out the review within a maximum of three months of receiving the request. However the guidance recommends that the authority should aim to complete the review within an average of 20 WORKING DAYS.
- g) When carrying out the review, the review sub-committee should apply the same criteria used for the initial assessment, which are set out in paragraph 11 above.
- h) The sub-committee has the same 4 decisions options available to it as the assessment committee. However, if new information of significance which is not merely a repeat of the complaint becomes available at the review stage, the matter should be treated as a new complaint and referred back to the assessment committee.
- i) The complainant will be notified of the outcome of the review as soon as possible by the review sub-committee which should aim to do so within 5 WORKING DAYS of the decision.
- j) A committee clerk will record the decision of the review sub-committee.
- k) If the review sub-committee's decision is that no action should be taken on the complaint, it must give the complainant and the subject member notice in writing of both the decision and the reason(s) for the decision.
- l) If the decision is that the complaint should be referred to the monitoring officer or Standards for England, the review sub-committee must write to the relevant parties informing them of the decision and reasons for it together with a summary of the complaint.
- m) Where further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint, the review sub-committee should consider whether the case should be passed to the assessment sub-committee to be handled as a new complaint. In this instance the review sub-committee would still need to make a formal decision that the review request will not be granted.

NB: Any member who participated in the assessment stage of the complaint will not be eligible to sit on the review hearing of the same complaint.

How investigations will be conducted.

33. If the review sub-committee decides that the complaint should be investigated it will refer the matter to the monitoring officer who will arrange for the matter to be investigated.
34. The monitoring officer can delegate all or any of the monitoring officer functions to any person.
35. The monitoring officer may appoint an investigating officer who could be:-
 - A senior officer of the authority
 - An officer from another local authority with a reciprocal agreement with Southwark Council to undertake each others conduct investigations.
 - Any other senior person, who is not an elected or former member of this authority, with the relevant experience to conduct an investigation.
36. The monitoring officer shall inform the following persons below that the matter has been referred for investigation
 - The member who is subject of the allegation.
 - Any person who made the allegation that gave rise to the referral
 - The standards committee of any other authority concerned
37. The investigating officer will give the subject member an opportunity to comment on the allegation.
38. The investigating officer can make enquires of any person and require any person to give such information including documentary evidence or explanation as he or she thinks necessary.
39. The investigating officer can require any other authority concerned to provide such advice and assistance as may reasonable be needed to assist in the investigation.
40. The investigating officer will prepare a report, including their findings. The Standard for England's Guidance recommends that most investigations are carried out and a report produced within 6 months of the complaint being initially assessed.

The report

41. The report should show appropriate input from relevant persons and clearly state whether the investigating officer considers that there has been a breach of the code and which obligations of the Code has been breached.
42. The Investigating officer may require any of the authorities concerned to afford reasonable access to such documents in the possession of that authority as appear to the investigation officer to be necessary for the purpose of conducting the investigation.
43. The investigating officer will send a copy of the report to the member who was the subject of the allegation and refer the report to the hearing sub-committee

Consideration hearing

44. A consideration sub-committee meeting should be convened to consider the investigating officer's report. This meeting will not be subject to the notice and publicity requirements under Part 5A of the Local Government Act 1972 and will be held in private.
45. The consideration sub-committee must consider the investigating officer's report and make one of the following findings:
 - that it accepts the monitoring officer's findings that there has been no failure to comply with an authority's code of conduct;
 - that the matter should be considered at a hearing sub-committee; or
 - that the matter should be referred to the First-Tier Tribunal (Local Government Standards, England) for determination.

NB: The consideration sub-committee may only refer to the First-Tier Tribunal (Local Government Standards, England) for determination if it considers the powers of sanction insufficient and the First-Tier Tribunal (Local Government Standards, England) has agreed to accept it.

46. If the consideration sub-committee agrees that the code has not been breached and providing the subject member agrees, it must arrange for a notice to be published in the local newspaper and may also arrange for the notice to be published on the council's website.

The hearing sub-committee

47. The hearing sub-committee, which will generally have the same members as the consideration sub-committee, will decide, on a balance of probabilities, whether the complaint(s) is or are upheld. It will do so by considering the investigating officer's report and any representations by him/her representative and the written or oral representations made by the subject member, any evidence given and any other relevant issues.
48. The hearing sub-committee meeting will be open to the public and the press. However, the public and press will be excluded for those parts of the meeting where confidential or exempt information under Schedule 12A of the Local Government Act 1972 as amended is disclosed.
49. The hearing must be heard within three months of the date on which the monitoring officer's report is completed but not less than 14 DAYS after the monitoring officer sends the report to the subject member.
50. The subject member may choose to present evidence and make representations either orally, or in writing and either personally or by counsel or solicitor or with the consent of the standards committee by any other representative.

Procedure at the Hearing

51. The initial order of business at the meeting will be as follows:
 - ❖ establishing whether the hearing sub-committee is quorate, (the quorum for the committee will be **three**. An independent member and a two

members from different political groups must be present; no substitutions will be allowed once proceedings have commenced);

- ❖ introductions;
- ❖ the chair will explain how the hearing will be conducted;
- ❖ If a member having given notice of attendance fails to attend the hearing, the hearing committee may make a determination in their absence if satisfied that there is insufficient reason for such failure or adjourn to another date where there is sufficient reason to warrant an adjournment
- ❖ consideration of any procedural issues and, in particular, any representations from the monitoring officer and/or the subject member as to reasons why the sub-committee should exclude the press and public for any part of the meeting and determination as to whether to exclude the press and public.

Presentation by the investigating officer

52. The investigating officer will present the evidence which is relevant to the matter and may call any witnesses, including the complainant to substantiate any matter(s) contained in the report.
53. The subject member or his/her representative may ask questions of the investigating officer and of any witnesses.
54. The sub-committee may ask questions of the investigating officer and of any witnesses.

Presentation by the subject member

55. The subject member or his/her representative will then have the opportunity to make representations and to present the evidence which is relevant to the matter. The subject member or his/her representative may call any other witnesses to give evidence.
56. The investigating officer may ask questions of the subject member and of any witnesses.
57. The committee may ask questions of the subject member or any witness.
58. The investigating officer will be given the opportunity to sum up and comment on the most appropriate sanction.
59. The subject member or his/her representative will be given the opportunity to sum up, comment on the most appropriate sanction and put forward any mitigating circumstances.

Decision by the hearing sub-committee

60. The decision of the hearing sub-committee will be made in accordance with the following procedure:

- The hearing sub-committee will adjourn to consider in private all the evidence and decision. The hearing sub-committee's legal adviser (who will be a different legal officer from the investigating officer) and committee clerk will retire with them to provide legal advice or advice regarding the evidence/submissions.
- At any stage in the consideration of the matter the hearing sub-committee may return to ask further questions of the investigating officer or subject member or seek further information.

61. Where the hearing sub-committee finds the subject member to be in breach of the Code, the possible sanctions or a combination of available to it are as follows:

- a) censure of that member;
- b) restriction for a period not exceeding six months of that member's access to the premises of the authority or that member's use of the resources of the authority provided that those restrictions
 - 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
- c) partial suspension of that member for a period not exceeding six months; or
- d) suspension of that member for a period not exceeding six months;
- e) that the member submits a written apology in a form specified by the hearing sub-committee;
- f) that the member undertakes such training as the standard committee specifies;
- g) that the member participates in such conciliation as the standards committee specifies;
- h) partial suspension of the member for a period not exceeding six months or until such time as the member submits a written apology in the form specified by the standards committee;
- i) partial suspension of a 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;
- j) suspension of member the 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;
- k) suspension of a 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;

62. The decision of the hearing sub- committee, the action (if any) it is proposes to take and the reasons for the decision will be given as soon as practicable after the end of the hearing.
63. The hearing sub-committee will consider whether there are any recommendations which should be made arising from the consideration of the allegation.

Notification of findings

64. The full written decision together with reasons must be given to the following:
 - I. to the subject member
 - II. Standards for England
 - III. Standards committee of any other authority concerned
 - IV. the complainant
65. The committee clerk will arrange for a summary of the full written decision to be published on the council's website and in at least one local newspaper.
66. Where the hearing sub-committee determines that there has not been a breach of the Code of Conduct, providing the subject member agrees, the summary will state that the committee found that the subject member had not failed to comply with the Code of Conduct and will give its reasons for reaching that finding;
67. Where the hearing sub-committee determines that there has been a failure to comply with the Code of Conduct but no action is required, the summary will:
 - (i) state that the hearing sub- committee found that the subject member had failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure;
 - (ii) specify the details of the failure;
 - (iii) give reasons for the decision reached; and
 - (iv) state that the member concerned may apply to the First-Tier Tribunal (Local Government Standards, England) for permission to appeal against the determination.
68. Where the committee determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the summary will:
 - (i) state that the panel found that the Member had failed to comply with the Code of Conduct;
 - (ii) specify the details of the failure;
 - (iii) give reasons for the decision reached;
 - (iv) specify the sanction imposed, and
 - (v) state that the Member concerned may apply to the First-Tier Tribunal (Local Government Standards, England) for permission to appeal against the determination.

Appeal

69. Where the hearing committee determines that the subject member has failed to comply with the Code of Conduct, the Chair will inform the subject member of his/her right to apply to the First-Tier Tribunal (Local Government

Standards, England) for permission to appeal the decision and for any sanction imposed to be suspended until the appeal is determined.

70. The application for leave to appeal must be lodged within 28 DAYS of receipt of the decision notice and must be addressed to:

First-Tier Tribunal (Local Government Standards, England)
York House
31-36 York Place
Leeds
West Yorkshire
LS1 2ED

Withdrawing the complaint

71. Where a complainant asks to withdraw their complaint prior to the assessment sub-committee having made a decision on it the assessment sub-committee will need to consider whether to grant the request.
72. The following criteria may apply:
- Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
 - Is the complaint such that action can be taken on it. For example an investigation without the complainant's participation?
 - Is there an underlying reason for the withdrawal of the complaint? For example, is there information to suggest that the complainant may have been pressured by the subject member or an associate of theirs to withdraw the complaint.

Multiple and vexatious complaints

Multiple complaints

73. Where a number of complaints from different complainants about the same matter are received the assessment sub-committee may consider the complaints at the same meeting.
74. If this is the case, an officer should be asked to present one report and recommendation that draws together all the relevant information highlighting any differences or contradictions. It should be noted however, that the assessment sub-committee must reach a separate decision for each complaint and follow the notification procedure on each one.

Vexatious complaints

75. The standards committee must consider every complaint that they receive in relation to the Code of Conduct on its own merits. However, if the complaint is vexatious it will not be considered.

76. Vexatious and persistent complaints may be identified through the following patterns of behaviour:
- repeated complaints making the same or broadly similar, complaints against the same member/s about the same alleged incident.
 - use or aggressive or repetitive language of an obsessive nature.
 - repeated complaints that disclose no potential breach of the Code.
 - where there seems to be an ulterior motive for the complaint/s.
 - where a complainant refuses to let the matter rest once the complaint process has been exhausted (including the review stage)

Confidentiality

77. Where a complainant wishes their identity to be withheld, the assessment sub committee can decide to do so. In reaching that decision it will need to have regard to the following:
- whether there is a risk of physical harm to the complainant if their identity is disclosed
 - where the complainant works closely with the subject member and afraid of the consequences to their employment
 - where the complainant suffers a serious health condition and there is a medical risk associate with the disclosure of their identity. In such cases the committee may wish to obtain medical evidence in respect of his.

Complaints about members of more than one authority.

78. If a complaint is made about a dual-hatted member the monitoring officer should check whether a similar allegation has been made to the other authority on which the member serves and a decision on which standards committee should deal with the particular matter must be taken by the standards committees themselves following discussions.
79. They may take advice as necessary from Standards for England.