

## **MEMBER COMPLAINT PROCESS (Article 9.02(a))**

### **1. INTRODUCTION**

- 1.1 The Localism Act 2011 requires the Council to adopt its own Code of Conduct and to agree procedures for dealing with alleged breaches of that Code of Conduct. The Code of Conduct sets out the general standards of behaviour that are expected of Councillors and also the arrangements for the registration and declaration of financial and other interests
- 1.2 Parish and Town Councils within the Council's area are also required to adopt their own Code of Conduct. The Localism Act 2011 requires any complaints about breaches of those Codes by Parish or Town Councillors to be dealt with under the Council's arrangements.
- 1.3 References to 'councillors' include elected members and co-opted members of the Council and Town and Parish Councils in its area.

### **2. MAKING A COMPLAINT**

- 2.1 Complaints should be made in writing to the Monitoring Officer, using a form provided by him/her if possible.
- 2.2 Anonymous complaints will not be considered.
- 2.3 In order for it to be considered a complaint must also:
- Identify the member(s) complained about
  - Identify the provisions of the code of conduct said to have been breached
  - Provide sufficient information for an initial assessment of the complaint to be made
  - Be clear about what remedy is being sought.
- 2.3 In the interests of fairness and natural justice, the Councillor who is the subject of the complaint will normally be told who has complained about them and the details of the complaint. There may be occasions where the complainant requests that their identity is withheld. Such a request will only be agreed in exceptional circumstances.

### **3. WHO WILL DEAL WITH THE COMPLAINT?**

- 3.1 The Initial Assessment of any complaint will be dealt with by the Monitoring Officer or by a deputy Monitoring Officer.
- 3.2 Any investigation under Stage 2, will be conducted by the Monitoring Officer, a deputy Monitoring Officer or a person appointed by the Monitoring Officer

("the Investigating Officer"). His/her investigation report will be considered by the Council's Audit and Governance (Hearing) Sub-Committee, who will also conduct any hearing under Stage 3.

- 3.3 The Independent Person will be able to attend any meetings held under stages 2 and 3 of the process.

#### **4. HOW WILL ANY COMPLAINT BE DEALT WITH?**

##### **5.1 Stage 1 – Initial Assessment**

The Monitoring Officer or a deputy Monitoring Officer will consider the complaint and in particular will consider whether:

- (a) the complaint is about the conduct of a councillor or lay or co-opted member of the Council or a town or parish council within the Council's area;
  - (b) the Councillor was a councillor at the time of the incident giving rise to the complaint;
  - (c) the Councillor was a councillor at the time of the complaint; and
  - (d) the matters giving rise to the complaint would, if proven, be capable of breaching the Code of the relevant local authority.
- 4.2 If the complaint fails one or more of these tests, or if the Monitoring Officer or a deputy Monitoring Officer in consultation with the Independent Person is satisfied that it would be disproportionate to investigate the complaint, no further action will be taken.
- 4.3 Unless the complaint is about a failure to disclose a Disclosable Pecuniary Interest or other criminal behaviour (see paragraph 4.7 below), if the complaint satisfies the tests in paragraphs 4.1 or 4.2 the Monitoring Officer or a deputy Monitoring Officer will prepare a report for the Audit and Governance (Assessment) Sub-Committee to consider. The Councillor, and if they are a Town or Parish Councillor, the relevant Town or Parish Clerk, will be informed of the receipt of the complaint and that a report is being prepared for the Audit and Governance (Assessment) Sub-Committee.
- 4.4 In considering the report and assessing the complaint the Audit and Governance (Assessment) Sub-Committee will have regard to the criteria set out in Appendix A.
- 4.5 The Audit and Governance (Assessment) Sub-Committee may:
- (a) reject the complaint or to decide to take no action – in which case the Sub-Committee will give their reasons for doing so;

- (b) seek an informal resolution (including, for example, an apology, or mediation); or
- (c) require the complaint to be investigated.

- 4.6 A copy of the complaint and a summary of the Audit and Governance (Assessment) Sub-Committee will be sent to the Councillor and to the complainant by the Monitoring Officer or the deputy Monitoring Officer.
- 4.7 A complaint that involves an allegation of a breach of a Disclosable Pecuniary Interest will be referred to the Police and will not at that stage be subject to any further investigation by the Council. Where a complaint involves allegations in addition to one relating to a Disclosable Pecuniary Interest, those additional allegations will not usually be investigated following the completion of any police investigation.

#### 4.8 **Stage 2 – Investigation**

The Investigating Officer will examine any available evidence of the alleged breach. He/she will usually interview the complainant, the councillor and, if appropriate any witnesses. The Investigating Officer will prepare a report setting out:

- (a) the agreed facts;
- (b) any facts which are not agreed and the conflicting evidence; and
- (c) their conclusion on whether or not there has been a breach of the Code of Conduct.

#### 4.9 **Stage 3 – Hearing**

The Investigating Officer's report will be circulated with the agenda as an exempt item. Having resolved to exclude the press and public from the meeting, the Audit and Governance (Hearing) Sub-Committee will consider whether the press and public should continue to be excluded further from all or any part of the hearing. Before making its decision the Sub-Committee may ask the Investigating Officer and the councillor complained about (if present) for their views.

NOTE: To promote public confidence and ensure fairness and transparency, the hearing will normally be held in public. However, the Sub-Committee may resolve to exclude the public and press for any part of the hearing where confidential or exempt information is considered and will usually do so when coming to its decision (see Appendix B).

- 4.10 The Audit and Governance (Hearing) Sub-Committee will reach a view on disputed facts and decide whether or not to accept the conclusion of the Investigating Officer on the alleged breach of the Code of Conduct. The Sub-Committee may:

- (a) dismiss the complaint;
- (b) refer the complaint to the Monitoring Officer to seek an informal resolution;
- (c) hold a hearing of the Sub-Committee (which depending on the circumstances may or may not be held on the same day as the initial consideration of the Investigating Officer's report).

4.11 The hearing will be to make a final decision on whether or not a Councillor has breached the Code of Conduct and, if so, to decide whether any sanction should be imposed.

4.12 The Sub-Committee may decide:

- (a) to take no further action;
- (b) to seek an informal resolution between the complainant and the subject councillor (if agreed by both parties);
- (c) to censure the Councillor;
- (d) to request the Councillor to give an unequivocal apology ;
- (e) to instruct the Monitoring Officer to request the Councillor to attend training;
- (f) to refer the matter to the full Council (in the case of a Town and Parish Councillor refer the matter to the relevant Town or Parish Council).

## **5. IS THERE A RIGHT OF APPEAL?**

5.1 There is no right of appeal against the decision of the Audit and Governance (Hearing) Sub-Committee.

## **6. HOW WILL THE DECISION BE PUBLICISED?**

6.1 A summary of complaint, the Audit and Governance (Hearing) Sub-Committee's findings and decisions shall be sent to the Councillor and in the case of a Town and Parish Councillor to the clerk of the relevant Town or Parish Council, and unless the Sub-Committee agrees otherwise due to exceptional circumstances, be published on the Council's website.

## **APPENDIX A – ASSESSMENT CRITERIA**

### **1 Initial Tests**

- 1.1 The complaint is about the conduct of a councillor or lay or co-opted member of a council within the Council's area;
- 1.2 The Councillor was a councillor at the time of the incident giving rise to the complaint;
- 1.3 The Councillor was a councillor at the time of the complaint;
- 1.4 the matters giving rise to the complaint would, if proven, be capable of breaching the Code of the relevant local authority.

### **2 Sufficiency of information**

- 2.1 Has the complainant provided sufficient information to allow the Sub-Committee assessing the complaint to understand the issues complained of? If insufficient information is provided, the Sub-Committee will not normally proceed with assessment of the complaint.

### **3 Seriousness of the Complaint and proportionality**

- 3.1 Does the complaint appear, on the available information, to be trivial, vexatious, malicious, politically motivated or 'tit for tat'?
- 3.2 Other than in particularly serious cases a complaint will not generally be referred for investigation if the Councillor has offered an apology, or if the view is taken that the complaint can reasonably be addressed by other means.
- 3.3 Given the public interest in financial and other resources being used efficiently referral for investigation is generally reserved for more serious complaints where alternative options for resolution are not considered by the Sub-Committee to be appropriate. A complaint may be regarded as serious in its own right or when considered in conjunction with a serious of incidents/complaints.

### **4 Length of Time Elapsed**

- 4.1 Except in exceptional circumstances a complaint will not be referred for investigation when it is made more than 20 working days from the date upon which the event giving rise to the complaint took place.

### **5 Multiple Complaints**

- 5.1 A single event may give rise to similar complaints from a number of complainants. These will generally be treated as a single complaint with multiple complainants.

## **APPENDIX B – GUIDANCE ON THE EXCLUSION OF THE PRESS AND PUBLIC AT HEARINGS**

### **1 Initial Considerations**

- 1.1 The purpose of publicity in the determination of complaints that a councillor has breached the code of conduct is to:
- (a) promote the public interest;
  - (b) maintain public confidence in local government;
  - (c) maintain proper standards of conduct; and
  - (d) is consistent with the proper discharge of the Council's functions in accordance with the Human Rights Act 1998 which provide for a public hearing .

### **2 Presumption in favour of openness**

- 2.1 Given the purpose of publicity, there is a presumption that the Audit and Governance (Hearings) Sub-Committee will proceed with the hearing in public.

### **3 Exceptional circumstances**

- 3.1 The Sub-Committee may however override the presumption in favour of openness if it is satisfied that there are exceptional circumstances which outweigh the public interest in the hearing being open to the public before excluding the press and public and proceeding in private for all or part of the hearing. Common examples of exceptional circumstances include the following (the list is not exhaustive):
- (a) health;
  - (b) sexual allegations;
  - (c) vulnerable third parties;
  - (d) public order;
  - (e) the protection of the private life of the parties requires; or
  - (f) where the complainant is an employee of the authority to which the councillor complained about is a member.

### **4 Announcement of decision**

- 4.1 Even if the whole or part of a hearing has been held in the absence of the press and public, the Sub-Committee will normally announce its decision in

public. If necessary, there may be a public and a private record of the decision made.