

## **Arrangements for dealing with complaints about the Code of Conduct for members**

### **1. Introduction**

1.1 This procedure applies when a complaint is received that a member, co-opted member or Parish Council Member has or may have failed to comply with the Code of Conduct for Members.

1.2 The person making the complaint will be referred to as “the complainant” and the person against whom the complaint is made will be referred to as the “subject member”.

1.3 No member or officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.

### **2. Making a complaint**

2.1 A complaint must be made in writing either by post or e-mail to the Monitoring Officer.

2.2 The Monitoring Officer will acknowledge receipt of the complaint within five working days of receiving it and, at the same time, write to the subject member (and in the case of a complaint about a parish or town councillor to the Clerk of the council also) with details of the allegations (subject to any representations from the complainant on confidentiality, which are accepted as valid by the Monitoring Officer). The subject member may, within five working days of receipt, make written representations to the Monitoring Officer which must be taken into account when deciding how the complaint should be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued the initial assessment of the complaint.

### **3. Initial Assessment of Complaint**

3.1 The Monitoring Officer will review the complaint and, following consultation with the Independent Person take a decision (initial assessment) as to whether it merits investigation, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint.

The complaint will be rejected if;

- The complaint is not against one or more named members or co-opted members of the council or a parish or town council within its district;
- The subject member was not in office at the time of the alleged conduct.
- The complaint, if proven, would not be a breach of the Code of Conduct under which the subject member was operating at the time of the alleged misconduct.

3.2 If the complaint has not been rejected on any of these grounds the Monitoring Officer will then go on to apply the following criteria in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected;

- Whether a substantially similar allegation has previously been made by the complainant to Standards for England, or the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority;
- Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;
- Whether the allegation is anonymous;
- Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and
  - i. The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations and
  - ii. Whether in all the circumstances there is no overriding public benefit in carrying out an investigation.
- Whether the complaint appears to be malicious, vexatious, politically motivated or tit for tat;
- Whether the complaint suggests that there is a wider problem throughout the authority;
- Whether it is apparent that the subject of the allegation is relatively inexperienced as a member or has admitted making an error and the matter would not warrant a more serious sanction;
- Whether training or conciliation would be the appropriate response.

The Monitoring Officer will consult with the Independent Person and then give his/her decision on how the complaint will be dealt with. The Monitoring Officer may in exceptional circumstances refer the question of how to proceed to a sub-committee of the Standards Committee.

#### **4. Additional Information**

4.1 The Monitoring Officer may require additional information to come to a decision and may request information from the subject member. Where the complaint relates to a parish or town councillor, the Monitoring Officer may also inform the Clerk of the council of the complaint and seek the views of the Clerk

before deciding whether the complaint merits formal investigation or other action. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation.

4.2 Such informal resolution may involve the subject member accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the subject member or the authority (in appropriate cases) makes a reasonable offer of local resolution, but it is rejected by the complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

4.3 If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the police or other prosecuting or regulatory authority, in addition to any action taken pursuant to the Code.

## **5. Confidentiality**

5.1 If a complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the initial assessment stage.

5.2 As a matter of fairness and natural justice the subject member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the complainant's identity if on request from the complainant, or otherwise, they are satisfied that the complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the complainant's identity being disclosed.

5.3 If the Monitoring Officer decides to refuse a request by a complainant for confidentiality, they will offer the complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the complainant's wish to have his or her identity withheld from the subject member.

## **6. Investigation**

6.1 The Monitoring Officer will appoint an investigating officer where a complaint merits formal investigation. The investigating officer may be a council officer, an officer from another council, or an external investigator.

6.2 The investigating officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost effective use of council resources and shall be interpreted in line with these principles.

6.3 The Investigating Officer will ensure that the subject member receives a copy of the complaint – subject to the Monitoring Officer decision on confidentiality.

6.4 At the end of their investigation, the investigating officer will produce a report and will send a copy of that report to the Monitoring Officer. The investigating officer may, before that, produce a draft report and send copies to the complainant and to the subject member, for comments. The investigating officer will take such comments into account before issuing their final report to the Monitoring Officer.

## **7. Investigating officer finding of no failure to comply with the Code of Conduct**

7.1 Where the investigating officer's report finds that the subject member has not failed to comply with the Code of Conduct, the Monitoring Officer (in consultation with the Independent Person) will review the investigating officer's report and if satisfied, will confirm the finding of no failure to comply with the Code of Conduct.

7.2 The Monitoring Officer will write to the complainant and the subject member (and to the Clerk of the council, where the complaint relates to a parish or town councillor), with a copy of the decision and the investigating officer's report.

7.3 If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the investigating officer may be asked to reconsider the report and the conclusions.

## **8. Investigating officer finding of sufficient evidence of failure to comply with the Code of Conduct.**

Where the investigating officer's report finds sufficient evidence that the subject member has failed to comply with the Code of Conduct, the Monitoring Officer will review the investigating officer's report and will then having consulted the Independent Person either send the matter for local hearing before the hearings panel or seek local resolution.

### **8.1 Local Resolution**

If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Independent Person and the complainant and seek to agree a fair resolution. Such resolution may include the subject member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee (and the Clerk to the council if appropriate) for information, but will take no further action. If the complainant or the subject member refuses local resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a local hearing without further reference to the complainant or the subject member.

### **8.2 Local Hearing**

Where, in the opinion of the Monitoring Officer, local resolution is not appropriate or the complainant and/or subject member refuses to co-operate, then the Monitoring Officer will report the investigating officer's findings to the hearing panel which will

conduct a local hearing before deciding whether the subject member has failed to comply with a Code of Conduct and, if so, what action (if any) to take in respect of the subject member.

The Council has agreed a procedure for local hearings which is attached as Annex 1 below.

## **9. Constitution of the Hearing Panel**

The Hearing Panel is a sub-committee of the council's Standards Committee. The Council has decided that it will comprise of at least one of the independent Members co-opted to the Standards Committee and three members of the council drawn from at least two different political parties. Where the complaint is about a parish or town council member, the hearing panel will endeavour to include at least one of the parish or town council members co-opted to the Standards Committee.

The Independent Person is invited to attend all meetings of the Hearing Panel and their views must be sought and taken into consideration before it takes any decision on whether the subject member's conduct constitutes a failure to comply with the code of conduct and as to any action to be taken following a finding of failure to comply with the code.

The quorum for the Hearing Panel will be two voting members.

## **10. The Independent Person**

The Independent Person must be a person who is eligible under the Localism Act 2011 to be appointed, has applied for the post following advertisements of a vacancy for the post, and has been appointed by a positive vote from a majority of all the members of the council at a meeting of the full Council.

## **11. Action**

Where a Hearing Panel find that a subject member has failed to comply with the code of conduct, the Council has delegated to the Standards Committee and the Standards Committee has delegated to the Hearing Panel such of its powers to take action in respect of subject members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Hearing Panel may –

- Publish its findings in respect of the subject member's conduct;
- Report its findings to Council (or to the parish or town council) for information;
- Recommend to Council that the subject member be censured;
- Recommend to the subject member's group leader (or in the case of ungrouped members) recommend to Council) that he/she be removed from any or all committees or sub committees of the council;

- Recommend to the Leader of the Council that the subject member be removed from the Executive, or removed from their portfolio responsibilities;
- Instruct the Monitoring Officer to (or recommend that the parish or town council) arrange training for the subject member;
- Recommend to Council (or recommend to the parish or town council) that the subject member be removed from all outside bodies, appointments to which they have been appointed or nominated by their council;
- Withdraw (or recommend to the parish or town council that it withdraws) facilities provided to the subject member by the council such as a computer, website and/or e-mail and internet access); or
- Placing such restrictions on the subject members access to staff which may be reasonable in the circumstances

## **12. Withdrawal of a Complaint**

In the event that a complainant withdraws a complaint at any time prior to a decision having been made by a Hearings Panel, the Monitoring Officer may, following consultation with the Independent Person, decide that no further steps be taken in respect of that complaint but shall, in taking such a decision take into account any issues which may arise under Paragraph 3.1(c) of the Code of Conduct.

## **13. Revision of these Arrangements**

The Council may by resolution or delegation to the Monitoring Officer agree to amend these arrangements and has delegated to the Chair of the Hearing Panel the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the efficient, effective and fair consideration of any matters.

## **14. Appeals**

Subject to judicial review or a decision of a Local Government Ombudsman, there is no right of appeal against the decision of a Monitoring Officer or of the hearing panel.

## **15. Publication of Decision Notice**

Following the completion of an investigation culminating in a decision from the Monitoring Officer or hearing panel a decision notice shall be published on the Council's website. Notification of the decision and a draft decision notice is to be sent to the Complainant and the Subject Councillor within 5 working days of the decision being made for comment and to propose amendments. Following consideration of comments and proposed amendments by the Complainant and Subject Councillor the final decision notice will be signed off by either the Monitoring Officer or the Chair of the hearing panel and published no later than 10 working days after a decision is reached. The decision notice will include;

- the date of the decision,
- the decision maker,
- a summary of the complaint,
- the relevant sections of the code of conduct,
- a statement of the facts considered,
- the independent persons view,
- the decision makers decision and reasoning,
- sanction, if any, resulting from the decision