

How to Make a Complaint Against a Scottish Borders Councillor



This document explains how you can make a complaint against a Scottish Borders Councillor. Complaints may be made by members of the public, Council staff or by Councillors.

Nothing in this document affects your right to make a complaint to the Public Standards Commissioners. Their address is:-

**Public Standards Commissioner
39 Drumsheugh Gardens
Edinburgh
EH3 7SW**

Tel: 0300 011 0550

Info@ethicalstandards.org.uk

www.publicstandardscommissioner.org.uk/

Section 1 Preliminary Stage – Complaints by Council Employees or Councillors

Section 2 Informal Resolution Stage – This stage will be used by Members of the Public. It is also the second stage for Complaints by Councillors and Council Employees.

Section 3 Standards Committee Procedure

Complaint by a Councillor or a Council Employee

Where any Councillor is alleged to have breached the Councillors Code of Conduct (“the Code of Conduct”) the following procedure will apply. The procedure is in two stages with the aim of achieving a satisfactory outcome for all involved – Preliminary Stage and Informal Resolution Stage.

The Preliminary Stage must always be used and only if this fails to produce a satisfactory outcome will the Informal Resolution Stage be invoked.

Preliminary Stage

1. The Complainer who alleges the breach of Code of Conduct will discuss the issue with the Councillor who is alleged to be in breach of the Code of Conduct (the Defendant). Both parties should seek to resolve the complaint at this stage.
2. If the Complainer is not willing to speak to the Defendant directly, he/she will approach his/her political group Leader or, in the case of a Council employee, a line manager who will assist in resolving the issue through discussion with both parties separately or together.
3. If the political group Leader is the subject of the allegation, the Convener or Leader of the Council will assist the Complainer to achieve a resolution of the complaint. If the Convener or the Leader of the Council is the subject of the allegation, the Convener/Leader of the Council (whoever is not the subject of the allegation) will try to resolve the issue in accordance with para 2 above.
4. If either party is not satisfied with the outcome of the meeting with the political group Leader or line manager, he/she will raise the matter with either the Convener or the Leader of the Council (if they are not the subject of the complaint) who will seek to resolve the matter.
5. If the Complainer is not satisfied after the Preliminary Stage, he/she may proceed to the informal resolution stage (Section 2)

INFORMAL RESOLUTION STAGE**How to make a complaint**

1. Any complaint about the conduct of a Councillor should be sent in writing to the Chief Executive. The complaint must also include the following details:-
 - (a) The name and address of Complainer
 - (b) The name of the Defendant
 - (c) The nature of the conduct alleged
 - (d) The part of the Councillors Code of Conduct (“the Code of Conduct”) which is alleged to have been breached
 - (e) Any supporting evidence

Prima facie evidence of alleged criminal offence

2. If at any stage during the course of the complaints procedure prima facie evidence of the commission of a criminal offence comes to the attention of the Chief Executive, the police will be informed immediately. In that event, the complaints procedure will be suspended until after the outcome of any police investigation or criminal prosecution.

Acknowledgement of Complaint

3. The Chief Executive shall record the date of receipt of every valid complaint; shall issue an acknowledgement of receipt to the complainer within 5 working days and shall send a copy of the complaints procedure to him/her. The Chief Executive shall advise the Complainer that the full details of his/her complaint will be sent to the complaine. The Chief Executive may seek clarification from the complainer in relation to any aspect of the complaint. The date of receipt of such clarification shall then be deemed to be the date of receipt of the complaint.

Intimation of the Complaint to the Councillor

4. Within 5 working days of the date of receipt of the complaint (or as soon as possible thereafter), the Chief Executive shall intimate the complaint to the Defendant. The Defendant shall be informed of the following:-
 - (a) Identity of the complainer;
 - (b) The exact nature of the complaint;
 - (c) The provisions of the code of Conduct which he/she is alleged to have contravened.

The Defendant shall be sent a copy of the complaints procedure.

5. The Chief Executive before processing the complaint requires to be satisfied that the preliminary stage has been exhausted and/or was not appropriate.

6. The Chief Executive may arrange for such investigation(s) to be carried out as he considers appropriate, in order to clarify or resolve the complaint. In the event that the Chief Executive determines that the complaint is invalid, he will advise the parties accordingly and give his reasoning.
7. The Chief Executive may invite the parties to attempt to resolve the complaint informally, by any means, including by attending a meeting convened by him for that purpose. Neither the complainer nor the Defendant shall be bound to attend such a meeting.

Acceptance of Complaint

8. In the event that the Defendant accepts that the complaint is well founded and the complainer is satisfied with the outcome, the Chief Executive shall be entitled to treat the matter as resolved.

Referral to Standards Committee

9. In the event that the Complainer is not satisfied with the outcome of the informal resolution procedure, he/she may, at any time, request that the matter be referred to the Clerk of the Council in which circumstances the procedure in Section 3 will apply.

Public Standards Commissioner (“the Commissioner”)

10. In the event that a complaint against a Councillor is also submitted to the Commissioner, the Chief Executive shall advise the complainer that the complaint to the Council will be suspended until the outcome of the complaint to the Commissioner is determined. The Chief Executive shall advise the Commissioner and the Defendant accordingly.

STANDARDS COMMITTEE HEARING PROCEDURE**Date of Hearing**

- 1 The Complainer and Defendant shall be informed in writing of the date, time and place of a hearing, which shall be fixed no earlier than 20 working days from the date of the notification of hearing.

The Standards Committee shall be entitled to postpone or adjourn a hearing, at any time, where they consider this to be necessary.

Provision of Documents prior to Hearing

- 2 The complainer and Defendant shall send copies of all papers that they wish the Standards Committee to consider to the Head of Corporate Administration not less than 10 working days before a hearing. Not less than 5 working days before the hearing the Clerk to the Council shall provide copies of the papers to both parties and to all Members of the Standards Committee due to sit at the hearing.

General Principles of Conducting Hearing

- 3 The following general principles shall apply to all hearings:
 - a. The overriding principle will be that the complainer and the Councillor will each be given a fair and impartial hearing.
 - b. In each case the Standards Committee will consider the proceedings in private, unless it determines, in all the circumstances, that the proceedings should be taken in public, in which case appropriate notice will be given of such a decision.
 - c. The complainer and the Councillor will be entitled to present their case in person or through a representative.
 - d. Any party may present their case in written form or orally.
 - e. Where there is no written submission by one or both parties, that party should attend in person.
 - f. The Standards Committee will have the power to consider the case in the absence of the complainer and/or the Councillor.
 - g. The Chairman of the Standards Committee will have a casting vote at any hearing.
 - h. Where it considers appropriate, the Standards Committee may refer the complaint to the Public Standards Commissioner, in which case it will take no further action in relation to the complaint.
 - i. The Standards Committee shall conduct any hearing in accordance with the rules of natural justice and the Human rights Act 1998.

Procedure at Hearing

- 4 The Standards Committee will normally expect the hearing to be conducted in the following manner: -
 - The complainer will present his/her case first.
 - After the Complainer has presented his/her case, the Defendant will present his/her case.
 - Members of the Committee will be permitted to ask questions at appropriate points, subject to the control of the chairman.
 - The complainer will sum up.
 - The defendant will sum up.
 - Both parties will be permitted to cross-examine the other party, subject to the control of the Chairman.

Representation at Hearing

- 5 Both parties will be entitled to be represented, if they so wish, at any hearing before the Standards Committee.

Witnesses

- 6 At a hearing, the Defendant and the complainer will be entitled to call witnesses who will be subject to cross-examination and who may be asked questions by the committee.
- 7 The Standards Committees shall itself have power to call any witnesses or have regard to material additional to that presented at a hearing in as far as it may be relevant to the issues raised by the complaint. The complainer and Defendant shall have the right to cross-examine any such witnesses and to make submissions in relation to any such additional material.

Making the Decision

- 8 In arriving at its decision the Standards Committee will have regard to all the evidence and submissions it has received.
- 9 Where the Standards committee decides that a breach of the Code of Conduct has been committed, it shall make a decision as to the sanction it proposes to impose as soon as possible, but not later than 5 working days after a hearing. The Standards Committee may impose one or more of the following sanctions:-
 - (i) Take no action.
 - (ii) Censure – private admonition.
 - (iii) Public censure.
 - (iv) Require an undertaking of improved future conduct and that the conduct complained of ceases immediately.
 - (v) To request a full apology.
 - (vi) To declare conduct as improper and/or unbecoming.
 - (vii) Recommend discipline by relevant political group.
 - (viii) Refer to Police.
 - (ix) Refer to the Public Standards Commissioner.
 - (x) Refer to the Scottish Public Services Ombudsman.
 - (xi) Refer to External Auditor.
 - (xii) Refer to Internal Audit.
 - (xiii) Withdraw particular Council facilities for a set period. *

- (xiv) To remove a Councillor for a specified period of time from membership of some or all Committees.
 - (xv) To remove a Councillor for a specified period of time as a representative of the Council on any outside body.
 - (xvi) To remove a Councillor for a specified period of time from a position of responsibility attracting a Special Responsibility Allowance.
 - (xvii) To suspend or remove a Councillor from a Committee Convenership or any other office appointed by the Council for a specified period of time.
 - (xviii) To ban a Councillor from representing the Council at conferences, seminars and other events, for a specified period of time.
- * to the extent that the Councillor is not prevented from exercising his/her duties as a Councillor.

10 The Standards Committee shall provide written reasons for any decision.

Decisions the Standards Committee can make

11 The Standards Committee may:-

- (i) agree by majority that there is no breach of any code, rule, policy or procedure etc and that no further proceedings shall be taken; or
- (ii) agree by majority that a breach of any code, rule policy or procedure etc has been committed; or
- (iii) agree by majority that the matter requires further investigation and should be referred back to the Chief Executive for that purpose before making a decision.
- (iv) Agree by majority to refer the complaint to the Standards commission for Scotland.

Intimation of the Standards Committee's Decision

12 The Standards Committee shall within five working days of reaching a decision, intimate its decision in writing to the complainer and Defendant with its written reasons.

Appeal

13 The Defendant shall be entitled to appeal to a meeting of full Council against the decision of the Standards Committee, The Councillor shall lodge all papers in relation to his/her appeal, setting out the full reasons for the appeal, with the Head of Corporate Administration within 10 working days of receipt of the decision of the Standards Committee.

Procedure at Council meeting

14 The meeting shall be conducted in accordance with the normal procedures of the Council.

15 The Defendant, or his/her representative, who is appealing against the decision of the Standards Committee shall present his/her appeal to the full Council, including on the question of sanctions, but shall not have a right to vote on the matter.

- 16 The Members of the Standards Committee shall not be entitled to take part in the deliberations of the council and shall not have a right to vote on the matter. The Chairman of the Standards Committee, or his/her nominee, will present the decision of the Standards Committee and answer any questions, but will take no further part in the debate and will not vote on the matter.

Council's Decision

- 17 The Council shall issue its written decision to the complainer and the Defendant within five working days and shall provide written reasons for it.