

MONITORING OFFICER PROTOCOL

1. CONTEXT

Under Section 28 of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a Member or co-opted Member of the authority or of a parish council (the “subject Member”) within the authority’s area has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

2. THE CODE OF CONDUCT

The Council has adopted a Code of Conduct for Members, which is published on the Council’s website and available for inspection on request from the Council’s Offices (see address below).

Each parish council is also required to adopt a Code of Conduct. If you wish to inspect a parish council’s Code of Conduct, it should be available on any website operated by the parish council or request the parish clerk to allow you to inspect a copy at their offices.

3. MAKING A COMPLAINT

If you wish to make a complaint, please write to:

The Monitoring Officer
Huntingdonshire District Council
Pathfinder House
St Mary’s street
Huntingdon
PE29 3TN

or email: CodeofConduct@huntingdonshire.gov.uk

The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the register of members’ interests and who is responsible for administering the system in respect of complaints of Member misconduct.

Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress.

As a matter of fairness and natural justice, the subject Member will usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the complainant’s identity, if on request from the complainant, or otherwise, he or she is satisfied that there are reasonable grounds for doing so e.g. belief that the complainant or any witness relevant to the complaint may be at risk of physical harm or intimidation, or his or her employment may be jeopardised if their identity is disclosed.

If the Monitoring Officer decides to refuse a request by a complainant for confidentiality, the complainant will be offered the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the complainant's wish to have his or her identity withheld from the subject Member.

4. SCOPE OF COMPLAINTS

The Code of Conduct does not apply to Councillors 24 hours a day, 7 days a week, but only covers Councillors when they are acting in their official capacity as a Member, or giving the impression that they are. The Code does **NOT** apply when acting in their capacity as a private individual. For example, if you live next to a Councillor and your complaint relates to a neighbour dispute, then the Councillor will not be subject to the Code of Conduct. If someone who happens to be a Councillor, is offensive or abusive in their private life, they are not covered by the Code of Conduct.

In addition it is not the purpose of the Code to restrict political debate. The requirements of the Code of Conduct have to be assessed against Article 10 of the European Convention on Human Rights – the right to freedom of expression. In a High Court case relating to this issue, the Judge stated that the “traditions of robust debate” may include “some degree of lampooning of those who place themselves in public office”, which would necessarily require politicians to have “thicker skins than others”.

Furthermore, complaints can only be dealt with under the Code of Conduct procedure where they relate to the alleged misconduct of an individual Councillor, **NOT** against a decision made by the Council or any of its Committees.

5. COMPLAINT PROCESS

The Monitoring Officer will acknowledge receipt of your complaint normally within five working days of receiving it and will keep you informed of the progress of your complaint. The complainant has primary responsibility for providing relevant, supporting evidence, but if the Monitoring Officer considers that the evidence is inadequate or unclear, he may require the complainant to provide further evidence before proceeding with the complaint.

Where your complaint relates to a parish councillor, then unless you have already been through their complaints process, the complaint will normally be referred to the parish council in the first instance to see if they can achieve a local resolution of the matter.

Within five working days of receiving a valid Code of Conduct complaint and supporting evidence, or if the complaint relates to a town or parish councillor and a satisfactory local resolution has not been achieved, the Monitoring Officer shall:-

- (i) contact the subject Member with a summary of the complaint and evidence; and
- (ii) ask the subject Member to provide a written response to the allegation(s) and supporting evidence within ten working days.

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 20 working days of receipt of your complaint and the subject Member's response. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

6 CRITERIA FOR ASSESSMENT

The cost of carrying out a formal investigation and hearing can be significant. Taking account of the limited potential remedies available in the event of a breach of the Code of Conduct ultimately being found, normally only more serious allegations are likely to be referred for investigation.

The Monitoring Officer has the discretion not to proceed with complaints, including those:-

- (i) containing no or insufficient evidence to demonstrate a breach of the Code;
- (ii) where there are alternative, more appropriate remedies that should be explored first;
- (iii) where the complaint is by one Member against another, a greater allowance for robust political debate, (but not personal abuse or "unparliamentary" language) may be given;
- (iv) that are not sufficiently serious, or are malicious or tit for tat;
- (v) that are anonymous, unless serious and supported by sufficient evidence;
- (vi) where an investigation would not be in the public interest or the matter would not warrant any sanction;
- (vii) where a substantially similar complaint has previously been considered and no new material evidence has been submitted;
- (viii) relating to allegations concerning a Member's private life;
- (ix) relating to conduct in the distant past (over six months before);
- (x) relating to dissatisfaction with a Council [or Parish Council] decision; and
- (xi) about someone who is no longer a member of the Council [or relevant parish council] or who is seriously ill.

7 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 Member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action. Where a reasonable proposal for local resolution is proposed, 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.

8 CRIMINAL CONDUCT

If your 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 or any other relevant regulatory agency. In such cases the complainant and subject Member will be notified in writing.

9. HOW IS THE INVESTIGATION CONDUCTED?

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer ("IO"), who may be another senior officer of the authority, an Officer of another authority or an external investigator. The IO will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the IO needs to see, and who the IO needs to interview.

The IO would normally write to the Member against whom you have complained, provide him/her with a copy of your complaint, and ask the Member to provide his/her explanation of events, to identify what documents the IO needs to see and who the IO needs to interview.

At the end of his/her investigation, the IO will produce a draft report and will send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the IO will send his/her final report to the Monitoring Officer.

10. WHAT HAPPENS IF THE INVESTIGATING OFFICER CONCLUDES THAT THERE IS NO EVIDENCE OF A FAILURE TO COMPLY WITH THE CODE OF CONDUCT?

The Monitoring Officer will review the IO's report and, if he is satisfied that the IO's report is sufficient, the Monitoring Officer will write to you and to the Member concerned and to the parish council, where your complaint relates to a parish councillor, notifying you that he is satisfied that no further action is required, and give you both a copy of the IO's final report. If the Monitoring Officer is not satisfied with any particular aspect of the investigation or report, he may ask the IO to reconsider his/her report.

11. WHAT HAPPENS IF THE INVESTIGATING OFFICER CONCLUDES THAT THERE IS EVIDENCE OF A FAILURE TO COMPLY WITH THE CODE OF CONDUCT?

The Monitoring Officer will review the IO's report and will then either send the matter for local hearing before a Hearings Panel or, after consulting the Independent Person, seek local resolution.

(a) 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 with you as complainant and seek to agree what you consider to be a fair resolution. Such resolution

may include the Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action e.g. training. If the subject Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Corporate Governance Committee [and the parish council where appropriate] for information, but will take no further action. If the complainant or the subject Member refuses local resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a Local Hearing without further reference to the complainant or the subject Member.

(b) **Local Hearing**

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the subject Member concerned is not prepared to undertake any proposed remedial action, then the Monitoring Officer will report the IO's report to the Hearings Panel which will conduct a local hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

The Monitoring Officer will conduct a "pre-hearing process", requiring the subject Member to give his/her response to the IO's report, in order to identify what is agreed and what is likely to be in contention at the hearing. The Chairman of the Hearings Panel, may issue directions as to the manner in which the hearing will be conducted. At the hearing, the IO will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Member has failed to comply with the Code of Conduct. For this purpose, the IO may ask you as the complainant to attend and give evidence to the Hearings Panel, although often this will not be necessary. The subject Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

If the Hearings Panel, with the benefit of any advice from the Independent Person, concludes that the Member did not fail to comply with the Code of Conduct, they will dismiss the complaint. If the Hearings Panel concludes that the Member did fail to comply with the Code of Conduct, the Chairman will inform the Member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the Member an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

12. WHAT ACTION CAN THE HEARINGS PANEL TAKE WHERE A MEMBER HAS FAILED TO COMPLY WITH THE CODE OF CONDUCT?

Where the Hearings Panel find that a Member has failed to comply with the Code of Conduct it may -

- (a) censure or reprimand the Member;
- (b) publish its findings in respect of the Member's conduct;

- (c) report its findings to Council [or to the parish council] for information;
- (d) recommend to the 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;
- (e) in the case of an Executive Member, recommend to the Executive Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- (f) the case of the Executive Leader recommend to Council that the Member be replaced as Executive Leader;
- (g) instruct the Monitoring Officer to [or recommend that the parish council] arrange training for the Member;
- (h) remove [or recommend to the parish council] that the Member be removed from all outside appointments to which he/she has been appointed or nominated by the Council;
- (i) withdraw [or recommend to the parish council that it withdraws] facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or
- (j) exclude [or recommend that the parish council exclude] the Member from the Council's offices or other premises, 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 Member or to withdraw Members' or special responsibility allowances.

13. WHAT HAPPENS AT THE END OF THE HEARING?

At the end of the hearing, the Chairman will state the decision of the Hearings Panel as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Hearings 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 Hearings Panel, and send a copy to the complainant, to the subject Member and to the parish council (where appropriate), make that decision notice available for public inspection and report the decision to the next convenient meeting of the Corporate Governance Committee.

14. WHO ARE THE HEARINGS PANEL?

The Hearings Panel is a sub-committee of the Council's Corporate Governance Committee comprising three Members drawn from at least two different political parties. Subject to those requirements, it is appointed in proportion to the strengths of each party group on the Council.

The Independent Person is invited to attend all meetings of the Hearings Panel and his/her views are sought and taken into consideration before the Hearings Panel takes any decision on whether the 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.

15. WHO IS THE INDEPENDENT PERSON?

The Lead and Deputy Independent Persons are appointed by the Council.

A person cannot be “independent” if he/she -

- (a) is, or has been within the past five years, a Member, co-opted Member or Officer of the authority.
- (b) is or has been within the past five years, a Member, co-opted Member or Officer of a parish council within the authority’s area, or
- (c) is a relative, or close friend, of a person within paragraph (a) or (b) above.

16. REVISION OF THESE ARRANGEMENTS

The Council may amend these arrangements, and has delegated to the Chairman of the Hearings Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

17. APPEALS

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearings Panel.

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Huntingdonshire District Council - Complaints Procedure Flowchart

