

REDCAR AND CLEVELAND BOROUGH COUNCIL

ARRANGEMENTS FOR DEALING WITH COMPLAINTS ABOUT THE CODE OF CONDUCT FOR MEMBERS

Introduction

1. This procedure applies when a complaint is received that a Member, Co-opted Member or Parish Member has or may have failed to comply with the Code of Conduct for Members.
2. 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.”
3. No Member or officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter. Where such an interest arises, arrangements shall be made to avoid this, including, for example, making a request for the Deputy Monitoring Officer, or a Monitoring Officer from another Council to deal with particular aspects of a case.
4. Making a complaint

A complaint must be made in writing to: –

The Monitoring Officer

Redcar and Cleveland Borough Council
Redcar and Cleveland House
Kirkleatham Street
Redcar
TS10 1RT

Complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.

5. Initial Assessment

The Monitoring Officer will review the complaint and must be satisfied that:-

1. The complaint is against one or more named Members or co-opted Members of the Council or a Town or Parish Council within the Borough of Redcar and Cleveland.

2. The Subject Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time.
3. The complaint, if proven, would be a breach of the Code of Conduct under which the Subject Member was operating at the time of the alleged misconduct.

If the complaint fails one or more of the above requirements it cannot be investigated as a breach of the code and the Complainant will be informed that no further action will be taken in respect of the complaint.

The Monitoring Officer will acknowledge receipt of an accepted complaint within 5 working days of receiving it and, at the same time, if not rejected based on the criteria set out above, write to the Subject Member (and in the case of a complaint about a Parish Councillor to the Clerk of the Parish Council as well) with details of the allegations (subject to any representations from the Complainant on confidentiality, which are accepted as valid by the Monitoring Officer).

The Subject Member may, within 10 working days of receipt, make written representations to be taken into account when deciding how the complaint will be dealt with. Representations received after this time but before the Monitoring Officer has decided how the complaint will be dealt with may be taken into account at the discretion of the Monitoring Officer.

The Monitoring Officer will produce a short factual summary of the complaint which will set out their views on:

- o Whether the complaint is within the Authority's jurisdiction;
- o The paragraphs of the Code of Conduct the complaint might relate to;
- o A summary of the key aspects of the complaint if it is lengthy or complex;
- o Any further information obtained which may assist the Assessment Sub-Committee with its decision (for example, a copy of a declaration of acceptance of office form, minutes of meetings, a copy of a member's entry in the register of interests, information from Companies House or the Land Registry, the Subject Member's response).

The Monitoring Officer may direct that other Officers may contact Complainants to seek clarification of the complaint if necessary.

The Monitoring Officer will provide a copy of the summary to the Council's Independent Person and seek their views with regard to the complaint and how it should be progressed. The views of the Independent Person will be recorded and included as part of the decision record to be issued to the relevant parties at the conclusion of the assessment process.

Where the Monitoring Officer, after consulting with the Independent Person and taking into account the criteria set out in paragraph 6 below, concludes that a complaint is clearly of a minor nature where either no action at all, or informal action rather than a formal sanction would be appropriate, s/he may conclude the assessment process on that basis and issue a decision accordingly that either (a) no action will be taken; or

(b) that Other Action will apply.

All such decisions will be reported as soon as practicable to the Governance Committee (in anonymised form).

In cases where the Monitoring Officer, in consultation with the Independent Person, is of the view that a formal investigation is clearly appropriate because the complaint, if upheld, is likely to warrant a formal sanction and the allegations within the complaint are disputed by the Subject Member, the Monitoring Officer may refer the matter for investigation.

In other cases, where the Monitoring Officer, in consultation with the Independent Person, is of the view that the Complaint is not minor, they will refer the matter to the Assessment Sub-Committee

The Assessment Sub-Committee meeting is a private meeting.

The Assessment Sub-Committee will make one of three assessment decisions:

- 1) not to refer the complaint for investigation - No Action;
- 2) refer the complaint for investigation – Investigation, or
- 3) refer the complaint back to the Monitoring Officer - Other Action

“Refer for Investigation” can include a Fast Track route to a Hearings Panel in circumstances for example where the Subject Member immediately accepts in their written representation that there has been a breach of the Code and a detailed investigation is not considered necessary.

Democratic Services will inform the Complainant, the Subject Member (and the Clerk of the Parish Council, where the complaint relates to a Parish Councillor), of the decision within 5 working days of it being made.

In all cases, where possible, the assessment decision should be made and communicated to the Complainant and Subject Member within 30 working days from receipt of the complaint.

6. Decisions not to refer for investigation

If appropriate, the Assessment Sub-Committee or Monitoring Officer, as applicable, will apply the following criteria in deciding whether a complaint should be accepted for investigation, dealt with through some other action, or rejected:

- Whether the same, or a substantially similar, complaint has already been the subject of an investigation and there is nothing more to be gained by further action being taken (i.e. by seeking the sanctions available);
- Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or

point in taking action now;

- Whether the Subject Member was not at the time of the complaint acting in their role as a Member of the Authority;
- Whether the allegation is anonymous;
- Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and:-
 - I. the resources needed to investigate and determine the complaint are wholly disproportionate to the allegations; or
 - II. whether, in all the circumstances, there is no overriding public benefit in carrying out an investigation;
- Whether the complaint appears to be malicious, vexatious, politically motivated or tit-for-tat;
- Whether it appears that the complaint concerns or is really about dissatisfaction with a Council decision, or policy rather than a breach of the Code;
- Whether in all the circumstances, training and/or mediation would be an appropriate response;

7. Decisions to refer a complaint for investigation

A complaint is likely to be investigated when it meets one or more of the following criteria:

- It is serious enough, if proven, to justify the range of sanctions available.
- It is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Authority and there is no other avenue left to deal with it, other than by investigation.
- In considering the above points, the time that has passed since the alleged conduct occurred will be taken into account.

8. Decisions to refer complaints for 'other action'

Other action is likely to be appropriate where:

- training for the Member concerned is considered to be a more appropriate way of dealing with the matter;
- it appears that a breakdown in relationships has occurred which may be effectively dealt with by conciliation or that the conduct complained of is a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct;

- an investigation is not the most cost effective way of resolving the matter and the Monitoring Officer is able to deal with it informally;
- some other action is more appropriate - e.g. a review and/or change to the Authority's policies and procedures;
- the conduct complained of is not so serious that it requires a substantive formal sanction;
- the Subject Member and the Complainant are amenable to engaging in such alternative action.

9. Additional Information

The Assessment Sub-Committee and/or the Monitoring Officer may require additional information to come to a decision and may request information from the Subject Member. Where the complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Clerk of the Parish Council of the complaint and seek the views of the Clerk of the Parish Council before deciding whether the complaint merits formal investigation or other action. If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authorities.

In all cases, should they deem it to be appropriate, the Monitoring Officer may decide to refer the assessment of a minor complaint to an Assessment Sub-Committee.

10. Constitution of the Assessment Sub-Committee

The Assessment Sub-Committee is a sub-committee of the Council's Governance Committee. It will be made up of a total of 3 members. This will comprise 2 elected Members and one co-opted independent Member, drawn from the Governance Committee. If the Assessment Sub-Committee is considering a matter relating to the conduct of a Parish or Town Councillor, then one of the two elected Members must be a Parish or Town Councillor.

If for any reason the sub-committee cannot be constituted to include a co-opted independent member, then the sub-committee can be constituted with 3 elected Members.

The Assessment Sub-Committee may seek the advice or the views of the Independent Person at any time.

11. Investigation

The Monitoring Officer will appoint an Investigating Officer when they or the Assessment Sub-Committee have decided the complaint merits formal investigation. The Investigating Officer may be a Council officer, an officer of another Council, or an external investigator.

The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost-effective use of Council resources and shall be interpreted in line with these principles.

The Investigating Officer will ensure that the Subject Member has received a copy of the complaint – subject to a Monitoring Officer decision on Confidentiality.

At the end of the investigation, the Investigating Officer will produce a draft report and will send copies of that draft report to the Complainant and to the Subject Member, for comments. The Investigating Officer will take such comments into account, before issuing their final report to the Monitoring Officer.

12. Investigating Officer finding

The Monitoring Officer will review the Investigating Officer's report and, if content that the Investigating Officer's report is satisfactory, will convene the Assessment Sub-Committee. If the Monitoring Officer is not satisfied that the investigation has been conducted satisfactorily, the Investigating Officer may be asked to reconsider their report and conclusion.

A copy of the Investigating Officer's Report will be sent to the Independent Person for their views with an invitation to attend the Assessment Sub-Committee Meeting. The Assessment Sub-Committee must take into consideration the view of the Independent Person before deciding whether to accept the recommendations of the Investigating Officer.

The Assessment Sub-Committee meeting is a private meeting and should be held where possible within 30 working days from receipt of the Investigating officer's report.

Dependent upon the Investigating Officers recommendations and the view of the Independent Person, the Assessment Sub-Committee can determine:

- 1) that no action is required - No Action, or
- 2) that the matter should be referred for possible sanction - Hearings Panel, or
- 3) that the matter should be referred to the Monitoring Officer - Other Action.

The Monitoring Officer will write to the Complainant and the Subject Member (and to the Clerk of the Parish Council, where the complaint relates to a Parish Councillor), with a copy of the Decision and the Investigating Officer's final report.

When required, the Monitoring Officer will arrange for the matter to proceed to a Local Hearing before the Hearings Panel or seek a local resolution by way of Other Action.

Where the Investigating Officer has found a serious breach of the Code of Conduct, and has recommended referral to a Hearings Panel, the Monitoring Officer, in conjunction with the Independent Person, may decide to immediately convene a Hearings Panel.

13. Other Action

If the Assessment Sub-Committee considers that the matter can reasonably be resolved without the need for a hearing, it will instruct the Monitoring Officer to consult with the Independent Person and the Complainant and seek to agree a fair resolution. Such resolution may include the Subject Member accepting that their conduct was unacceptable and offering an apology, mediation, and/or other remedial action. If the Subject Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Governance Committee and the Clerk to the Parish Council (if appropriate) for information. If the Complainant or the Subject Member refuses such a local resolution in principle or fails to engage with an agreed outcome, the Monitoring Officer may, after consultation with the Independent Person, refer the matter for a Local Hearing without further reference to the Complainant or the Subject Member.

14. Local Hearing

Where, following a recommendation from the Investigating Officer that there has been a potential breach of the Code of Conduct and taking into account the view of the Independent Person, the Assessment Sub-Committee has referred the complaint to a Hearings Panel, or where the Complainant and/or Subject Member refuse or fail to co-operate or engage (see above), then the Monitoring Officer will deliver the Investigating Officer'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 Council has an agreed procedure for local hearings.

15. Constitution of the Hearings Panel

The Hearings Panel is a Sub-Committee of the Council's Governance Committee. It will comprise 3 elected Members of the Council, drawn from at least 2 different political parties. Where the complaint is about a Parish or Town Member, then one of the three elected Members will be a Parish or Town Council Member.

The Independent Person is invited to attend all meetings of the Hearings Panel and their views must be 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.

16. Action the Hearings Panel may take where a Member has failed to comply with the Code of Conduct

When a Hearings Panel finds that a Member has failed to comply with the Code of Conduct, the Council has delegated to the Hearings 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 Hearings Panel may –

- 15.1 Publish its findings in respect of the Member's conduct;

- 15.2 Report its findings to Council (or to the Parish Council) for information;
- 15.3 Issue a formal censure;
- 15.4 Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 15.5 Recommend to the Leader of the Council that the Member be removed from the Executive, or removed from their Portfolio responsibilities; or, in the case of the Subject Member being the Leader, recommend to the Full Council that they be removed from the role of Leader.
- 15.6 Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Member;
- 15.7 Recommend to Council (or recommend to the Parish Council) that the Member be removed from all outside body appointments to which they have been appointed or nominated by the Council (or by the Parish Council);
- 15.8 If relevant, recommend to the secretary or appropriate official of a political group that the councillor be removed as group leader or other position of responsibility.
- 15.9 Exclude the subject member from the authority'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 and/or restricts contact with officers to named officers only.
- 15.10 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;

17. Revision of these arrangements

The Council may by resolution or delegation to the Monitoring Officer agree to amend these arrangements and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

18. Appeals

Subject to Judicial Review, or a decision of the Local Government Ombudsman, there is no right of appeal against a decision of the Monitoring Officer, the Assessment Sub-Committee or of the Hearings Panel.