

DEVON AND SOMERSET FIRE AND RESCUE AUTHORITY

MEMBERS' CODE OF CONDUCT

GUIDE TO MAKING A COMPLAINT

1. Summary

This guide provides information on making a complaint against certain types of inappropriate behaviour by Members (elected Councillors appointed by constituent authorities) and Independent Members of the Devon and Somerset Fire and Rescue Authority. The guide explains:-

- who you can complain about;
- what you can complain about; and
- what will happen to your complaint.

If you have any questions or difficulties arising from this guide – for example, if English is not your first language – then please contact the Clerk to the Authority on Exeter (01329) 872200.

2. Background

The Devon and Somerset Fire and Rescue Authority is a stand-alone local authority. As such, it is required by legislation to have its own Standards Committee and to adopt a Members' Code of Conduct, based upon government guidance. A copy of the Members' Code of Conduct as approved by the Authority can be found on the website (www.dsfire.gov.uk) or is available on request from:-

The Clerk
Devon and Somerset Fire and Rescue Authority
Service Headquarters
The Knowle
Clyst St. George
EXETER EX3 0NW
Tel: (01392) 872200
e-mail: membercomplaints@dsfire.gov.uk

The Authority is made up of a total of 25 elected councillors (Members) appointed to it by four constituent authorities (Devon and Somerset County Councils; Plymouth City Council and Torbay Council). The Authority also has – as required by law – three Independent Members. These are not councillors or employees of the Authority or its constituent authorities. All Members and Independent Members are required to follow the Authority's approved Members' Code of Conduct. This guide explains how – from 8 May 2008 - you can make a complaint to the Authority if you feel that a Member or Independent Member has failed to follow the Code.

3. Who and What You CAN Complain About

You can only use this complaints procedure to complain that a Member or Independent Member may have failed to follow the Authority's approved Members' Code of Conduct. ***Please remember that a "Member" is an elected councillor appointed to the Authority by one of its constituent authorities (Devon and Somerset County Councils; Plymouth City Council and Torbay Council). An Independent Member is someone appointed under statute to serve on the Authority's Standards Committee.***

Your complaint may be that the Member or Independent Member has:-

- failed to treat others with respect;
- acted in a way that may cause the Authority to breach an equality enactment
- bullied someone;
- intimidated, or attempted to intimidate a person involved in an allegation against them;
- compromised the impartiality of those who work for, or on behalf of, the Authority;
- disclosed confidential information;
- brought an office of, or the Authority itself, into disrepute;
- used their position as a Member or Independent Member improperly to confer or secure an advantage or disadvantage;
- not used the resources of the Authority in accordance with its requirements
- disregarded advice when reaching decisions
- failed to give reasons for decisions where there is a statutory requirement to do so;
- failed to declare a personal or prejudicial interest as defined by the Code;
- had a prejudicial interest as defined by the Code and failed to act appropriately;
- failed to register (an) interest(s) as required by the Code.

4. What CANNOT dealt with under this procedure

This procedure cannot be used for:-

- complaints where a Member or Independent Member is not named;
- complaints that are **NOT** in writing;
- incidents or actions that are not covered by the Authority's approved Members' Code of Conduct (e.g. that the complaint concerns acts carried out in the Member or Independent Member's private life UNLESS, in certain circumstances, the act constitutes a criminal offence for which the Member or Independent Member has been convicted);
- incidents that are about a fault in the way the Authority has or has not done something. This is known as maladministration and may be a matter for the Local Government Ombudsman;
- complaints about people employed by this Authority;

- incidents that happened before OR after the person complained of was a Member or Independent Member of the Authority;
- incidents that happened before the Authority adopted its approved Members' Code of Conduct;
- complaints about the way in which the Authority conducts and records its meetings.

5. How Do I Make a Complaint?

Your complaint **MUST** be in writing – this includes fax and electronic submissions. If, however, this would be difficult for you (for example, because of a disability or if English is not your first language) then please contact the Clerk to the Authority (whose contact details are provided above).

A complaints form is available on the Authority website (www.dsfire.gov.uk) or on request from the Clerk to the Authority (e-mail: membercomplaints@dsfire.gov.uk). If you wish to make a complaint you are encouraged to use this form although you may prefer to write a letter setting out your complaint. If you choose to write a letter, it is important that you include in it **ALL** of the following information:-

- your name, address and other contact details (telephone number(s), e-mail address etc.);
- your status (e.g. member of the public; local authority member; monitoring officer; Member of Parliament);
- for the purposes of the Authority's ethnic monitoring, brief details of your ethnic origin (e.g. British; Irish; Other White Background; White and Black Caribbean etc)¹;
- the name of the Member or Independent Member of the Fire and Rescue Authority who the complaint is about;
- details of the alleged misconduct with, where possible, dates, witness details and other supporting information.

Please note that your identity will normally be disclosed to the Member or Independent Member about whom you are complaining. This information may, however, be withheld from that Member or Independent Member in exceptional circumstances and at the discretion of the Assessment Sub-Committee of the Standards Committee if it considers that following criteria are met:-

- ***you have reasonable grounds for believing that you will be at risk of physical harm if your identity is disclosed; and/or***
- ***you are an officer (i.e. employee of the Authority or a constituent authority) who works closely with the Member or Independent Member who is the subject of the complaint and you are afraid of the consequences to your employment or of losing your job if your identity is disclosed; and/or***
- ***you suffer from a serious medical condition and that there are medical risks associated with your identity being disclosed. In this event, the Assessment Sub-Committee will require medical evidence of your condition.***

¹ For full details of ethnic origin classifications used by the Authority, please refer to the Members' Code of Conduct Complaints Form

6. Anonymous Complaints

Anonymous complaints will only be referred by an Assessment Sub-Committee for investigation or some other form of action if the complaint includes photographic evidence indicating an exceptionally serious or significant matter.

7. What will happen to my complaint?

On receiving your complaint, the Clerk will refer it to an Assessment Sub-Committee to reach a decision, within an average of **20 working days**, on what should happen with the complaint. The Assessment Sub-Committee is required to reach one of the three following decisions on a complaint about a Member or Independent Member's actions in relation to the Authority's approved Members' Code of Conduct:-

- to refer the complaint to the Authority's Monitoring Officer for investigation or for some other course of action to be undertaken;
- to refer the complaint to the Standards Board for England;
- that no action should be taken in respect of the complaint.

Meetings of the Assessment Sub-Committee are **CLOSED** meetings and are not subject to the notice and publicity requirements under Part 5 of the Local Government Act 1972. Specifically, they are not subject to the following rules:-

- rules regarding notices of meetings;
- rules on the circulation of agendas and documents;
- rules over public access to meetings; and
- rules on the validity of proceedings.

8. How will the Assessment Sub-Committee make its decision?

(a) Initial Tests

Before any other assessment of the complaint begins, the Assessment Sub-Committee will need to be satisfied that the complaint meets **ALL** of the following tests:-

- it is a complaint against one or more **named** Members or Independent Members of the Authority;
- the **named** Member or Independent Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
- the complaint, if proven, would be a breach of the Code under which the Member or Independent Member was operating at the time of the alleged misconduct.

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

(b) Other Assessment Criteria

If your complaint meets the above tests, it may be that the Assessment Sub-Committee may still decide to take no further action in respect of your complaint if one or more of the following criteria apply:-

- your complaint falls within any of the areas that CANNOT be dealt with under this procedure, as set out in Section 4 of this guide;
- the Assessment Sub-Committee does not consider that you have provided sufficient information to enable it to reach a decision on whether the complaint should be referred for investigation or some other action;
- your complaint is about someone who is no longer a Member or Independent Member of this Authority BUT is a Member or Independent Member of another Authority. In this case, the Assessment Sub-Committee may decide to refer your complaint to the Monitoring Officer of the other authority concerned;
- your complaint has been the subject of an investigation or other action relating to the Code of Conduct, or by other regulatory authorities, and there is nothing to be gained by further action being taken;
- your complaint is about something that happened so long ago that there would be little or no benefit in taking action now;
- your complaint is considered to be not sufficiently serious to warrant further action;
- your complaint appears to be simply malicious, politically motivated or "tit-for-tat".

9. What can I do if the Assessment Sub-Committee decides, at first, to take no further action on my complaint?

You are entitled to request a review of a decision of an Assessment Sub-Committee to take no further action after giving initial consideration to your complaint. A decision by the Assessment Sub-Committee to take no further action is the **ONLY** decision about which you can request a review.

If you wish to request a review, you **MUST** do this **in writing** not more than **thirty days** after the date of the notice provided to you notifying you of the initial decision to take no further action.

Any review request complying with this will be carried out by a Review Sub-Committee. This will be made up of different Members to those on the Assessment Sub-Committee who made the initial decision. The review **must** be undertaken within a maximum of three months from the date of receiving the request, although the Authority will aim to complete the review within an average of twenty working days.

In considering a valid review request, the Review Sub-Committee will apply the same initial tests and assessment criteria as set out in Section 8 of this guide and will have available to it the same decisions as are available to the Assessment Sub-Committee (see Section 7 of this guide) **EXCEPT** that there will be no further right of review in the event of the Review Sub-Committee deciding that no further action should be taken.

10. How will I be notified of the decision of an Assessment or Review Sub-Committee

We will provide you with a written notice of the decision. We will aim to do this within five working days of the date of the meeting of the Assessment or Review Sub-Committee at which the decision was made. The notice will:-

- in relation to a decision to take no further action, summarise the nature of the complaint and the reason(s) for deciding to take no further action. An Assessment Sub-Committee decision notice to take no further action will also give details of the right to request a review of this decision;
- in relation to a decision to a decision to refer a matter to the Monitoring Officer of the Authority or the Standards Board for England, summarise the nature of the complaint and:-
 - in the case of a referral to the Monitoring Officer for investigation, will summarise the potential breaches of the Code to which the conduct as set out in the complaint refers and will indicate how the investigation process will be conducted;
 - in the case of referral to a the Monitoring Officer for some other course of action, will summarise the potential breaches of the Code to which the conduct as set out in the complaint refers, will indicate what the other course of action is and, if appropriate, indicate what allowance is made for your involvement in the other course of action;
 - in the case of a referral to the Standards Board for England, **may** indicate the reason for the referral and will indicate how the Standards Board for England may deal with the referral.