

CHAPTER 9.1 - THE STANDARDS COMMITTEE

9.1.12 Process for Dealing with Misconduct Complaints

9.1.12.1

The Localism Act 2011 requires the Council to adopt arrangements for dealing with complaints of breaches of the Code of Conduct by either Borough Council Members, Town/Parish Council Members or co-opted members of any of these bodies and such complaints can only be dealt with in accordance with such arrangements.

9.1.12.2

The following is the process that will be followed for dealing with complaints of misconduct and the actions which may be taken against a Member who is found to have failed to comply with the relevant Code of Conduct.

9.1.13 Process for Considering Code of Conduct Complaints

9.1.13.1 Receipt and Acknowledgment of the Complaint

Following receipt of a Councillor Code of Conduct complaint, the Monitoring Officer¹ will write, within 3 working days, to the complainant to acknowledge receipt of the complaint and provide them with a copy of this complaints process.

The complainant will be told that full details of their complaint, including the parts of the Code of Conduct which have allegedly been breached and their name, will be given to the Councillor they have complained about, (“the Subject Member”), subject to [Rule 9.1.13.5](#) (Anonymous complaints).

If the complaint relates to a Parish or Town Councillor, the Clerk to that Council will be informed and may be asked for relevant factual information. In the case of Subject Members who sit on more than one Council, the Monitoring Officer will seek clarification from the complainant if it is unclear which Council the Subject Member was acting for at the time of the alleged breach.

9.1.13.2 Response of the Subject Member

The Subject Member will be informed of the complaint as soon as possible, and be asked for their initial comments on the complaint. The Subject Member will have 15 working days to provide their comments and if no comments are received within this timescale then the Monitoring Officer will proceed with his/her assessment on the basis of the original complaint. If the Monitoring Officer requires further clarification from the complainant in response to the comments made by the Subject Member, then these comments may be passed back to the complainant for further comment.

9.1.13.3 Response of the Town or Parish Clerk

If the complaint is about a Town or Parish Councillor, the Monitoring Officer shall seek the views of a response to the complaint from the Town/Parish Clerk, about the complaint. Their view This response, which should relate to clarification of factual matters only eg was the Councillor actually present at the meeting in question, will

¹¹ Reference to the Monitoring Officer in this document includes the Deputy Monitoring Officer

be recorded in the Monitoring Officer's summary and taken into account when a decision is made, under [Rule 9.1.13.4](#). ~~The Clerk's opinion on the complaint is not being sought.~~

9.1.13.4 Initial Decision of the Monitoring Officer

The purpose of the initial assessment by the Monitoring Officer, in consultation with an Independent Person ~~and Chairman of the Standards Committee~~, is to determine whether the complaint should be accepted for further consideration or rejected. In determining whether a complaint should proceed the Monitoring Officer may apply the following criteria:

Sufficiency of information – Is there sufficient information or evidence provided with the allegation? If it appears that substantiating evidence may be available, but has not been provided, the Monitoring Officer may ask for additional evidence, but the onus is on the complainant to ensure that all relevant information is provided.

Seriousness of the complaint – is the complaint trivial, vexatious, malicious, politically motivated, or 'tit for tat'? Would the resources/cost involved in investigating and determining the complaint be disproportionate to the allegation if proven?

Duplication – Is the complaint substantially similar to a previous allegation or subject of an investigation by another relevant authority?

Length of time – Did the events or behaviour to which the complaint relates take place more than six months prior to receipt of the complaint. Does the time lapse mean that those involved are unlikely to remember matters clearly, or does the lapse of time mean that there would be little benefit in taking action.

Public Interest – Is the public interest served in referring the complaint further. Has the Subject Member offered an apology or other remedial action?

The Monitoring Officer shall write a summary of the complaint and then, subject to consultation with an Independent Person ~~and the Chairman² of the Standards Committee~~, have delegated authority to decide to:

- a) take no action if there is clear evidence that there has been no breach of the Code of Conduct.
- b) Resolve the matter informally by asking the Subject Member to
 - i) take part in mediation with the complainant in order to settle the complaint, provided both the Subject Member and the complainant are willing to do so, and/or
 - ii) make a written apology to the complainant which is acceptable to the Monitoring Officer and ~~Chairman of the Standards Committee~~ [Independent Person](#), and/or
 - iii) attend training and/or

² ~~Reference to the Chairman of the Standards Committee includes the Vice Chairman of the Committee~~

- iv) correct an entry in the Members' Register of Interests or correct a declaration made; OR
- c) Require a formal investigation and a written investigation report by an Investigating Officer. The investigation report shall conclude whether there has been a breach of the Code of Conduct. Copies of the investigation report will be provided in confidence to the Independent Person, ~~the Chair of the Standards Committee~~, and the Subject Member. OR
- d) Refer the complaint to the Standards Committee for a decision on whether options a), b) and c) above should be followed.

The decision by the Monitoring Officer will normally be taken within ~~2010~~ working days of receipt of the complaint. Once a decision has been made by the Monitoring Officer the complainant, the Subject Member and the Town/Parish Clerk (if applicable) will be informed of the outcome as soon as possible.

If the Monitoring Officer decides to resolve the matter informally, as set out in b) above, but this is deemed to have failed the Monitoring Officer can further decide, in consultation with the Independent Person, to refer the complaint for a formal investigation, as set out in c) above.

9.1.13.5 Anonymous Complaints

Anonymous complaints will not usually be considered. However it is recognised that in some exceptional circumstances some individuals may feel unable to reveal their identity. In these situations, complainants wishing to remain anonymous should be aware that their concerns may carry less weight because the evidence may not be sufficient enough to allow a successful investigation and fair result. The Monitoring Officer is authorised, subject to consultation with the Independent Person ~~and Chair of the Standards Committee~~, to accept or decline an anonymous complaint.

9.1.14 Finding on Investigation

9.1.14.1 No Breach of Code of Conduct

Where a formal investigation concludes that the Subject Member has not failed to comply with the Code of Conduct, the Monitoring Officer shall have delegated authority to decide not to take any further action, in consultation with the Independent Person.

If the Monitoring Officer makes a decision not to take any further action, he or she will advise the complainant, the Subject Member and the Town/Parish Clerk if applicable.

A summary of all investigations will be provided to the Standards Committee for information. However, where there is a determination that there has been no breach of the Code of Conduct, no names will be disclosed.

9.1.14.2 Breach of Code of Conduct

Where a formal investigation finds evidence that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with an

Independent Person ~~and the Chairman of the Standards Committee~~, shall make a decision to:

- a) resolve the matter informally by asking the Subject Member to
 - i) take part in mediation with the complainant in order to settle the complaint, provided both the Subject Member and the complainant are willing to do so, and/or
 - ii) make a written apology to the complainant which is acceptable to the Monitoring Officer and Chairman of the Standards Committee, and/or
 - iii) attend training and/or
 - iv) correct an entry in a register or correct a declaration made;

Where there has been a determination by the Monitoring Officer to resolve the matter informally, the Subject Member's name will ~~not~~ be disclosed in accordance with Rule 9.1.14.3 below.

OR

- b) refer the Investigating Officer's report to a Standards Committee Hearings Panel, constituted from members of the Standards Committee. The Hearings Panel will conduct a local hearing following the procedure in [Rule 9.1.15](#), and make a decision in accordance with [Rule 9.1.16.2](#).

The Hearings Panel will usually hear a complaint within two calendar months of the date that the Monitoring Officer received the final investigation report.

9.1.14.3 Publication of a Decision on Finding a Breach of the Code of Conduct which has been Dealt with Informally

Within 3 working days of the decision to resolve the matter informally the Monitoring Officer shall prepare a formal decision notice. The decision notice will include details of the steps the Subject Member has been asked to take by the Monitoring Officer to resolve the matter. A copy of the decision notice will be sent to the complainant, the Subject Member (and, if applicable, the relevant Town/Parish Council) and the Independent Person. The decision notice will be available for public inspection and will be published on the Borough Council's website. If the complaint is directed at a Borough Councillor, the decision will be reported to the next convenient meeting of the Borough Council. At the Council meeting the report will be noted and there will be no discussion on the item. If the complaint is directed at a Town/Parish Councillor, the relevant Council will be requested to report the decision to its next Council meeting.

The Subject Member has no right of appeal against the decision of the Monitoring Officer.

9.1.15 Procedure for Local Hearings

9.1.15.1 Appointment, Composition and Terms of Reference of the Hearings Panel

The Monitoring Officer is required to convene a politically balanced Hearings Panel from the membership of the Standards Committee as necessary. The Hearings Panel will therefore not have a fixed membership.

The Hearings Panel shall comprise three to five voting members of the Standards Committee.

If the complaint relates to a Town or Parish Councillor then a co-opted Town or Parish Councillor of the Standards Committee will also be part of the Hearings Panel, but will not have voting rights.

An Independent Person will be asked to attend any Hearings Panel and give advice to it in respect of the complaint as required by S28(7) of the Localism Act 2011.

9.1.15.2 Pre Hearing Process

The date of the hearing will be arranged by the Monitoring Officer in consultation with the members of the Hearings Panel and the Subject Member.

Once the date for the Hearings Panel has been arranged the Subject Member will be notified and asked if they:

- a) wish to attend the hearing;
- b) wish to be represented at the hearing by a solicitor, barrister or any other person;
- c) wish to submit any written evidence or documentation to be considered by the Panel. This must be sent no later than 3 working days prior to the hearing and will be passed to the complainant and the Investigating Officer for any comment. Additional evidence or documentation not submitted by this deadline may not be accepted by the Panel;
- d) wish to call relevant witnesses to give evidence at the hearing. The Chairman of the Hearings Panel appointed at the meeting will have the final decision on how many witnesses may reasonably be needed.

The Hearings Panel will receive a report from the Monitoring Officer which will include a copy of the Investigating Officer's final report.

~~The Hearings Panel will be held in private and this will be confirmed at the hearing. The legal requirements for publishing agendas, minutes and calling meetings will apply to the Hearings Panel. The hearing will be held in public no earlier than 14 working days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member and no later than 2 months, except in exceptional circumstances. The hearing will normally be held in public but Schedule 12A of the Local Government Act 1972 (as amended) may be applied to exclude the public and press from meetings of the Hearings Panel where it is likely that confidential or exempt information will be disclosed.~~

9.1.15.3 Procedure for the Hearings Panel

The procedure for the Hearings Panel will be as follows:

- a) Elect a Chairman for the Hearing.
- b) The Chairman will ask the Hearings Panel if they have any interests to declare.
- c) Agree whether the matter should be heard in public or private, subject to the normal rules on exempt and confidential information and bearing in mind the public interest. The Hearings Pan will always, however, retire in private to consider its findings and possible action.
- d) The Chairman to Cconfirm the names and status of those attending. If the Subject Member is not present at the start of the hearing, and they had indicated their intention to attend, the Chairman shall ask the Monitoring Officer whether the Subject Member has provided any reasons why he or she would not be present. From the response the Hearings Panel will decide whether to make a determination in the absence of the Subject Member or adjourn the hearing to another date.

The Chairman may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

The Hearings Panel may adjourn at any time.

9.1.15.4 Presentation of the Complaint and Subject Member's Case

- a) The Monitoring Officer, or in his/her absence the Deputy Monitoring Officer, or Chairman may each make an introductory statement outlining the nature of the complaint and the purpose of the hearing, and the procedure to be followed.
- b) The Investigating Officer, or in his/her absence the Monitoring Officer, shall present the Investigating Officer's report having particular regard to any points of difference identified by the Subject Member and why the Investigating Officer had concluded, on the basis of their findings of fact, that the Subject Member had failed to comply with the Code of Conduct. The Investigating Officer or Monitoring Officer may call witnesses as necessary in order to substantiate his/her findings.
- c) The Subject Member will then be given the opportunity to ask the Investigating Officer, or any of the witnesses, questions relating to the report or matters that have arisen during the witness statements.
- d) Members of the Hearings Panel, the Independent Person and the Monitoring Officer will then have the opportunity of asking the Investigating Officer, or any of the witnesses, questions relating to the report or matters that have arisen during the witness statements.

- e) The Subject Member will then be invited to respond to the Investigating Officer's report and provide evidence, either by calling witnesses or by making representations to the Hearings Panel as to why they consider that they did not fail to comply with the Code of Conduct.
- f) The Investigating Officer will then be given the opportunity to ask the Subject Member and any witnesses, questions relating to the representations made to the Hearings Panel.
- g) Members of the Hearings Panel, the Independent Person and the Monitoring Officer will then have the opportunity to ask the Subject Member, and any witnesses, questions relating to the representations made to the Hearings Panel.
- h) The Investigating Officer will then be given the opportunity to sum up.
- i) The Subject Member will then be given the opportunity to sum up
- j) The Independent Person will then be invited to comment and outline express their view in respect of the complaint on whether or not they consider that on the facts presented to the Panel, there has been a breach of the Code of Conduct.
- k) The Chairman of the Hearings Panel will check with the other members of the Panel whether they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter. If it is decided that additional evidence is required before a determination can be made then the hearing will be adjourned and the Investigating Officer be asked either to seek and provide such additional evidence and/or undertake further investigation on any point specified by the Hearings Panel.
- l) If the Panel is satisfied that that they do have sufficient evidence to make a decision this will conclude the evidence gathering part of the hearing.

9.1.15.5 Deliberations of the Hearings Panel

- a) The Hearings Panel will adjourn the hearing and deliberate in private to consider whether or not, on the facts found, the Subject Member has failed to comply with the Code of Conduct. The Investigating Officer, the Subject Member, the Independent Person and any witnesses that might be present will be asked to leave at this point, but the Democratic Services Clerk and Monitoring Officer will remain.
- b) ~~m)~~ The Hearings Panel will then determine the complaint on the balance of probabilities. If the Panel determine that there has been a failure to follow the Code the Panel shall seek advice from the Monitoring Officer as to what action they believe should be taken against the Subject Member.
- a)c) The Hearings Panel may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from

the Investigating Officer, the Subject Member or witnesses. If further information to assist the Panel cannot be presented, then the Panel may adjourn the hearing and issue directions as to the additional evidence required and from whom.

9.1.15.6 Announcement of Decision

The Hearings Panel will reconvene the hearing in public and the Chairman will announce whether or not on the facts found the Panel considers that there has been a breach of the Code of Conduct.

9.1.16 Finding of the Hearings Panel

9.1.16.1 Finding of Non Failure to follow the Code of Conduct

If the Hearings Panel determine that the Subject Member has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report then the complaint will be dismissed.

The decision notice stating the Hearings Panel's findings, in relation to a non-failure to follow the Code of Conduct, will be provided to the Subject Member, the Investigating Officer, the Monitoring Officer, and the Independent Person on a confidential basis. It will not be published on the Council's website or otherwise disclosed.

9.1.16.2 Finding of Failure to follow the Code of Conduct

If the Hearings Panel determines that the Subject Member has failed to follow the Code of Conduct then it can decide to take any or more of the following actions:

- a) Formally censure the Subject Member in writing for their failure to follow the Code of Conduct;
- b) Recommend to the Subject Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committee(s) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- c) Recommend to the Leader of Council that the Subject Member be removed from the Executive, or removed from particular portfolio responsibilities;
- d) Instruct the Monitoring Officer (or recommend that the relevant Town/Parish Council, as appropriate) to arrange training for the Member;
- e) Remove (or recommend to the relevant Town/Parish Council that the Subject Member be removed) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Town/Parish Council);
- f) Withdraw (or recommend to the relevant Town/Parish 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;

- g) Exclude (or recommend that the relevant Town/Parish Council exclude) the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee or Sub-Committee meetings; or
- h) Report its findings to the Crown Prosecution Service in respect of a Subject Member that has been found to have committed an offence under [Appendix A](#).

9.1.16.3 Publication of the Decision on Finding a Breach of the Code of Conduct

Within 3 working days, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Hearings Panel [and the Independent Person](#). A copy of the decision notice will be sent to the complainant, the Subject Member (and, if applicable, the relevant Town/Parish Council) and the Independent Person. The decision notice will be available for public inspection, and published on the Borough Council's website. If the complaint is directed at a Borough Councillor, the decision will be reported to the next convenient meeting of the Borough Council. At the Council meeting the report will be noted and there will be no discussion on the item. If the complaint is directed at a Town/Parish Councillor, the relevant Council will be requested to report the decision to its next Council Meeting.

The Subject Member [or complainant](#) has no right of appeal against a decision of the Monitoring Officer or the Hearings Panel.

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