

Parole Board for Scotland

POLICY ON COMPLAINTS ABOUT THE CONDUCT OF MEMBERS OF THE PAROLE BOARD FOR SCOTLAND MEMBERS

1. This Policy applies to complaints about the conduct of any member of the Parole Board for Scotland (the Board). This policy does not cover service level complaints, which will be dealt with under the complaints procedure set out on the Board's website. The policy is designed to recognise judicial independence, and to provide a procedure to resolve complaints. It is important to note that the consequence of a complaints being upheld under this procedure is that it may be referred to Scottish Ministers to consider establishing a judicial tribunal under paragraph 3A of Schedule 3 of the Prisoners and Criminal proceedings (Scotland) Act 1993. The Board has no powers to impose any sanctions beyond such a referral. The Board would encourage the informal resolution of complaints where that is possible.

2. The chairperson of the Board (the chairperson) will be responsible for: -

(a) the general operational supervision of this Policy and reporting to Scottish Ministers about that matter as appropriate; and.

(b) carrying out the other functions specified by this Policy.

3. Paragraph (4) applies to a complaint/grievance raised under this Policy—

(a) alleging misconduct on the part of the chairperson; or

(b) where the chairperson considers it to be inappropriate for him or her to carry out the functions mentioned in paragraph (2)(b) in relation to a complaint or grievance.

4. The functions mentioned in paragraph (2)(b) are in relation to that complaint to be carried out by another legal member of the Board who is to be appointed for that purpose by the Chief Executive of the Board.

5. Making a Complaint/Grievance

5.1 A complaint or grievance may be made by submitting a complaint document to the chairperson of the Board.

5.2 A “complaint document” is a document in writing which —

(a) is legible;

(b) contains one or more detailed allegations of misconduct on the part of a named or identifiable Board member

(c) gives the date or dates of the alleged misconduct; and

(d) states the name of the person alleging misconduct and details of an address to which correspondence may be sent.

5.3 A complaint document is to be accompanied by all documents within the possession of the person complaining upon which that person seeks to rely.

5.4 A complaint document will not be accepted where it (or any communication associated with it) indicates that the person complaining does not want the Board member against whom the complaint is made to see a copy of the complaint document or any document accompanying it.

6. Allegations of criminal conduct

6.1 Where it appears to the chairperson that there is credible evidence of an act, omission or other conduct which may constitute a criminal offence which is sufficiently serious as to suggest that the member is unfit for office by reason of inability, neglect of duty or misbehaviour—

(a) further consideration of the allegation under this Policy is to be suspended until—

- (i) the relevant prosecutor indicates that no criminal proceedings are to be taken;
- (ii) any such proceedings have concluded; or
- (iii) it becomes clear to the chairperson that no such proceedings are to be taken;

(b) the chairperson is to notify the person complaining to that effect; and
(c) the chairperson shall provide a copy of the complaint and supporting evidence to Police Scotland and Crown Office.

7. Time limit

7.1 The chairperson must dismiss any allegation which founds on anything said to have occurred more than 3 months before the date on which the complaint document was received.

7.2 The complainant may make an application in writing to the chairperson for an allegation which founds on something which is said to have occurred more than 3 months before the date on which the complaint document was received to be treated under this Policy as if it had been submitted on time.

7.3 An application under paragraph (7.2) may only be made on the ground that exceptional circumstances exist which justify the granting of the application and the circumstances relied on must be specified in the application.

7.4 Where such an application is not made at the time of making the allegation, the chairperson is to write to the complainant notifying them of their right to do so and requiring any such application to be received by the chairperson by a specified date.

7.5 Where such an application has been made, the chairperson is to decide whether the allegation is to be allowed to continue to be considered under this Policy as if it had been submitted on time.

7.6 Where an allegation is dismissed under this section the chairperson is to write to the complainant to that effect.

7.7 Where the chairperson considers that the allegation falls to be dismissed under paragraph (8.3), they may decide not to invite representations under paragraph (7.3) above and proceed directly to deal with the matter under Section 8.

8. Initial assessment of complaint

8.1 This section applies to an allegation which is not currently suspended under section 6 and has not been dismissed under Section 7.

8.2 The chairperson is to carry out an initial assessment of the allegation.

8.3 If the chairperson considers that the allegation falls into paragraph (8.4), it is to dismiss the allegation.

8.4 An allegation falls into this paragraph if—

- (a) it does not contain sufficient information to enable a proper understanding of the allegation to be achieved;
- (b) it is about a judicial decision;
- (c) it raises a matter which has already been dealt with (whether under this Policy or otherwise), and does not present any material new evidence.

8.5 Where an allegation is dismissed under paragraph (8.3), the chairperson is to provide written reasons to the complainant to that effect.

8.6 Where an allegation is not dismissed under paragraph (8.3), the chairperson is to write to the complainant to inform them of that fact and of the next step to be taken under this Policy.

9. Notification to Board Member

9.1 This Section applies to an allegation whose consideration is not currently suspended under Section 6 and which has not been dismissed under Sections 7 or 8

9.2 The chairperson is to send to the Board member concerned—

- (a) a document (which may be the complaint document) containing the allegation;
- (b) all information about the allegation which is in or which accompanied the complaint document;
- (c) notification of the next step to be taken under this Policy.

10. Ongoing proceedings

10.1 This section applies where a Board member has been notified of an allegation under Section 9.

10.2 If the allegation relates to judicial proceedings which are not concluded the chairperson will decide whether it would be appropriate for consideration under this Policy to continue before the judicial proceedings are concluded.

10.3 Where the chairperson decides that it would be inappropriate for that to occur—

(a) further consideration of the allegation must be suspended until the proceedings have concluded; and

(b) the chairperson will write to the person complaining and to the Board member concerned to that effect.

11. Appointment of investigating Board Member

11.1 The Chairperson shall appoint a Board member to investigate the complaint.

11.2 The investigating Board member will be the legal vice chair of the Board.

11.3 If the legal vice chair is unavailable, or the chairperson concludes for whatever reason that it would be inappropriate for the legal vice chair to undertake the investigation, the general vice chair of the Board will be appointed as the investigating officer.

11.4 If the legal vice chair and general vice chair are unavailable, or the chairperson concludes for whatever reason that it would be inappropriate for the legal vice chair or general vice chair to undertake the investigation, the chairperson will select a member of the Board to conduct the investigation.

12. Consideration by Investigating Board Member

12.1 This section applies to an allegation —

(a) which is not dismissed under Section 8; and

(b) whose consideration is not currently suspended under Section 10.

12.2 The allegation is to be considered by the investigating Board member in accordance with the following paragraphs.

12.3 If the investigating Board member is of the view that the allegation falls into paragraph (12.4), he or she is to dismiss it and is to inform the chairperson accordingly.

12.4 An allegation falls into this paragraph if —

- (a) it does not contain sufficient information to enable a proper understanding of the grounds of the allegation to be achieved;
- (b) it is about a judicial decision;
- (c) it raises a matter which has already been dealt with, whether under this Policy or otherwise, and does not present any material new evidence;
- (d) it is vexatious;
- (e) it is without substance;
- (f) it is insubstantial, that is to say that even if substantiated, it would not be likely to mean that the Board member was unfit for office by reason of inability, neglect of duty or misbehaviour;.

12.5 In forming his or her view as to whether paragraph (12.4)(e) or (f) applies, the investigating Board member is to take due account of the extent to which the conduct concerned complies with the Board's statement of principles of ethics and behaviours for members of the Parole Board for Scotland.

12.6 Where an allegation is dismissed under paragraph (12.3), the chairperson is to write to the complainant and the Board Member concerned to that effect.

12.7 If the investigating board Member is of the view that one or more allegations in a complaint fall outside paragraph (12.4), he or she is to consider whether paragraph (12.8) applies and is to inform the chairperson.

12.8 This section applies where the investigating Board Member thinks that the allegation, if substantiated, would raise a possible question of fitness for office.

12.9 In deciding whether the allegation, if substantiated, would raise a possible question of fitness for office, the investigating Member must consider whether, if the complaint was to be established, it could mean that the member was unfit for office by reason of inability, neglect of duty or misbehaviour.

12.10 Where the chairperson is informed that paragraph (12.8) applies—

- (a) they are to inform Scottish Ministers; and
- (b) further consideration under this Policy is suspended until Scottish Ministers indicate whether they intend to request the establishment of a tribunal to consider fitness for office of the Board member.

12.11 In the event that the Scottish Ministers indicate an intention to make such a request—

- (a) consideration under this Policy is to cease; and
- (b) the chairperson is to write to the complainant and to the Board member concerned to that effect.

12.12 Where at any stage of consideration under this Policy the investigating Board member thinks that an allegation may be capable of resolution to the satisfaction of the complainant and the Board member concerned without further investigation, he or she may communicate with them both with a view to securing that outcome.

12.13 Where that outcome is achieved, the investigating Board member is to write to the chairperson to that effect and consideration of the allegation under this Policy is to cease.

13. Investigation and report

13.1 This section applies to an allegation referred to an investigating Board member which has, on initial consideration, been incapable of resolution under paragraph (12.11).

13.2 The investigating Board member is to investigate the allegation and produce a report determining —

- (a) the facts of the matter;
- (b) whether the allegation is substantiated (or substantiated in part); and if so, to recommend whether the chairperson should exercise a power mentioned under Section 41 of the 2019 Act or take other action.

13.3 The report must—

- (a) be in writing;
- (b) contain reasons and evidence for its conclusions;
- (c) be submitted to the chairperson.

13.4 In deciding whether an allegation is to any extent substantiated and in making any recommendation in consequence the investigating Board member is to take due account of the extent to which the conduct concerned complies with any guidance relating to the conduct of Board members issued by the chairperson.

14. Procedure and conduct of investigation

14.1 For the purposes of the investigation the investigating Board member may—

- (a) make such inquiries regarding the allegation as he or she considers appropriate;
- (b) obtain and consider any documents which appear to be relevant;
- (c) interview any persons he or she considers appropriate.

14.2 The investigating Board member is to—

- (a) give an interviewee reasonable notice of the date and time of the interview;
- (b) permit an interviewee to be accompanied by a person of his or her choosing for the purpose of—
 - (i) providing moral support;
 - (ii) helping to manage papers;
 - (iii) taking notes;
 - (iv) offering advice.

14.3 The investigating Board member may arrange for any interview to be recorded by equipment which records sound digitally on an appropriate storage medium.

14.4 The Board member concerned is to comply with a request from the investigating Board member that he or she be interviewed.

14.5 The procedure and conduct of an investigation is such (consistent with respect for the principles of fairness and natural justice) as the investigating Board member thinks fit; but—

(a) the Board member concerned is to be afforded the opportunity to submit a written response to the allegation;

(b) the person complaining and the Board member are each to be afforded the opportunity to submit written comments on any information obtained by the investigating Board member which he or she has not previously seen;

(c) so far as the determination of questions of fact is concerned—

(i) the investigation is to be conducted with the aim of ascertaining the truth;

(ii) findings of fact are to be made on the balance of probabilities;

(d) so far as possible, the investigation is to be conducted without disclosure to third parties of the identity of the complainant or the Board member concerned. All parties are required to act in accordance with this requirement and a failure to do so may be the basis of a complaint under this procedure;

(e) If the complainant is also a member of the Board, then they should not discuss the complaint with other Board members. The Chair Executive of the Board should make every effort to avoid scheduling the complainant and the Board member concerned to sit together on panels until the investigation is concluded, if this is requested by the complainant or the Board member.

14.6 Before the investigation starts the investigating Board member is to prepare and issue to the complainant and the Board member concerned a statement of the procedure he or she has decided on.

14.7 Where, after the investigation starts, the investigating Board member wishes to depart from that procedure in a material way, he or she must inform the complainant and the Board member concerned in writing before proceeding.

14.8 The investigating Board member is to make a note of the substance of all communications in the course of the investigation which are material to it and is to create and maintain a file containing—

(a) those notes;

(b) all documents relevant to the investigation; and

(c) all recordings of interviews carried out in the course of the investigation.

14.9 For the purpose of this Policy, notes taken by the investigating Board member under paragraph (14.3) are deemed to be an accurate record of any interview where the interviewee has signed a copy of the notes to that effect.

14.10 After submitting a report the investigating Board member is to make all information gathered during the investigation available to the chairperson on request.

15. Review by chairperson

15.1 This section applies where the chairperson has received a report under paragraph 13.3

15.2 The report is to be put before the chairperson.

15.3 The chairperson is to review the determinations in the report.

15.4 Having reviewed the determinations, the chairperson may require the investigating Board member to reconsider any of them.

15.5 Such a requirement given by the chairperson is to be in writing.

15.6 For the purposes of reconsidering a determination, the investigating Board member may—

- (a) make such further inquiries regarding the allegation as he or she considers appropriate;
- (b) obtain and consider any further documents which appear to be relevant;
- (c) interview (or re-interview) such persons as he or she considers appropriate.

15.7 paragraphs (14.2), (14.3) and (14.9) apply to an interview under paragraph (15.6 (c)) as they apply to an interview conducted under paragraph (14.1(c)).

15.8 The investigating Board member is to make a note of the substance of all communications in the course of reconsideration of a determination which are material to it and is to update the chairperson with—

- (a) those notes;
- (b) all additional documents relevant to the reconsideration;
- (c) all recordings of interviews carried out in the course of the reconsideration.

15.9 Having carried out all reconsiderations required by the chairperson, the investigating Board member is to resubmit the report.

15.10 In relation to any determination which the investigating Board member was required to reconsider the report is to contain statements of—

- (a) what the investigating Board member did in reconsidering the determination;
- (b) what the outcome of the reconsideration was.

16. Consideration by chairperson

16.1 The chairperson is to write to the Board member who is the subject of the report inviting him or her to make written representations.

16.2 The chairperson's letter must contain or be accompanied by such information, which may include the report, as he or she considers to be appropriate for the purpose of giving the Board member a fair opportunity to make any representations.

16.3 The Board member who is the subject of the report may make any representations by such date as is specified in the invitation made under paragraph (16.1).

16.4 The chairperson is to consider any representations before deciding whether to exercise a power mentioned in Section 41 of the 2019 Act or take other action.

17. Notification of outcome, etc

17.1 This section applies where—

- (a) the chairperson has received a report under paragraph 13.3; and
- (b) the chairperson has taken all action (if any) which he or she proposes to take in relation to the allegation.

17.2 The chairperson is to write to the person complaining to inform the person of—

- (a) the outcome of the investigation of the allegation; and
- (b) of any action taken by the chairperson in consequence.

17.3 The chairperson's letter is to contain or be accompanied by such information as the chairperson considers to be appropriate for the purpose of giving the complainant a fair understanding of the matters mentioned in paragraphs (17.2)(a) and (b).

17.4 Except where the chairperson has already done so under section 16, he or she is to write to the Board member who is the subject of the report to inform him or her of the matters mentioned in paragraphs (17.2)(a) and (b).

17.5 After paragraphs (17.2) and (17.4) have been complied with the chairperson may publish or disclose to any person such information concerning the whole matter (including the identity of the person complaining or the Board member who is the subject of the report or both) as he or she considers appropriate.

18. Withdrawal of complaint

18.1 A complainant may, by writing to the chairperson to that effect, withdraw an allegation at any time before the chairperson has received a report about it under paragraph (13.3 (c)).

18.2 Where a complainant fails to respond to correspondence from the chairperson or the investigating Board member within 28 days, the complaint may be deemed to have been withdrawn.

18.3 Where an allegation is withdrawn before it is referred to an investigating Board member under Section 12, the chairperson is to consider whether further procedure under this Policy is appropriate.

18.4 If the chairperson determines further procedure is appropriate, the allegation is to continue to be considered under this Policy as if it had not been withdrawn.

18.5 Where an allegation is withdrawn after it is referred to an investigating Board member under Section 12, the investigating Board member is to consider whether further investigation of the allegation is appropriate.

18.6 If the investigating Board member determines further investigation is appropriate, the allegation is to continue to be investigated under this Policy as if it had not been withdrawn. The investigating Board member will notify the chairperson where such a determination is made.

18.7 Where an allegation is continuing under this Policy by virtue of paragraph (18.4) or (18.6), any requirement in the Policy or in the statement of the procedure decided on under section (14.6) to communicate a matter to or to seek comments from the complainant ceases to apply.

19. Consideration of matters in absence of a complaint

19.1 Paragraph (19.2) applies where no complaint is made under this Policy but the chairperson receives information from any source which suggests to him or her that consideration under this Policy of a possible allegation of misconduct is appropriate.

19.2 The allegation is to be considered under this Policy (with the necessary modifications reflecting the absence of a person complaining) as if—

- (a) a complaint containing it had been made under Section 5; and
- (b) Section 7 did not apply.

20. Ceasing to be a member of the Board

20. Where a Board member against whom an allegation under this Policy had been made ceases to be a member of the Board or dies, consideration of the allegation under this Policy is to cease.

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