

SCA - COMPLAINTS AGAINST MEMBERS

Members are expected to uphold the high standards set by the SCA.

This document sets out the process for challenging members should they fall below these agreed standards. Examples include failure to comply with the membership criteria or agreed SCA decisions and any actions which generally undermine the SCA.

1 Introduction

- 1.1 These arrangements set out how an allegation may be made against an SCA member and how the SCA will deal with such allegations.
- 1.2 Wherever possible complaints should be dealt with at the lowest level within the procedure.
- 1.3 In these Arrangements a number of terms are used which have the following meanings:

SCA Member	A company or organisation in membership of the SCA.
Administration Officer	An appropriate person appointed by FETA / SCA Technical Manager or SCA Chair to organise and administer the complaints process.
Investigation Officer	An appropriate person appointed by the Assessment Sub Committee to investigate the complaint.
Assessment Sub Committee	A Sub-Committee consisting of up to three members of the Steering Committee established to decide whether allegations against members are worthy of being investigated.
Steering Committee	A Committee consisting of up to eight members reporting to the members established to oversee the general operation of the SCA including conducting hearings into allegations against members and to determine such allegations following a hearing. Committee must include the Chairman of the SCA with other members being elected and approved annually.

2 Making an allegation

- 2.1 An allegation that an SCA member has failed to uphold expected standards should be made using the form on www.smokecontrol.org.uk/about-us/complaints-procedure.
- 2.2 It is important that a person making an allegation provides their name, a contact email address and full details of the complaint and how the

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member has failed to uphold expected standards, so that the SCA can acknowledge receipt of the allegation and keep the person informed of its progress. The person must indicate if he/she wants to keep his/her name and address confidential and the Administration Officer will consider any such requests and only in exceptional circumstances will names not be kept confidential. The person must confirm that he/she will keep details of the complaint confidential and will not disclose it to third parties. Only one person can submit a complaint. If more than one person has the "same complaint" they should each submit a separate complaint, and not combine into one, and each complaint will be processed independently.

- 2.3 The SCA does not normally investigate anonymous allegations unless there is a clear public interest in doing so.
- 2.4 The Administration Officer will acknowledge receipt of an allegation within five clear working days of receiving it, or as soon as possible after 5 days, and will keep the person making the allegation informed of progress.
- 2.5 The Administration Officer will inform the SCA member against whom an allegation has been made and will give the details of the complaint and remedy sought to them. In exceptional circumstances the Administration Officer has the discretion not to inform the SCA member if, in their opinion, to do so would risk an investigation being frustrated or prejudiced in some other way.

3 Assessment of an allegation

- 3.1 The Administration Officer will review every allegation received before taking a decision as to whether, or not, it merits reference to the Assessment Sub-Committee of the Steering Committee.
- 3.2 If the Administration Officer requires additional information in order to reach a decision, he/she may revert to the person making the allegation for such information and may request information from the member against whom the complaint is directed. If the person making the allegation fails to provide the additional information requested the allegation may be dismissed by the Administration Officer pursuant to paragraph 5.3 (c), below.
- 3.3 The Administration Officer will use a number of criteria for assessing complaints and may consult with the SCA Chairman and other FETA personnel. The decision whether to investigate a complaint will be a proportionate response to the issues raised and likely outcomes. The Administration Officer may determine that an allegation does not merit any further action, where:
 - (a) The allegation does not demonstrate a breach of the membership criteria; for example, it is about dissatisfaction with an SCA decision or service, or

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- (b) It is about someone who is no longer an SCA member, or
 - (c) There is insufficient evidence upon which to investigate and/or the person making the allegation has failed to co-operate with the Investigation Officer to specify the allegation sufficiently, or
 - (d) The same or a similar allegation has been investigated and determined, or
 - (e) It is an anonymous allegation which does not include sufficient documentary evidence to indicate a significant breach of the membership criteria, or
 - (f) The Administration Officer facilitates an informal resolution without the need for a formal investigation. This may involve the SCA member accepting that the member's conduct was unacceptable and offering an apology or other remedial action through the SCA. If the Administration Officer considers an offer of informal resolution is reasonable but the person making the allegation is not willing to accept it, the allegation will be referred to the Assessment Sub-Committee for determination, or
 - (g) The complaint is considered to be vexatious.
- 3.4 If the complaint is dealt with under **3.3** above, the Administration Officer will promptly notify the complainant and the member of the outcome, giving reasons for the decision and advise the Assessment Sub-Committee. **Except as provided for in Paragraph 3.3 above, the Administration Officer shall refer all allegations to the Assessment Sub-Committee for consideration.**
- 3.5 The Assessment Sub-Committee shall determine whether the allegation:
- (a) merits no further investigation and is dismissed, or
 - (b) merits further investigation.
- 3.6 The Assessment Sub-Committee may determine that an allegation merits no further investigation for whatever reasons it thinks fit, but it may have regard to the criteria set out in Paragraph 3.3 above and to the following additional criteria:
- (a) The allegation is not considered sufficiently serious to warrant investigation, or
 - (b) The allegation appears to be motivated by malice or is 'tit-for-tat', or
 - (c) The allegation appears to be politically motivated, or

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- (d) The matter about which the allegation is made took place more than a year prior to receipt of the allegation unless there are exceptional circumstances, or it is otherwise appropriate to investigate.
- 3.7 Where the Assessment Sub-Committee considers that an allegation merits further investigation, the Administration Officer shall assist with the administration of such investigation as necessary.
- 3.8 The decision as to whether or not an allegation should be investigated will normally be taken within thirty clear working days from receipt. The Administration Officer will inform the person making the allegation of that decision and if the allegation is to be investigated, an indication of the timescale for the investigation. The Administration Officer will keep the person informed if the initial timetable changes substantially,

4 The Investigation

- 4.1 The investigating will be conducted by the Investigating Officer who will be a member of the Assessment sub-committee selected by the SCA administration officer or chair or may be another SCA member appointed by the sub-committee to do so.
- 4.2 The Investigating Officer will decide if they need to meet or speak to the person making the allegation to understand the nature of the allegation and so that the person can explain their understanding of events and identify what documents they consider the Investigating Officer needs to see and who they consider the Investigating Officer needs to interview.
- 4.3 The Investigating Officer will normally email to the SCA member against whom the complaint is made and provide them with a copy of the complaint and ask the SCA member to provide their explanation of events and to identify what documents they consider the Investigating Officer needs to see and who they consider the Investigating Officer needs to interview if required. Where it is appropriate to keep confidential the identity of the person making the allegation the Investigating Officer will delete the person's name and address from the papers given to the member. Where disclosure of details of the allegation to the member might prejudice the investigation, the Investigating Officer may delay notifying the member until the investigation has progressed sufficiently.
- 4.4 The Investigating Officer has absolute discretion about which are the appropriate witnesses to interview and documents to consider but will follow best practice in conducting investigations. Having considered all relevant documentation identified and having interviewed all relevant witnesses, at the end of the investigation the Investigating Officer will produce a draft report and may where appropriate send copies of that draft report, in confidence, to the person making the allegation and to the SCA member concerned, to give them an opportunity to identify

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any matter in that report with which there is disagreement, or which is considered to require more consideration.

- 4.5 Where an Investigating Officer has been appointed, having received, and taken account of any comments which the person making the allegation and/or the SCA member have made on the draft report, the Investigating Officer will send their final report (the Investigation Report) to the assessment sub-committee for the latter's consideration prior to onward transmission to the steering Committee. If the Assessment sub-committee is not satisfied that the investigation has been conducted properly, it may ask the Investigating Officer to reconsider the report or may appoint a new Investigating Officer.
- 4.6 Where the Investigating Officer has undertaken the investigation personally, having received and taken account of any comments which the person making the allegation and/or the member have made on the draft report, and, where appropriate, having sought to achieve an informal resolution pursuant to paragraph 8.1 below, the Investigating Officer shall submit the Investigation Report to the Steering Committee.

5 Where the Investigating Officer concludes that there is no evidence of a failure to uphold expected standards.

- 5.1 In these circumstances the Investigating Officer will refer the matter to the Steering Committee. When the Steering Committee receives an Investigation report which recommends that there is no evidence of failure to uphold expected standards, the Committee may:
- (a) accept the recommendation resolve that no further action is required and dismiss the allegation, or
 - (b) remit the report back to the assessment subcommittee for further consideration, or
 - (b) remit the complaint to the Steering Committee to conduct a hearing for the consideration of the allegation and the Investigation Report and determine the allegation.

6 Where the Investigating Officer concludes that there is evidence of failure to uphold expected standards.

- 6.1 Where an Investigation Report concludes that there is evidence of failure to uphold expected standards the Assessment Sub-Committee may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, the Assessment Sub-Committee will consult the person making the allegation and seek to agree what the person considers to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the SCA member accepting that the member's conduct was unacceptable and offering an apology, and/or other remedial action by the Assessment Sub-Committee. If the member complies with the suggested resolution, the Investigating Officer will report the matter to

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the Steering Committee which will note the outcome but take no further action.

- 6.2 If the Assessment Sub-Committee considers that an informal resolution is not appropriate, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Assessment Sub-Committee will submit the Investigation Report to the Standards Committee to conduct a hearing for the consideration of the allegation and the Investigation Report and to determine the allegation.

7 The Pre-Hearing Process and Hearing

- 7.1 In advance of the Hearing the Administration Officer (and/or his nominees) will:
- (a) agree a date for the hearing with all the relevant parties.
 - (b) provide a timetable for the member to provide details about whether they wish to give evidence (and whether orally or in writing) at the hearing and any witnesses they intend to call, and additional papers they may wish to provide in time for inclusion in the committee papers.
 - (c) establish whether the member will be represented or accompanied at the hearing.
 - (d) establish whether the member wishes any part of the Investigation Report to be kept confidential or the Hearing itself to be held in private, and the reasons for this.
 - (e) provide information about the procedure to be used at the hearing.
 - (f) establish whether the member disagrees with any of the findings of fact in the Investigation Report.
 - (g) establish whether the Investigating Officer intends to call any witnesses.
- 7.2 Wherever possible hearings conducted by the Standards Committee shall take place within three calendar months of the referral to the Steering Committee.
- 7.3 At the hearing, the Investigating Officer will present the Investigation Report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the member has failed to uphold expected standards. For this purpose, the Investigating Officer may request the person making the allegation to attend and give evidence to the Steering Committee.
- 7.4 The SCA member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Steering Committee as to why the member company considers that they did not fail to uphold expected standards.
- 7.5 If an SCA member fails to attend the hearing, the Steering Committee may decide to proceed in the SCA member's absence and make a determination, or to adjourn the hearing to a later date.

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- 7.6 Full details of the process to be undertaken at the hearing are contained in the Steering Committee note comprising Appendix A to these arrangements.
- 7.7 The Steering Committee, may conclude:
- (a) that the SCA member did not fail to uphold expected standards, and dismiss the complaint, or
 - (b) that the SCA member did fail to uphold expected standards.
- 7.8 In the event of a finding under Paragraph 9.7 (b) above, the Chair will inform the member of this finding and the Steering Committee will then consider what action, if any, it should take as a result of the member's failure to uphold expected standards. In doing this, the Steering Committee will give the SCA member an opportunity to make representations to the Steering Committee as to whether any action should be taken and what form any action should take. It will then decide what action, if any, to take in respect of the matter.

8 Action which may be taken where a member has failed to uphold expected standards.

- 8.1 Having determined that an SCA member has failed to uphold expected standards, the Steering Committee may:
- (a) Report its findings in respect of the member's conduct to the SCA members meeting.
 - (b) Issue the member with a formal reprimand.
 - (c) Recommend to the member's meeting that the SCA Member be removed from any or all Committees or Sub- committees of the SCA.
 - (d) Revoke or suspend the membership of the member concerned.
 - (e) Instruct the Administration Officer to arrange training for the member.
 - (f) Recommend to the member's meeting that the SCA member be removed from outside appointments to which he/she has been appointed or nominated by the SCA.
 - (g) Withdraw facilities provided to the member by the SCA, such as a computer, website and/or email and internet access.
 - (h) Exclude the member from the SCA Offices or other premises,

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with the exception of meeting rooms as necessary for attending SCA member's meetings.

- (i) Take no further action.
 - (k) Any other appropriate sanction which may be available to the Steering Committee.
- 8.3 At the end of the hearing, the Chair shall state the decision of the Steering Committee as to whether the member failed to uphold expected standards and as to any action which the Standards Committee has resolved to take.
- 8.4 As soon as reasonably practicable thereafter, the Administration Officer shall prepare a formal decision notice after consultation with the Chair of the Steering Committee and send a copy to the person making the allegation; to the member concerned; make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

9 Appeals

- 9.1 There is no right of appeal for either the person making the allegation or for the SCA member against whom the allegation is made, against a decision of the Investigating Officer, the Steering Committee, or the Assessment Sub-Committee.
- 9.2 If a person making the allegation considers that the SCA has failed to deal with an allegation properly, he/she may make a complaint to the HEVAC Chief executive.

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Appendix A

Hearing Procedure

The model procedure which follows comprises good and equitable practice and should be followed closely wherever possible. There may be occasions when circumstances require variations and subject to the maintenance of the principles of natural justice these may be affected at the discretion of the Steering Committee and advised to the parties.

1. The Chair shall facilitate introductions and explain the procedure for the hearing.
2. The Investigating Officer shall be invited to present their Investigation Report including any documentary evidence or other material and to call witnesses as required. This report and documentary and witness evidence must be based on the allegation made to the SCA; no new or additional matters will be allowed.
3. The Member against whom the allegation has been made or their representative may question the Investigating Officer upon the content of the Investigation Report and any witnesses called by the Investigating Officer. This is the SCA Member's opportunity to ask questions arising from the Investigation Report and the direct evidence and not to make a statement.
5. Members of the Sub-Committee may question the Investigating Officer upon the content of the Investigation Report and any witnesses called by the Investigating Officer
6. The Member against whom the allegation has been made or their representative may present their case and call witnesses as required.
7. The Investigating Officer may question the Member and any witnesses
8. Members of the Sub-Committee may question the Member and any witnesses.
9. The Investigating Officer may sum up the investigation into the allegation and make a closing speech.
10. The Member or their representative may sum up their case and make a closing speech.
11. The Chair shall invite the parties to withdraw to enable the Sub-Committee to deliberate upon the allegation.
12. The parties shall be invited to return, and the Chair shall announce the Sub-Committee's decision in the following terms: -

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- (a) The Sub-Committee has determined that the Member has failed to uphold expected standards, or
- (b) The Sub-Committee has determined that the Member has not failed to uphold expected standards and the allegation is dismissed.

The Sub-Committee will give reasons for its decision.

13. If the Sub-Committee has determined that the Member has failed to uphold expected standards it shall consider any representations from the Member as to whether any action should be taken and what form any action should take.
14. The Chair shall invite the parties to withdraw to enable the Sub-Committee to deliberate upon what action if any should be taken.
15. In addition to any action upon the current matter, the Sub-Committee shall consider whether in consequence it should make recommendations to the Council with a view to promoting high standards of conduct amongst Members.
16. The parties shall be invited to return, and the Chair shall announce the Sub-Committee's decision
17. A full written decision shall be issued to the Complainant and the Member within ten clear working days following the hearing.