

Members' Code of Conduct Complaints Procedure

1.0 INTRODUCTION

- 1.1 The Localism Act 2011 requires local authorities to establish arrangements to deal with allegations of breaches by councillors of the Members' Code of Conduct.
- 1.2 This procedure is to be adopted when dealing with complaints against elected councillors and voting co-opted members when they are acting in that capacity. The procedure applies when a complaint is received that a South Derbyshire District Council Member, a South Derbyshire Parish Council Member or a voting co-opted Member has, or may have, failed to comply with the relevant Members' Code of Conduct at the time of the alleged breach.
- 1.3 The Council's Members' Code of Conduct can be found at Part 5 Section 1 of the Constitution. Parish and Town Councils can determine their own codes of conduct.
- 1.4 This Procedure is only to be used for the assessment and investigation of complaints of alleged failures by Members to comply with their Council's Member Code of Conduct.

2.0 COMPLAINTS PROCEDURE

- 2.1 In this procedure-

the person making a complaint is referred to as "the Complainant"

the person against whom a complaint is made is referred to as "the Subject Member".

References to the Monitoring Officer include his or her properly appointed Deputy.

Independent Persons are individuals appointed by the Council to assist the Monitoring Officer in the consideration of Member Code of Conduct Complaints.

A Designated Independent Person will be appointed to each complaint to assist the Monitoring Officer.

- 2.2 A complaint is confidential and remains so until the complaint is resolved.
- 2.3 A Complainant may request that a complaint be withdrawn at any stage and all such requests will be determined by the Monitoring Officer, which may include consultation with an Independent Person.
- 2.4 Complaints can be made about a Subject Member breaching any part of their council's Members' Code of Conduct when they are acting (or giving the impression they are acting) as a representative of their council or undertaking council business.

Making a complaint

- 2.5 A complaint should be made in writing within **10 working days** of the alleged breach of the Members' Code of Conduct. Any documents that support a complaint should accompany the complaint.
- 2.6 A complaint will normally be acknowledged within **10 working days** of receipt and the Complainant advised that the complaint will be passed for initial assessment by the Monitoring Officer. The acknowledgement will provide a date by which the Monitoring Officer will conclude the **initial assessment**.
- 2.7 Complaints may be rejected:
- (a) where a member is not named
 - (b) where the Complainant is not named¹
 - (c) if they relate to a person who is no longer a member or refer to alleged incidents before the person became a member
 - (d) that relate to a person who is not an elected or a voting co-opted member of the Council or a South Derbyshire Parish Council
 - (e) that relate to incidents or actions that are not covered by the Members' Code of Conduct
 - (f) where they are about the actions (or inactions) of the Council or South Derbyshire Parish Council as a whole (these complaints should be dealt with through the appropriate council's complaints process)
 - (g) where they relate to a member's personal or private life
 - (h) contain insufficient information
 - (i) about people employed by local authorities
 - (j) if they refer to alleged incidents which happened so long ago that there would be little benefit in taking action now
 - (k) if they contain trivial allegations, or which appear to be malicious, politically motivated or tit-for-tat
 - (l) that relate to alleged behaviour that has already been the subject of an investigation or some form of action
 - (m) if they make allegations that a criminal offence may have been committed, in which case the matter will not be dealt with under this procedure but instead will be referred to the police.
- 2.8 Where the Monitoring Officer decides to reject a complaint, they will firstly consult with the Independent Person and then write to the Complainant explaining why

¹ Complaints that contain a request for the complainant's identity to be withheld may be accepted, although the complainant's identity will only be withheld in exceptional circumstances. If the Monitoring Officer does not consider it appropriate to withhold the complainant's identity, the complainant will be given the opportunity to withdraw their complaint before it proceeds to the next stage.

their complaint cannot be dealt with under this Procedure. In these circumstances, there will be no right of appeal.

Informal resolution

- 2.9 If the complaint is accepted, the Monitoring Officer will write to the Complainant and explain that the matter is to be dealt with under this Procedure and that he/she considers the complaint could be resolved by Informal Resolution.
- 2.10 The Subject Member will be sent a summary of the complaint and will be notified of the name of Designated Independent Person and also be provided with contact details of an Independent Person whom he/she can ask for advice.
- 2.11 In this correspondence, the Monitoring Officer will:
- (a) seek confirmation from the Complainant as to what form of informal resolution they would find acceptable; and if provided
 - (b) provide the Subject Member with a reasonable timescale (usually 20 working days) within which to attempt to informally resolve the complaint
- 2.12 Types of informal resolution might include:
- (a) An explanation by the Subject Member of the circumstances surrounding the complaint
 - (b) An apology from the Subject Member
 - (c) Agreement from the Subject Member to attend relevant training or to take part in a mentoring process
 - (d) Offering to engage in a process of mediation or conciliation between the Subject Member and the Complainant
 - (e) Correcting an entry in a register
 - (f) Any other action capable of resolving the complaint
- 2.13 Where the Subject Member has appropriately addressed the matters raised there will be no further action taken in respect of the complaint and the Monitoring Officer will notify both the Complainant and the Subject Member of this decision.

3.0 INVESTIGATION PROCEDURE

- 3.1 Where it has not been possible to informally resolve matters, the complaint will be referred by the Monitoring Officer to a Council Officer, an officer of another authority or such other expert as the Monitoring Officer considers appropriate for investigation ('the Investigating Officer'). The Monitoring Officer will notify both the Complainant and the Subject Member of this decision.
- 3.2 When notifying the persons mentioned above, the Monitoring Officer will request that they respond within 10 working days:
- (a) Listing any documents they wish to be taken into account in any investigation of the allegation, providing copies of these documents, and confirming where the original documents may be inspected.

- (b) Providing the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the person would wish to be interviewed in the course of any investigation of the allegation.
 - (c) Providing any information which they would wish to be sought from any person or organisation in the course of any investigation of the allegation.
- 3.3 The Investigating Officer will take into account both the content of the original complaint and any information received from the persons notified above. They will make any further necessary enquiries, following which they will determine whether or not there appears to have been any breach of the Members' Code of Conduct.
- 3.4 Upon conclusion, the Investigating Officer will provide the Monitoring Officer with a report setting out their findings and whether or not, in the officer's view, there have been any breaches of the Members' Code of Conduct.
- 3.5 The investigation will normally be carried out and the report provided to the Monitoring Officer within 40 working days of the investigation being commissioned.

Outcome of investigation

- 3.6 The Investigating Officer's report will set out:
 - (a) The details of the allegation
 - (b) The relevant provisions of statute, the Members' Code of Conduct and any relevant local protocols
 - (c) The Subject Member's response to notification of the allegation (if any)
 - (d) The views of an Independent Person
 - (e) The relevant information, advice and explanations obtained in the course of the investigation
 - (f) Any documents relevant to the matter
 - (g) A list of those persons they have interviewed and those organisations from whom they have sought information
 - (h) A note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to cooperate
 - (i) A statement of their draft findings of fact
 - (j) Their conclusions as to whether or not the Subject Member has failed to comply with their Members' Code of Conduct
- 3.7 If the Investigating Officer's conclusion is that there has been **no breach** of the Members' Code of Conduct, the Complainant and the Subject Member will be notified. In these circumstances, there will be no right of appeal.
- 3.8 If the Investigating Officer's conclusion is that there has been a **breach** of the Members' Code of Conduct, consideration will be given by the Monitoring Officer,

in liaison with an Independent Person, whether or not an **informal resolution** between the parties would be appropriate.

- 3.9 Where an informal resolution is considered appropriate, this will be discussed with the Complainant and the Subject Member. Should an informal resolution be agreed, the complaint will not proceed any further.
- 3.10 Should either the Complainant or the Subject Member not agree the proposed informal resolution, or an informal resolution is not considered appropriate, the matter will be referred to the Standards Hearing Sub-Committee for final decision.

4.0 HEARING PROCEDURE

- 4.1 Where the matter is referred to the Standards Hearing Sub-Committee for decision, the Complainant, the Subject Member and the Designated Independent Person will be advised of the position and consulted on the date of the Sub-Committee hearing.
- 4.2 Democratic Services will arrange a convenient time and date for the Sub-Committee to meet and determine the matter. It is anticipated that a hearing will be dealt with on a single day.
- 4.3 At least 20 working days before the hearing, the Complainant, the Subject Member and the Designated Independent Person will be notified of the date, time and place of meeting, provided with the agenda for the meeting and a copy of the investigation report. They will be invited to attend and identify any witnesses already interviewed that they wish to speak.
- 4.4 The documentation sent out must be treated by all recipients as confidential information until such time (if any) as the report is made available to the press and public or the Sub-Committee resolves that the press and public should not be excluded from the meeting at which the allegations are heard.
- 4.5 The date of the Meeting and the Agenda will be published on the Council's website.
- 4.6 Determination of the matter by the Standards Hearing Sub-Committee will normally be made within 65 working days of referral of the matter to the Sub-Committee.

Standards Hearing Sub-Committee proceedings

- 4.8 The Standards Hearing Sub-Committee will determine whether or not it agrees with the Investigating Officer's conclusions, whether there has been a breach of the Member's Code of Conduct and, if so, what (if any) sanctions should be applied. In so doing, they may seek the views of the Designated Independent Person.
- 4.9 Where a witness has been interviewed and their information is included in the Investigating Officer's report, should they not attend, the Sub-Committee will give such weight to their comments as it considers appropriate.
- 4.10 The Standards Hearing Sub-Committee's decision as to whether or not there have been any breaches of the Members' Code of Conduct shall be final. This

also applies to any sanctions imposed or recommended by the Sub-Committee for any such breaches of the Code.

- 4.11 If at any point during the hearing process, the Subject Member resigns, loses their seat, is seriously ill or has died, the Standards Hearing Sub-Committee will only hear the matter if it considers it is in the public interest to do so.

Representation

- 4.12 The Subject Member may be represented or accompanied during the hearing by another person.
- 4.13 The Subject Member may make representations (orally or in writing) or present evidence in accordance with this procedure either personally or through their representative. The Sub-Committee will not normally permit the Subject Member and their representative to both make representations, although the Subject Member may present evidence themselves whether or not represented.

Procedure outline

- 4.14 The Standards Hearing Sub-Committee may govern its own procedure as long as it acts fairly. It may request advice from the Monitoring Officer (or their nominee) at any time. However, in general the following procedure should be adopted:
- (a) Hearings should normally be held in private unless the Sub-Committee has resolved not to exclude the press and public from all or any part of the hearing in accordance with the Council's Access to Information Rules.
 - (b) Any submissions by either party about the conduct of the case, including disputes about witnesses, potential new information, new supporting documents etc, should be raised at the commencement of the hearing.
 - (c) The Sub-Committee will adopt as far as reasonably practicable an inquisitorial approach to the hearing rather than permit an adversarial or hostile approach to develop.
 - (d) Witnesses are not to be present in the hearing until they have been called to give their evidence.
 - (e) If the Subject Member is not present, then the Sub-Committee shall consider whether or not to proceed. If the Sub-Committee is not satisfied that there is sufficient reason for the Subject Member's absence, it may either proceed to consider the matter and make a determination in the absence of the Subject Member, or adjourn the hearing to another time or date. If the Sub-Committee is satisfied there is sufficient reason, it shall adjourn the hearing to another date unless the Subject Member has indicated that the hearing should proceed in their absence.

Order of witnesses

- 4.15 Witnesses at the hearing will be called in the following order:
- (a) The Investigating Officer presents the evidence on which they rely and calls any witnesses;

- (b) The Investigating Officer makes submissions about whether the facts constitute a breach of the Member's Code of Conduct;
- (c) The Investigating Officer makes submissions as to the seriousness of the breach and the appropriate sanction in the event that the Sub-Committee decides that a breach has occurred;
- (d) The Subject Member and members of the Sub-Committee may ask questions through the Chair of the Investigating Officer and/or their witnesses;
- (e) The Subject Member may present evidence on which they rely and call any witnesses referred to in the Investigating Officer's report;
- (f) The Subject Member may make submissions about whether the facts constitute a breach of the Member's Code of Conduct;
- (g) The Subject Member may make a statement in mitigation in regard to the seriousness of the breach and the appropriate sanction in the event that the Sub-Committee decides that a breach has occurred;
- (h) The Investigating Officer and members of the Standards Hearing Sub-Committee may ask questions through the Chair of the Subject Member and/or their witnesses;
- (i) The Standards Hearing Sub-Committee retires to decide the facts and whether, on the balance of probabilities, there has been a breach of the Members' Code of Conduct. At this point, the Sub-Committee is likely to ask all present to leave the room whilst they consider the matter.
- (j) Once the Sub-Committee has concluded its findings as to whether the facts amount to a breach, all return to the room and the decision is read out.

Outcome

4.16 If the Standards Hearing Sub-Committee decides there has been a breach of the Members' Code of Conduct, then it can determine whether and, if so, which of the following sanctions should apply:

- (a) Publish findings in respect of the Subject Member's conduct;
- (b) Report findings to the relevant council for information;
- (c) Issue or recommend to the relevant council that the Subject Member be issued with a formal censure or be reprimanded;
- (d) Recommend to the Subject Member's Political Group Leader (or in the case of un-grouped Members, recommend to the relevant council) that they be removed from any or all committees or sub-committees of the council;
- (e) Arrange or recommend training for the Subject Member;
- (f) Remove or recommend the removal of the Subject Member from all outside appointments to which they have been appointed or nominated by their Council;

- (g) Withdraw or recommend withdrawal of facilities provided to the Subject Member by their council, such as a computer, website and/or email and internet access;
 - (h) Exclude or recommend the exclusion of the Subject Member from their council's offices or other premises, with the exception of meeting rooms as necessary for attending council, committee and sub-committee meetings.
- 4.17 The Standards Hearing Sub-Committee has no power to suspend or disqualify a Member or to withdraw a Member's Basic or Special Responsibility Allowance.
- 4.18 If the matter relates to a parish councillor, then if a breach has been determined, the matter is referred to that Parish Council with recommendations as to what action they may wish to take.
- 4.19 The Clerk to the Parish Council will be expected to confirm to the Monitoring Officer as soon as reasonably practicable what action the Parish Council proposes to take in response to the recommendation.
- 4.20 The Sub-Committee will issue a formal written decision together with supporting reasons as soon as practicable after the end of the hearing and in any event within 10 working days.