

Arrangements for dealing with complaints about breach of the Code of Conduct

1 Introduction

These arrangements set out how Gedling Borough Council (“the Council”) will deal with allegations that an elected or co-opted member of the Council or of a Parish Council within its area has failed to comply with the Code of Conduct.

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”.

2 The Code of Conduct

The Council has adopted a Code of Conduct for members, which is available for inspection on the Council’s website and on request from Reception at the Civic Centre.

Each Parish Council is also required to adopt a Code of Conduct. If the Complainant wishes to inspect a Parish Council’s Code of Conduct, the Complainant should inspect any website operated by the parish council or request the parish clerk to allow the Complainant to inspect the parish council’s Code of Conduct.

3 Making a complaint

All complaints must be submitted in writing to –

The Monitoring Officer
Gedling Borough Council
Civic Centre
Arnot Hill Park
Arnold
Nottingham
NG5 6LU

helen.barrington@gedling.gov.uk

The complaint shall include:

- the Complainant’s name and contact details;
- the name of the member(s) the Complainant believes has breached the Code of Conduct and the name of the authority;

- what the Subject Member has allegedly done that the Complainant believes breaches the Code of Conduct; and
- details of why the Complainant believes their name and/or the details of the complaint should be withheld (if necessary).

In order to ensure that the Council has all the information to be able to process the complaint a complaint form is available on the Council's website. *If the complainant decides not to use the complaint form, they must still provide the Monitoring Officer with all the information set out above; otherwise the Monitoring Officer will not be able to consider the complaint.*

Formal complaints about the conduct of a Parish Councillor towards the Clerk can and should be made by the Chair or the Parish Council as a whole, rather than the Clerk, in all but exceptional circumstances.

4 Conflict of interest

Where the Monitoring Officer considers that he/she has a conflict of interests, for example, as a result of a close professional relationship with the Subject Member; the Monitoring Officer will pass the complaint to the Deputy Monitoring Officer to deal with. Where the Deputy Monitoring Officer similarly has a conflict of interest, arrangements may be made for a Monitoring Officer from another local authority in Nottinghamshire to oversee and manage the complaint.

5 Criminal conduct

If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to refer the matter to the Police and other regulatory agencies.

5 Acknowledging the complaint

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it. The Monitoring Officer will write to the Subject Member (and in the case of a complaint about a Parish Councillor to the Clerk of the Parish Council) with details of the allegations (subject to any representations from the Complainant about confidentiality or concerns that disclosure of the complaint would prejudice any potential investigation) and notifying the Subject Member of their right to consult the Independent Person. At the same time the Monitoring Officer will write to the Independent Person with details of the allegations so that he/she is aware of the nature of the complaint if the Subject Member consults them. The Subject Member may, within 10 working days of the date of the letter, or such longer period as the Monitoring Officer may agree, make written representations to the Monitoring Officer which will be taken into account when deciding how the complaint will be dealt with.

6 Initial filtering of complaints

Code of Conduct complaints can only be accepted if they relate to a member's behaviour whilst they are acting, or giving the impression that they are acting, in

their official capacity. Complaints which clearly relate to a member acting in their private capacity or otherwise fall outside of the Code of Conduct can be rejected by the Monitoring Officer without notifying the Subject Member (and in the case of a complaint about a Parish Councillor to the Clerk of the Parish Council) or seeking the views of the Independent Person. The Monitoring Officer will inform the Complainant, the Subject Member (and in the case of a complaint about a Parish Councillor to the Clerk of the Parish Council) of the decision and the reasons for that decision in writing.

5 Confidentiality

As a matter of fairness and natural justice, the Subject Member should be told who has complained about them. There may be occasions where the Complainant requests that their identity is withheld. Such a request may be granted in circumstances that the Monitoring Officer considers to be exceptional, for example:

- a) The Complainant has reasonable grounds for believing that they will be at real risk of intimidation, victimisation or physical harm if their identity is disclosed.
- b) The Complainant is an officer who works closely with the Subject Member and they are afraid of the consequences to their employment if their identity is disclosed.
- c) The Complainant suffers from a serious health condition, which might be adversely affected if their identity is disclosed.

If the Monitoring Officer decides to refuse a request by the Complainant for confidentiality, he/she will offer the Complainant the option to withdraw the complaint, rather than proceed with disclosure of the Complainant's identity.

As a matter of fairness and natural justice, the Subject Member should also be informed of the nature of the complaint. If however the Monitoring Officer considers that disclosure of details of the complaint to the Subject Member might prejudice the investigation, the Monitoring Officer can agree to delay notifying the Subject Member until consideration of the complaint has progressed sufficiently.

It is important, first, to preserve the integrity of the complaints process and, second, to minimise any negative impact of the complaint on all the people affected by it, that information relating to the complaint is treated as confidential. The assessment of complaints will therefore be conducted by the Monitoring Officer in private. The parties to a complaint are expected to maintain confidentiality as well. Parties are not prohibited from discussing the complaint to seek advice and support; however, it should not be discussed in the public domain.

6 Additional Information

If the Complainant does not submit sufficient information to enable the Monitoring Officer to come to a decision, the Monitoring Officer may ask the Complainant for such information, and may request additional information from the Subject Member.

The Monitoring Officer may also carry out pre-assessment enquiries, which will not amount to an investigation. This may include obtaining documentation, such as a copy of the relevant Code of Conduct or minutes of meetings.

7 Initial Assessment of Complaint

The Monitoring Officer will review the complaint together with any representations received from the Subject Member and, after consultation with the Independent Person, take a decision as to whether the complaint merits formal investigation or should be dealt with informally or rejected. This decision will normally be taken within 20 working days of receipt of the complaint or the Subject Member's written representation, whichever is the latter. The Monitoring Officer will inform the Complainant, the Subject Member (and in the case of a complaint about a Parish Councillor to the Clerk of the Parish Council) of the decision on initial assessment and the reasons for that decision in writing. *The decision of the Monitoring Officer will also be reported to the Standards Committee for information. Where the Monitoring Officer has determined that if the complaint is proven, there would potentially be a breach of the Code and recommended an information resolution, it is in the public interest for the Subject Member to be named, however where the Monitoring Officer has made a finding of no breach, the Subject Member will not be identified.*

Each complaint will be assessed to determine whether it is one the Monitoring Officer can and should investigate.

The Monitoring Officer *will consider the following in deciding whether the complaint can be investigated* must initially be satisfied that the complaint meets the following tests:

- a) Is the complaint about the conduct of a named, elected or co-opted member of the Borough Council or a Parish Council within the Borough?
- b) Was the named member in office at the time the alleged misconduct took place?
- c) Was the Code of Conduct in force at the time the alleged misconduct took place?
- d) If the complaint is proven, would there potentially be a breach of the Code under which the Subject Member was operating at the time of the alleged misconduct?

If the complaint fails one or more of these tests it will be rejected.

The Monitoring Officer will then consider the following in deciding whether the complaint should be investigated, dealt with informally or rejected:

- i. The complaint appears to be trivial, vexatious, malicious, politically motivated or tit for tat.

- ii. The complaint is anonymous. The Monitoring Officer will not usually investigate anonymous complaints, unless there is a clear public interest in doing so.
- iii. *The complainant has not provided any evidence that supports the complaint. The Monitoring Officer will not usually investigate where a complainant has simply make an allegation that the councillor has failed to act in a way that is required by the Code.*
- iv. A significant period of time has elapsed since the events, which are the subject of the complaint. This could be because, where a matter is serious, it would be reasonable to expect the Complainant to make a complaint promptly, or because the passage of time may make it more difficult to obtain documentary evidence and reliable witness evidence. The Monitoring Officer will normally reject a complaint where the last event complained of took place more than 6 months prior to the date of the complaint.
- v. The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter. This could be where the matter is such that there is unlikely to be any firm evidence on the matter.
- vi. The complaint or a substantially similar allegation has previously been the subject of an investigation and there is nothing more to be gained by further action being taken.
- vii. The complaint suggests that there is a wider problem throughout the authority.
- viii. The complaint discloses a potential breach of the Code, but the Subject Member has remedied or made reasonable endeavours to remedy the issues to which the complaint relates and the complaint does not disclose sufficiently serious potential breaches of the Code of Conduct to merit further consideration.
- ix. The complaint discloses a potential breach of the Code, but the complaint is not serious enough to merit an investigation in circumstances where the resources needed to investigate are wholly disproportionate to the allegations and there is no overriding public interest in carrying out an investigation. *Public interest is regarded as "something which is of serious concern and benefit to the public".*

8 Informal Resolution

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable; and

- offering an apology;

- agreeing to attend a training course;
- agreeing to engage in a process of conciliation; or
- the Council introducing some other remedial action (such as changing procedures).

Where the Subject Member makes a reasonable offer of local *informal* resolution, but the Complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

Where the Monitoring Officer recommends informal resolution, but the Subject Member is not willing to accept his/her conduct was unacceptable or not willing to accept the informal resolution proposed, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

9 Criminal conduct

~~If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to refer the matter to the Police and other regulatory agencies.~~

10 Investigation

If the Monitoring Officer decides that the complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to the Complainant to understand the nature of the complaint.

The Investigating Officer would normally write to the Subject Member and provide him/her with a copy of the complaint, and ask the Subject Member to provide his/her explanation of events, and to identify what documents the Investigating Officer needs to see and who she/he needs to interview. In exceptional cases, where it is appropriate to keep the Complainant's identity confidential or the Monitoring Officer considers that disclosure of details of the complaint to the Subject Member might prejudice the investigation, the Investigating Officer can delete the Complainant's name and address from the papers given to the Subject Member, or delay notifying the Subject Member until the investigation has progressed sufficiently.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the Complainant and to the Subject Member concerned, to give them both an opportunity to identify any matter in that draft report which they disagree with or which they consider requires more consideration. Both parties will be given 10 working days to make representations or, in exceptional circumstances, such other period as the Investigating Officer considers reasonable.

Having received and taken account of any comments on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

11 Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct

The Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied that the Investigating Officer's report is sufficient, will send to the Complainant and the Subject Member (and the Parish Council, where the complaint relates to a Parish Councillor) a copy of the Investigating Officer's final report and confirm the finding of no failure to comply with the Code of Conduct. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

12 Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Hearing Panel ("the Panel") or, after consulting the Independent Person, seek local resolution.

12.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and the Complainant and seek to agree what the Complainant considers to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable; and

- offering an apology;
- agreeing to attend a training course;
- agreeing to engage in a process of conciliation; or
- the Council introducing some other remedial action (such as changing procedures).

If the Subject Member complies with the suggested resolution, the Monitoring Officer will *issue a decision notice* ~~report the matter to the Standards Committee (and the Parish Council, where the complaint relates to a Parish Councillor) for information, but will take no further action.~~ *The decision notice will include a brief statement of facts, the provisions of the code of conduct engaged by the allegations, the views of the Independent Person, the reasons for the decision and any sanctions applied. A copy of the decision notice will be sent to the Complainant, to the Subject Member [and to the Parish Council in the case of a complaint about a Parish Councillor], published on the Council's website and reported to the next convenient meeting of the Standards Committee.*

However, if the Complainant tells the Monitoring Officer that any suggested resolution would not be adequate or the Subject Member refuses to accept the resolution; the Monitoring Officer will refer the matter for a local hearing.

12.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or the Complainant is not satisfied by the proposed resolution, or the Subject Member is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Hearing Panel which will conduct a local hearing before deciding whether the Subject Member has failed to comply with the Code of Conduct and, if so, whether to take any action.

The Monitoring Officer will conduct a "pre-hearing process", requiring the Subject Member to give his/her response to the Investigating Officer's report in writing, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing. The Chairman of the Panel may issue directions as to the manner in which the hearing will be conducted.

At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Subject Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the Complainant to attend and give evidence to the Panel. The Subject Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct. The Panel can allow witnesses to be questioned and cross examined by the Subject Member, the Monitoring Officer, the Investigating Officer (or their representative(s)) directly or through the Chairman. The Panel can also question witnesses.

The Independent Person will be invited to attend to observe, but will not participate in the hearing. The Panel will seek the views of the Independent Person and take those views into account before making its decision.

The Panel may conclude that the Subject Member did not fail to comply with the Code of Conduct, and if so will dismiss the complaint.

If the Panel concludes that the Subject Member did fail to comply with the Code of Conduct, the Chairman will inform the Subject Member of this finding and the Panel will then consider what action, if any, the Panel should take as a result of the Subject Member's failure to comply with the Code of Conduct. In doing this, the Panel will give the Subject Member an opportunity to make representations to the Panel and seek the views of the Independent Person and take those views into account before making its decision.

13 What action can the Hearing Panel take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Panel such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Panel may do one or a combination of the following –

- 13.1 Send a formal letter to the Subject Member;
- 13.2 Issue a formal Censure;
- 13.3 Publish its findings in respect of the Subject Member's conduct;
- 13.4 Report its findings to Council (or to the Parish Council) for information;
- 13.5 Recommend to the Subject Member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 13.6 Recommend to the Leader of the Council that the Subject Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 13.7 Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Subject Member;
- 13.8 Recommend to the Subject Member's Group Leader that he/she is removed ([or recommend to the 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 Parish Council);
- 13.9 In the case of a co-opted Member, recommend to Council (or to the Parish Council) that he/she be removed from the Council or any of its committees, sub-committees or working groups;
- 13.10 Withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the Subject Member by the Council (such as a computer, website and/or email and Internet access) for a specified period; or
- 13.11 Exclude (or recommend that the Parish Council exclude) the Subject Member from the Council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Hearings Panel has no power to suspend or disqualify the Subject Member or to withdraw members' or special responsibility allowances. It also has no power to impose a sanction which would fetter the otherwise appropriate activities of a democratically elected representative.

14 What happens at the end of the hearing?

At the end of the hearing, the Chairman will state the decision of the Panel as to whether the Subject Member failed to comply with the Code of Conduct and as to any actions which the Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Panel. *The decision*

notice will include a brief statement of facts, the provisions of the code of conduct engaged by the allegations, the views of the Independent Person, the reasons for the decision and any sanctions applied. ~~and send~~ A copy *of the decision notice will be sent* to the Complainant, to the Subject Member [and to the Parish Council in the case of a complaint about a Parish Councillor], ~~make that decision notice available for public inspection~~ *published on the Council's website* and ~~reported~~ the decision to the next convenient meeting of the Standards Committee.

15 What is the Hearing Panel?

The Hearing Panel is a sub-committee of the Council's Standards Committee.

The Independent Person is invited to attend all meetings of the Panel and his/her views are sought and taken into consideration before the Panel 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 of Conduct.

16 Who is the Independent Person?

The Independent Person is a person who has been appointed by the Council under Section 28 of the Localism Act 2011. The Independent Person's views must be sought and taken into account before a decision on an allegation can be made. Their views may also be sought by the Subject Member.

The Monitoring Officer will consult the Independent Person as set out in these arrangements, but has the discretion to consult the Independent Person on any other issues arising out of an allegation that a member has failed to comply with the Code of Conduct. *The Council has also appointed a reserve Independent Person who is able to act when the Independent Person is incapacitated or otherwise unable to act, for example due to illness, holiday or conflict.*

17 ~~Reporting to Standards Committee~~

~~Decisions of the Monitoring Officer will be reported to the Standards Committee for information. Where the Monitoring Officer has found a breach of the Code, it is in the public interest for the Subject Member to be named, however where the Monitoring Officer has made a finding of no breach, the Subject Member will not be identified.~~

18 Revision of these arrangements

The Standards Committee has the power to amend these arrangements. The Council has delegated to the Panel and the Monitoring Officer the right to depart from these arrangements where it considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

19 Appeals

There is no right of appeal against a decision of the Monitoring Officer or the Panel.

If the Complainant feels that the Council has failed to deal with the complaint properly, he/she may complain to the Local Government *and Social Care* Ombudsman.