

ARRANGEMENTS FOR DEALING WITH STANDARDS COMPLAINTS UNDER THE LOCALISM ACT 2011

1. Context

These “arrangements” set out how to make a complaint that an elected or co-opted member of Ashfield District Council (the Council) or Parish Council within the District has failed to comply with the Council’s Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with the Council’s Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a member or co-opted member of the Council or Parish Council within its area, or of a committee or sub-committee of the Council, has failed to comply with that authority’s Code of Conduct, can be investigated, and decisions made on such allegations.

Such arrangements must provide for the Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage, or by the member against whom an allegation has been made.

2. The Code of Conduct

The Council has adopted a Code of Conduct for members, which is attached as Appendix 1 to these arrangements and is available for inspection on the Council’s website, or on request from the Monitoring Officer.

Parish Councils are also required to adopt a Code of Conduct. The Parish Council’s Code of Conduct can be inspected on their website or by contacting the Parish Clerk.

3. Making a Complaint

Complaints should be in writing and sent by post or email to:

The Monitoring Officer,
Ashfield District Council,
Urban Road,
Kirkby-in-Ashfield,
Nottingham.
NG17 8DA

Monitoring.officer@ashfield.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.

In order to ensure the Monitoring Officer has all the information which is needed to be able to process a complaint, a complaint form can be downloaded from the Council's website and is available from the Monitoring Officer. **Help to complete the form or make a complaint is available by contacting the Democratic Services Team on 01623 457316 or email: democratic.services@ashfield.gov.uk**

The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so. As a matter of fairness and natural justice, the member should be told who has complained about them. There may be occasions where a 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 risk of intimidation, victimisation or physical harm if their identity is disclosed;
- b) The complainant is an officer who works closely with the 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 may be adversely affected if their identity is disclosed.

If the Monitoring Officer decides to refuse a request for confidentiality, she/he 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 member should also be informed of the nature of the complaint. If, however, the Monitoring Officer considers that disclosure of the details of the complaint to the member might prejudice the investigation, the Monitoring Officer can agree to delay notifying the member until consideration of the complaint has progressed sufficiently.

The Monitoring Officer will acknowledge receipt of a complaint within 5 working days of receiving it, and will keep the complainant informed of the progress of the complaints.

4. Will your Complaint be investigated?

Before assessment of the complaint begins the Monitoring Officer must be satisfied that the complaint:

- is against one of more named members of the authority or an authority within their jurisdiction; and
- is about a member who was in office at the time of the alleged conduct and the Code of Conduct was in force at the time; and
- if proven, would be a breach of the Code under which the member was operating at the time of the alleged misconduct; and
- if the member was acting in their official capacity when the alleged conduct took place.

Alleged conduct relating to election/political campaigning activities is outside the remit of the Members' Code of Conduct and will not be assessed for further action. Potential election offences should be reported to the Police or the Electoral Commission.

Complaints of a trivial and/or tit-for-tat nature will not be assessed for further action.

If the complaint meets each of the above criteria it will be assessed by the Monitoring Officer, after consultation with the Independent Person, to decide whether it merits formal investigation. This decision will normally be taken within 20 working days of receipt of your complaint. The Monitoring Officer has three options:

1. Refer the matter for investigation; or
2. Resolve the complaint informally with other action; or
3. Take no further action.

When deciding whether an investigation is necessary the Monitoring Officer must have regard to the duty to promote and maintain high standards of member conduct. Relevant factors include but are not limited to:

- Whether the information provided is sufficient to justify a referral for investigation.
- Is the complaint about something that happened so long ago that there would be little benefit in taking action now?
- Is the complaint already the subject of an investigation or other action related to either the Code of Conduct or another disciplinary process?
- Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?
- Is the complaint anonymous?
- Would an investigation serve any public benefit?

Where the Monitoring Officer requires additional information in order to come to a decision, he/she may request such information from the complainant and the member against whom the complaint is directed. Where a complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council of the complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation.

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 by the Council. Where the member or the Council makes a reasonable offer of local resolution, but the complainant is not willing to accept that offer, the Monitoring Officer, in consultation with the Independent Person, will take account of this in deciding whether the complaint merits formal investigation.

It should be noted that a decision to refer a complaint for other action does not involve making any findings of fact; no conclusions are reached about what happened and no decision is made about whether the member failed to comply with the Code of Conduct. In addition, an investigation should not be viewed as something that can take place after other action has been attempted and is not to the satisfaction of one of the parties. There is a risk

that other action will not be taken seriously if it is seen merely as a precursor to an investigation.

A decision to take 'other action' might also involve a member/members being asked to attend a relevant training course or engage in a process of conciliation. This form of other action is most beneficial where a complaint exposes systemic problems rather than individual ones; indeed other action does not have to be limited to the subject of the complaint. Matters that a Monitoring Officer might consider referring for "other action" include complaints that demonstrate:

- A need for a better understanding of procedures
- Lack of experience or training
- Tit-for-tat allegations between the same members
- A general breakdown of relationships, including those between members and officers, as evidenced by a pattern of allegations of minor disrespect/bullying
- Allegations that may be symptomatic of governance problems that are more significant than the allegations themselves.

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

In some cases, at his/her discretion, the Monitoring Officer may refer the complaint to the Standards and Personnel Appeals Committee's Referrals Sub-Committee to decide whether or not it should be investigated or other action taken.

The Monitoring Officer may refer complaints made by one member against another member to the relevant political group leaders for them to mediate between the parties. If such a complaint involved political group leaders, the matter will be referred instead to the political group whip or other nominated member of the group for them to mediate between the members. If the matter cannot be resolved or if mediation is not thought possible, the complaint will be referred to the Referrals Sub-Committee to decide whether or not the complaint should be investigated or other action taken.

Where complaints are made between members, one or both of whom are not members of a political group, the members will be asked to attend a meeting of the Referrals Sub-Committee for it to decide whether or not the complaint should be investigated or other action taken.

Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

5. How is the Investigation Conducted?

If the Monitoring Officer and/or the Referrals Sub-Committee decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the Council, an officer of another authority or an external investigator. The Investigating Officer will speak to the complainant to understand the nature of their complaint.

The Investigating Officer would normally write to the member against whom the complaint is made and provide him/her with a copy of the complaint, and ask the member to provide his/her explanation of events.

Where a complaint is raised by an officer regarding a member, while it is being investigated the member must comply with any measures deemed appropriate by the Monitoring Officer in consultation with the Independent Person.

These measures may include, but are not limited to:

- Members not having contact with officer who have raised a complaint for the duration of the investigation and until an outcome is decided;
- Members contacting a nominated person if they wish to have contact with the officer who made a complaint;
- Officers not attending meetings with the member on their own;
- Members being required to copy in specified people in their email correspondence with the officer;
- Members being required to communicate with the officer in a specified form (for example, be email);
- Member's group leader being informed if one of their Members is the subject of a complaint.

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 member concerned, to give both parties an opportunity to comment on the draft report.

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

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.

6. 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 Investigating Officer's report in consultation with the Independent Person. If satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you all parties concerned (and to the Parish Council where the complaint relates to a Parish Councillor) confirming that he/she is satisfied that no further action is required enclosing a copy of the Investigating Officer's final report. 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.

7. 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 Investigating Officer's report in consultation with the Independent Person. If satisfied the investigation has been conducted properly the complaint will be referred for hearing by the Hearings Sub-Committee (a sub-committee of the Standards and Personnel Appeals Committee).

Local Hearing

The Monitoring Officer will conduct a “pre-hearing process”, requiring the member to give his/her response to the Investigating Officer’s report, 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 Hearings Sub Committee 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 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 Hearings Sub Committee. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Sub Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

If the Hearings Sub-Committee, with the benefit of any advice from the Monitoring Officer (or his/her nominated representative) and the Independent Person, concludes that the member did not fail to comply with the Code of Conduct, it will dismiss the complaint.

If the Hearings Sub Committee 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 Sub Committee will then consider what action, if any, it should take as a result of the member’s failure to comply with the Code of Conduct. In doing this, the Hearings Sub Committee will give the member an opportunity to make representations to the Sub Committee and will consult with the Independent Person, but will then decide what action, if any, to take in respect of the matter.

8. What action can the Hearings Sub Committee take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Hearings Sub Committee 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 Hearings Sub Committee may:

- 8.1 Censure or reprimand the member;
- 8.2 Publish its findings in respect of the member’s conduct;
- 8.3 Report its findings to Council or to the Parish Council for information;
- 8.4 Recommend to the member’s Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.5 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.6 Recommend to Council that the member be replaced as Executive Leader;
- 8.7 Instruct the Monitoring Officer to, or recommend that the Parish Council, arrange training for the member;

- 8.8 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 authority or by the Parish Council;
- 8.9 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
- 8.10 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 Sub Committee has no power to suspend or disqualify the member or to withdraw member's allowances or special responsibility allowances.

9. What happens at the end of the Hearing?

At the end of the hearing, the Chair will state the decision of the Hearings Sub Committee as to whether the member failed to comply with the Code of Conduct and as to any actions which the Hearings Sub Committee resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer (or his/her nominated representative) will prepare a formal decision notice in consultation with the Chair of the Hearings Sub Committee, and send a copy the complainant, to the member and to the Parish Council if appropriate. The decision notice will be available for public inspection and will be reported to the next convenient meeting of the Council.

10. What is the Referrals Sub Committee?

The Referrals Sub-Committee is a Sub-Committee of the Council's Standards and Personnel Appeals Committee and will comprise a minimum of three and no more than 5 members of the Council taken from the parent committee. The membership of the Sub-Committee will be selected by the Monitoring Officer.

The Independent Person is invited to attend all meetings of the Referrals Sub-Committee and his/her views are sought and taken into consideration before the Referrals Sub-Committee takes any decision whether or not the complaint should be investigated or other action taken.

11. What is the Hearings Sub Committee?

The Hearings Sub Committee is a Sub-Committee of the Council's Standards and Personnel Appeals Committee and will comprise a maximum of three members of the Council taken from the parent committee. The membership of the Sub-Committee will be selected by the Monitoring Officer.

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

Who is the Independent Person?

The Independent Person is appointed by the Council. There are a number of restrictions on eligibility for this role to ensure they have no close associations with the Council and are

therefore truly independent. Their role is to provide an independent view regarding complaints made about the behaviour of members.

Apologies

Apologies should recognise poor behaviour and be genuine and sincere.

Apologies will only be accepted as an informal means of resolving a complaint if they are given as soon as possible and certainly pre-investigation stage. When being notified of a complaint made against them, members will be given 14 days in which to offer and acceptably worded apology. The complainant will be asked for their views in relation to the apology, but the final decision as to the acceptability of the apology will rest with the Monitoring Officer in consultation with the Independent Person.

Failing to Co-operate with the Complaint Process

Failure by the complainant, the subject member or witnesses to take part in the complaints process will be taken into account. In the interests of fairness, evidence provided will be considered and checks to corroborate complaints will still be undertaken.

Correspondence with those involved in complaints will be given notification that they should respond to requests made by the Monitoring Officer and/or Investigating Officer within 14 days of the date of the request. If they do not respond to this first request, they will be sent a reminder giving them a further 14 days to respond. If there is still no response the Monitoring Officer and/or Investigating Officer will proceed with the complaint without further delay.

The Monitoring Officer and/or Investigating Officer may be flexible in exceptional circumstances.

12. Revision of these Arrangements?

The Council may by resolution agree to amend these arrangements, and has delegated to the Chairman of the Standards and Personnel Appeals Committee and any of its Sub-Committees 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.

13. Appeals

There is no right of appeal for the complainant or for the member against a decision of the Monitoring Officer or of the Referrals Sub-Committee or the Hearings Sub Committee.

If you feel that the Council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman (<http://www.lgo.org.uk>).