

PROCEDURE FOR CONSIDERING COMPLAINTS THAT MEMBERS HAVE BREACHED THE CODE OF CONDUCT

When looking at complaints these are key considerations:

<p><u>Can</u> we investigate your complaint?</p>	<ul style="list-style-type: none"> • Is the person you are complaining about a councillor? • Did the conduct occur recently (e.g. within the last six months)? • Is the conduct something that is covered by the Code of Conduct?
<p><u>Should</u> we investigate your complaint?</p>	<ul style="list-style-type: none"> • Is there evidence which supports the complaint? • Is the conduct something which it is possible to investigate? • Would an investigation be proportionate and in the public interest?

1. The Monitoring Officer (MO) acknowledges receipt of the complaint within 5 working days of receipt.
2. The MO informs the subject member of:
 - (a) the complaint, giving a summary of it and, subject to data protection considerations, the name of the complainant;
 - (b) their right to consult one of the Independent Persons (IP) appointed by the Council, through the MO.
3. The MO, in consultation with an IP (other than one consulted by the subject member under para 2 (b)), decides that:
 - (a) the complaint does not come within the remit of the Code of Conduct;
 - (b) the complaint is not sufficiently serious to warrant an investigation;
 - (c) that it is not in the public interest to investigate the complaint;
 - (d) they should seek to resolve the complaint without the need for an investigation (e.g. by an apology or training by the subject member);
 - (e) the Complaint should not be investigated because it is vexatious, malicious or obsessive;

- (f) the Complaint should not be investigated because it is broadly similar to a complaint against the same member about the same alleged incident;
- (g) the Complaint should not be investigated because there is a clear ulterior/political motive for it or it is just a tit for tat complaint;
- (h) an investigation should take place.

Complaints will be assessed within 20 working days where practicable, but in some more complex cases or where clarification is needed longer may be required and the complainant should be kept informed.

Outcome (a) will be applicable in circumstances including:

- where the complaint relates to activity in a private capacity and not in the subject member's capacity as a councillor or
 - where no likely breach of the code of conduct is shown by the complaint
4. Before coming to their decision under para 3 the MO may request further information and/or clarification from the complainant and/or the subject member and the time period shall be extended accordingly.
 5. If the MO decides that the complaint should be investigated, or their attempts to resolve the complaint without an investigation do not succeed, then they will carry out an investigation or appoint an investigator to carry out an investigation on their behalf.
 6. The investigator appointed under para 5 by the MO may be:
 - (a) a senior officer of the Council;
 - (b) a senior officer of another Council;
 - (c) an external investigator with relevant experience.

(and 'senior officer' includes a solicitor or other senior officer)
 7. The role of the investigator is to independently and fairly assess the allegations and the evidence and to reach provisional conclusions on whether or not there has been a breach of the Code. In doing this and when presenting their report to Standards and Audit Committee, the investigator is not (and should not be seen as) acting for either the complainant or the councillor. Notwithstanding this the investigator (or the person representing them) may ask questions of either party or witnesses at a hearing in support of their report and findings.
 8. A report into an investigation shall include the investigator's findings on whether the Code has been breached.

9. Before finalising their report the Investigator shall send a copy of it to both the complainant and subject member and give them at least 5 working days to comment on it.
10. If the investigator's final report finds there has not been a breach of the Code the MO can, in consultation with the IP, decide to:
 - (a) take no action;
 - (b) refer the report to the Standards and Audit Committee.
11. If the investigator's report finds there has been a breach of the Code then the MO must refer the matter to the full Standards and Audit Committee.
12. When the matter has been referred to the Standards and Audit Committee by the MO, it will carry out a hearing into the allegations in accordance with procedures adopted by the committee and:
 - (a) allow the investigator to present their report and call witnesses, including the complainant;
 - (b) allow the subject member to make representations and call witnesses;
 - (c) decide if the subject member has breached the Code of Conduct;
 - (d) decide what sanction should be imposed if they decide the Code has been breached.
13. The sanctions the Standards and Audit Committee can impose if they find a breach of the Code are:
 - (a) censuring the member;
 - (b) reporting its findings to Council for information;
 - (c) recommending to the member's Group Leader (or in the case of ungrouped members, recommending to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council;
 - (d) recommending to Council that the member be replaced as Executive Leader of the authority;
 - (e) recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - (f) recommending the Monitoring Officer to arrange training for the member;

- (g) recommending to Council that the member be removed from all outside appointments to which they have been appointed or nominated by the authority.

(In respect of Parish Councils all of these will be recommendations).

14. In reaching a decision as to whether there has been a breach of the Code and if so what sanction should be imposed the Standards and Audit Committee will consult and take into account the views of the IP who will attend such hearings.
15. In reaching a conclusion as to whether there has been a breach of the Code the Investigator (in preparing their report) and the Standards and Audit Committee (when deciding the matter):
 - may take into account whether or not the subject member has or has not cooperated with this complaints procedure
 - will apply the test of whether it is more likely than not that the Code has been broken (i.e on the balance of probabilities – there is no requirement for an allegation to be proved beyond reasonable doubt).
16. A complaint by a councillor about another councillor which is found to be trivial, malicious or obsessive can amount to a breach of the Code in itself, and result in a separate complaint.
17. Following any final decision by the MO or the Standards and Audit Committee at whatever stage the MO shall inform the complainant and the subject member of the decision and the reasons for it within 10 working days.
18. Wherever there has been a decision that the subject member has breached the Code of Conduct that decision and the reasons for it shall be put on the Council's website in a prominent position
19. Wherever there is a decision that the subject member has not breached the Code of Conduct that decision shall be put on the Council's website, in a prominent position if the subject member wishes it to be.
20. Any decision of the MO or Standards and Audit Committee shall be final and binding
21. A report will be submitted every 6 to 12 months, or sooner if appropriate, by the MO to the Standards and Audit Committee giving:
 - (a) the number of complaints received and brief details;
 - (b) how they are progressing;
 - (c) what decisions have been made;
 - (d) what action has, where appropriate, been taken.

The report will not disclose the identity of the complainant or the councillor complained about, unless already in the public domain or otherwise not in breach of data protection laws.

22. The MO has delegated power, in consultation with the IP and the Chair of the Standards and Audit Committee, to approve a departure from these arrangements when they consider it is expedient to do so to secure the effective and fair consideration of any matter.
23. In all cases where the MO is unable to perform their role (e.g. due to a conflict of interest) their deputy will do so.

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