

Leicester
City Council

WARDS AFFECTED
All Wards

**FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:
STANDARDS COMMITTEE**

18TH NOVEMBER, 2009

MEDIATION AND OTHER ACTION

REPORT OF THE SOLICITOR AND MONITORING OFFICER

1. PURPOSE OF REPORT

To enable the Committee to consider use of mediation and other action when dealing with complaints about Members' conduct.

2. RECOMMENDATION

This Committee is asked to note the information in this report and to support the use of mediation as a means of resolving complaints at any stage in the process where appropriate.

3. REPORT

This Committee has expressed support for the use of informal resolution of complaints where possible and a "filtering" process has been developed and approved by the Committee and Council – see **Appendix 1**.

If a written complaint to the Monitoring Officer shows an alleged breach of the Code of Conduct by an Elected Member then that complaint must be submitted to the Standards Committee for assessment. The attached filtering process is designed to minimise the formal handling of complaints by the Standards Committee when more effective or appropriate means are available e.g. the complaint relates to service delivery not conduct. It may also be possible for the matter complained about to be dealt with by reference to a Group Leader or Whip, and this has, in practice, resolved some issues without the need for a formal complaint to be processed.

Once a formal written complaint has been submitted to the Standards Committee via the Monitoring Officer the Assessment Sub-Committee has three options when dealing with the complaint i.e. to refer the complaint to the Monitoring Officer, refer the matter to the Standards Board or take no action. If the matter is referred to the Monitoring Officer the Committee can direct that the matter be investigated or direct that steps be taken other than carrying out an investigation. This is known as "other action".

The Standards Board's key message on other action are:

- * Complaints should not be referred for other action when an investigation is in the public interest, when an allegation challenges the Member's honesty or integrity, or where if proven to be true, the alleged conduct would undoubtedly warrant a sanction.
- * A referral for other action closes the opportunity to investigate.
- * A decision to refer a complaint for other action makes no findings of fact and the action decided on must not imply that the subject of the complaint has breached the Code of Conduct.
- * Assessment Sub-Committee cannot direct the subject Member or any other party to take action. The direction is to the Monitoring Officer.
- * Although there is no formal route for dealing with a Member who refuses to comply with other action, failure to co-operate may amount to bringing the authority into disrepute.

Other action can include training, giving an apology or mediation.

Mediation

Mediation can also be an appropriate mechanism for resolving a complaint at any stage whether informal or formal, as "other action". A useful summary of guidance which has been issued by Standards Board for England is shown as **Appendix 3**

It is proposed that the on-line application form used for submitting a complaint is modified to remind a complainant of the informal resolution options available, including mediation.

The suitability of mediation will be considered at all stages, both informal and formal.

It is not proposed, at this stage, to train any in-house staff or members to a level where they can act as a professional mediator. It would be far more cost effective to buy-in specialist skills as and when the need arises. Standards for England has provided useful contacts.

4. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

4.1. Financial Implications

None

4.2 Legal Implications

Covered in the report.

5. OTHER IMPLICATIONS

OTHER IMPLICATIONS	YES/NO	Paragraph Within Supporting information	References
Equal Opportunities	Yes	The national Code requires compliance	
Policy			
Sustainable and Environmental			
Crime and Disorder			
Human Rights Act	Yes	The national Code requires compliance	
Elderly/People on Low Income			

6. BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

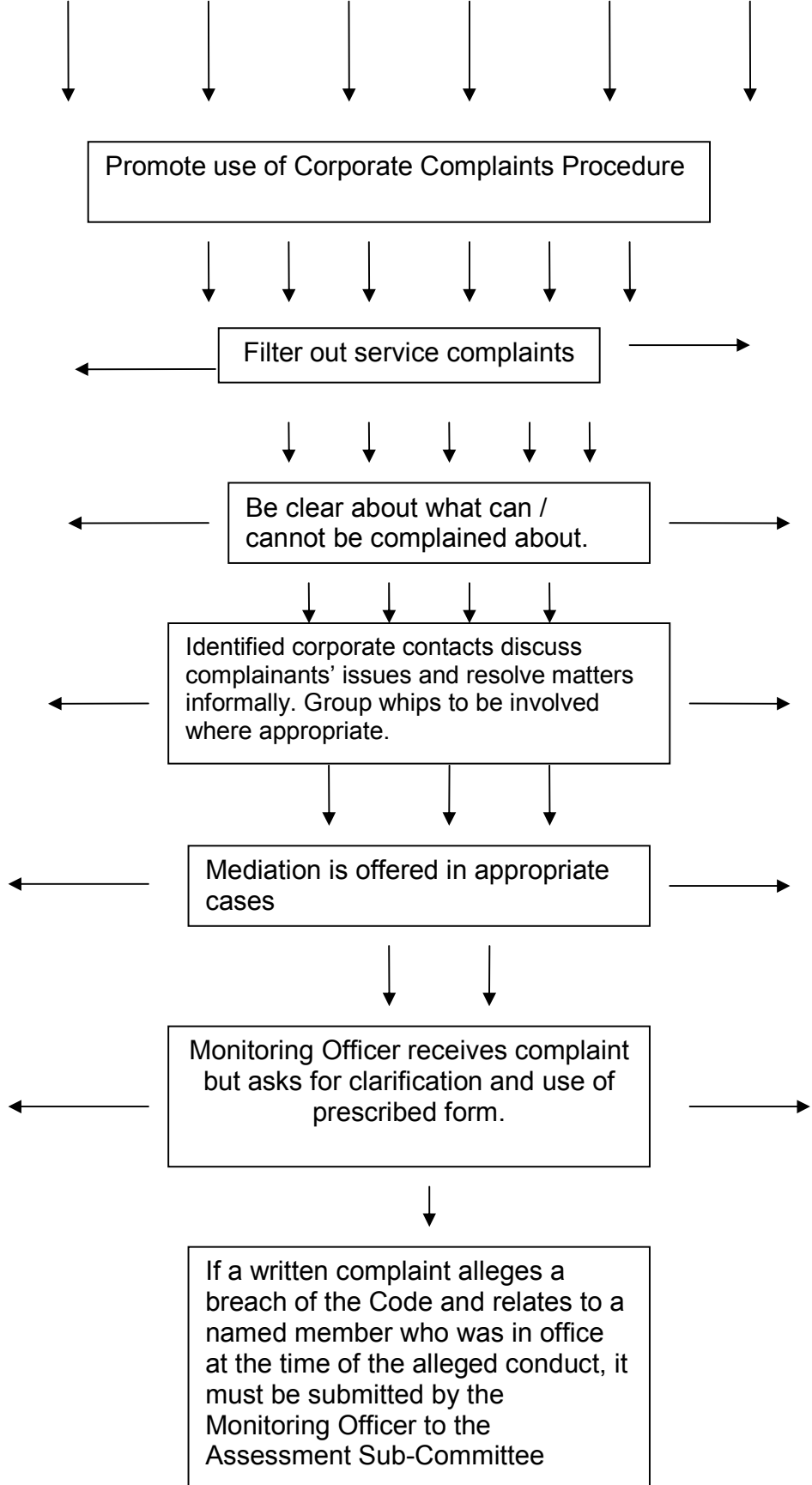
Guidance issued by Standards for England

7. REPORT AUTHOR

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INFORMAL RESOLUTION OF COMPLAINTS

APPENDIX 1



SANDWELL MBC – INFORMAL RESOLUTION PROCEDURE

Protocol for the Informal Resolution of Concerns in Relation to the Members' Code of Conduct

Purpose of the Protocol

The Council has formal statutory procedures in place to deal with complaints about member misconduct. You can complain about a member breaching any part of the Council's Members' Code of Conduct which may result in your complaint being referred to the Standards Committee. However, most concerns that are raised about the conduct of members are not so serious as to warrant formal complaints or investigation. This Protocol sets out a process for you to deal with the less serious misconduct which may arise. The intent of the Protocol is to deal with concerns about the conduct of members informally wherever possible. Informal resolution is often more expeditious, less costly and more mutually satisfactory. This Protocol gives you an opportunity to deal with your concern informally through the leader of your political group. Where your complaint involves concerns about the leader himself then the formal process is likely to be more appropriate.

You are encouraged to initially pursue this informal resolution procedure as a means of stopping and remedying a behaviour or activity that is concerning you and which may be prohibited by the Council's Members' Code of Conduct. However, this Protocol does not prevent you at any stage from instead following the formal complaints procedure if you so wish.

Concerns raised by you about the conduct of other members (excluding your political group leader) will be addressed in the first instance by the leader of your political group.

Informal Resolution Procedure

1. If you have identified or witnessed behaviour or any activity by a member of the Council that you believe is in contravention of the Council's Members' Code of Conduct you should express your concern about the conduct of the member at the first reasonable opportunity to the leader of your political group.

2. In addressing a concern, the leader of your group may meet with you and advise you that in his view the behaviour or activity is either likely to contravene the Code of Conduct or not. The leader of your political group may also make other informal enquiries and attempt to resolve the concern informally. He may, for example, discuss the matter with the leader of the relevant political group, the Chief Executive or the Monitoring Officer. The leader should involve you in this process and should seek to deal with your concerns expeditiously.
3. Where you have expressed concern and you are willing to pursue an informal resolution of your concern, the leader of your political group shall confirm to you the details of the informal resolution. The leader shall involve you in this process of reaching the informal resolution.
4. The leader of your political group may then consider that your concern has been satisfactorily resolved or that it is not serious enough to warrant further consideration or formal complaint.
5. Where you have expressed a concern and the leader of your political group decides that further action is required or that a formal complaint should be made, he shall inform you at the first reasonable opportunity.
6. If you decide at any stage of the process that you wish to pursue the formal process, you should contact the Monitoring Officer for the Complaints Form and information that will help you progress your complaint.

STANDARDS BOARD FOR ENGLAND

BRIEFING ON MEDIATION

What is mediation?

Mediation is a process by which an impartial third party helps people in a dispute explore and understand any differences that they have in order to come to a mutual agreement in settling those differences. It is the parties involved, not the mediator, who decides the terms of the agreement.

Mediation works well where:

- * People's ongoing relationships are important
- * Those involved want to retain control of the outcome
- * Not dealing with the dispute is unacceptable
- * People are participating voluntarily
- * The issues are specific and can be resolved by those involved

Mediation works less well or not at all where:

- * The people involved are not willing or competent to negotiate
- * Legal or other formal action is being carried out
- * A higher authority judgement is required
- * Positions on both sides are extreme

Mediation should not be confused with:

- * Negotiations: people talk directly to each other. If third parties are present they are partial.
- * Conciliation: very similar to mediation because the third party is impartial, however, they might be more proactive in suggesting solutions.
- * Arbitration: people appoint third party to make a binding resolution.
- * Adjudication: people seek a ruling or legal judgement from a third party.
- * Counselling: third party seems to change peoples' behaviours, thoughts and feeling.

The mediation process:

1. Initial contact with various parties.
2. Face to face session:
 - 2.1 summarising each party's position
 - 2.2 Exploring and working on the issues

2.3 Building agreements

3. Closure and follow up

From positions to interests:

Position: one party's predicted outcome or solution to the issue being disputed. What they want they want or what they say should happen.

Interest: one party's concern(s) about the issue being disputed. What they actually need to happen.

Conflict occurs when people take up positions, believing that an important interest of theirs is being threatened.

As mediation proceeds the underlying needs and concerns of those involved emerge and they can move away from entrenchment in their positions. A resolution to the conflict can be reached by exploring any mutual interests.

Useful information and contacts:

Choosing a mediation provider is not straightforward. There is no consistent quality or accreditation system which applies to all types of mediators or mediation providers. There is no single regulatory body for mediators. In England and Wales there is not even a single body that can help you locate a local mediation provider. A good place to start would be to consult the Council's HR department, who may already employ qualified mediators or have had cause to employ an outsourced professional service.

Standards for England do not either recommend or endorse any particular mediation service. The following is provided for information only:

www.nationalmediationhelpline.com

www.ukmediation.net

www.mediate.co.uk

www.collegeofmediators.co.uk