

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

Section 28 Localism Act 2011

I. 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.

II. Procedure

1. Making a Complaint

A complaint must be made in writing by post or email to:-

The Monitoring Officer
Welwyn Hatfield Borough Council
Council Offices
The Campus
Welwyn Garden City
Herts
AL8 6AE

OR

m.martinus@welhat.gov.uk

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it and, at the same time, 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 the Monitoring Officer which must be taken into account when deciding how the complaint will be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued his Complaint Initial Assessment.

2. Complaint Initial Assessment

The Monitoring Officer will review the complaint and take a decision (a Complaint Initial Assessment) as to whether it merits investigation, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint. The Monitoring Officer will have the discretion to consult with whoever he considers appropriate given the circumstances of the complaint to assist him in reaching his decision.

If the complaint fails one or more of the following tests, it will be rejected:

- The complaint is against one or more named Members or co-opted Members of the Council or a Parish Council within its district;
- The Subject Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
- 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 appropriate, the Monitoring Officer will then go on to apply the following criteria in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected:

- Whether a substantially similar allegation has previously been made by the Complainant to Standards for England, or the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority;
- 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 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;
 - (ii) whether, in all the circumstances, there is no overriding public benefit in carrying out an investigation (including (i) when the incident complained of happened and (ii) where the member complained of is no longer a councillor)
- Whether the complaint appears to be malicious, vexatious, politically motivated or tit-for-tat;

- Whether the complaint suggests that there is a wider problem throughout the authority;
- Whether it is apparent that the subject of the allegation is relatively inexperienced as a Member, or has admitted making an error and the matter would not warrant a more serious sanction;
- Whether training or conciliation would be the appropriate response;
- Whether the Member apologises for the conduct or was he or she willing to apologise and the matter did not warrant a more serious action
- Is the subject matter of the complaint being dealt with through any other complaints, legal or regulatory process

3. Additional Information

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. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation. Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the Subject Member or the authority (in appropriate cases) make a reasonable offer of local resolution, but it is rejected by the Complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

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.

4. Confidentiality

If a Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the Complaint Initial Assessment stage.

As a matter of fairness and natural justice, the Subject Member should 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, they are satisfied that the Complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.

If the Monitoring Officer decides to refuse a request by a Complainant for confidentiality, they will offer the Complainant 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

5. Investigation

The Monitoring Officer will appoint an Investigating Officer where a 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 receives a copy of the complaint – subject to a Monitoring Officer decision on Confidentiality.

At the end of their 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.

6. Investigation Officer finding of insufficient evidence of failure to comply with the Code of Conduct

The Monitoring Officer will review the Investigating Officer's report and, if satisfied that the Investigating Officer's report is satisfactory, will make a Confirmation Decision to confirm the finding of no failure to comply with the Code of Conduct.

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 Confirmation Decision and the Investigating Officer's final report.

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.

7. Investigating Officer finding of sufficient evidence to 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 Hearings Panel or, after consulting the Independent Person, seek Local Resolution.

8. Local Resolution

If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Independent Person and the Complainant and seek to agree a fair resolution. Such resolution may include the Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee and the Clerk to the Parish Council (if 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.

9. Local Hearing

Where, in the opinion of the Monitoring Officer, Local Resolution is not appropriate or the Complainant and/or Subject Member refuse to co-operate, then the Monitoring Officer will report 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 agreed a procedure for local hearings, which is attached to these arrangements.

10. Constitution of the Hearings Panel

The Hearings Panel is a Sub-Committee of the Council's Standards Committee. The Council has decided that it will comprise of 3 Members of the Council. Where the complaint is about a Parish Member, the Hearings Panel will include the Parish Member co-opted to the Standards Committee.

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.

11. The Independent Person

The Independent Person must be a person who has applied for the post following advertisement of a vacancy for the post, and appointed by a positive vote from a majority of all the Members of Council at a meeting of the Council.

A person is not eligible for appointment if they:

- 11.1 Are or have been within the past 5 years, a Member, co-opted Member or officer of the Council with the exception that former Independent Members of Standards Committees can be appointed as Independent persons.

- 11.2 Are or have been within the past 5 years, a Member, co-opted Member or officer of a parish council within the Borough, or
- 11.3 Are a relative or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, “relative” means –
 - 11.3.1 Spouse or civil partner;
 - 11.3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 11.3.3 Grandparent of the other person;
 - 11.3.4 A lineal descendent of a grandparent of the other person;
 - 11.3.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
 - 11.3.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
 - 11.3.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners

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

Where a Hearings Panel find that a Member has failed to comply with the Code of Conduct, the Council has delegated to the Standards Committee and its 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:-

- 12.1 Publish its findings in respect of the Member’s conduct;
- 12.2 Report its findings to Council (or to the Parish Council) for information;
- 12.3 Recommend to Council that the Member be censured;
- 12.4 Recommend to the Member’s Group Leader (or in the case of ungrouped Members, recommend to Council) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 12.5 Recommend to the Leader of the Council that the Member be removed from the Executive, or removed from their Portfolio responsibilities;
- 12.6 Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Member;
- 12.7 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);

12.8 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

12.9 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.

13. 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 Chairman 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.

14. 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 or of the Hearings Panel.

STANDARDS SUB-COMMITTEE HEARING PROCEDURE

Item no.		<u>Procedure</u>
1.		<p style="text-align: center;"><u>Quorum</u></p> <p>1.1 Three members must be present throughout the hearing to form a quorum</p> <p>1.2 Where the complaint refers to a Parish Councillor the non voting Parish member of the Standards Committee may be present</p> <p>1.3 The Sub-Committee shall nominate a Chairman for the meeting</p>
2.		<p style="text-align: center;"><u>Opening</u></p> <p>2.1 The Chairman explains the procedure for the hearing and reminds all parties to turn off mobile phones, audible alarms and pagers, etc.</p> <p>2.2 The Chairman asks all present to introduce themselves</p> <p>2.3 The Councillor will be asked whether they wish to briefly outline their position</p>
3.		<p style="text-align: center;"><u>The Complaint</u></p> <p>3.1 The Investigating Officer shall be invited to present their report including any documentary evidence or other material (and to call witnesses as required by the Investigating Officer). This report and documentary evidence must be based on the complaint made to the Council – no new points will be allowed.</p> <p>3.2 The Councillor against whom the complaint has been made (or their representative) may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer. (This is the Councillor’s opportunity to ask questions arising from the Investigator’s report and not to make a statement).</p> <p>3.3 Members of the Sub-Committee may question the Investigating Officer upon the content of their report and/or any witnesses called by the Investigating Officer.</p>
4.		<p style="text-align: center;"><u>The Councillor’s Case</u></p> <p>4.1 The Councillor against whom the complaint has been made (or their representative) may present their case (and call any witnesses as required by the Councillor or their representative)</p> <p>4.2 The Investigating Officer may question the Councillor and/or any witnesses</p>

	4.3	Members of the Sub-Committee may question the Member and/or any witnesses
5.		<u>Summing Up</u>
	5.1	The Investigating Office may sum up the Complaint
	5.2	The Member (or their representative) may sum up their case.
6.		<u>Decision</u>
	6.1	Members of the Sub-Committee will deliberate in private to consider the complaint in consultation with the Independent Person prior to reaching a decision.
	6.2	On the Sub-Committee's return the Chairman will announce the Sub-Committee's decision in the following terms:
	6.2.1	The Sub-Committee decides that the Member has failed to follow the Code of Conduct or
	6.2.2	The Sub-Committee decides that the member has not failed to follow the Code of Conduct
	6.2.3	The Sub-Committee will give reasons for their decision
	6.3	If the Sub-Committee decides that the Member has failed to follow the Code of Conduct the Panel will consider any representations from the Investigator and/or the Member as to:
	6.3.1	Whether any action should be taken and
	6.3.2	What form any action should take
	6.4	The Sub-Committee will then deliberate in private to consider what action if any should be taken in consultation with the Independent Person
	6.5	On the Sub-Committee's return the Chairman will announce the Sub-Committee's decision (in relation to a Parish Councillor a recommendation to the Parish Council).
	6.6	The Sub-Committee will consider whether it should make any recommendations to the Council or in relation to a Parish Councillor to the Parish Council with a view to promoting high standards of conduct among Members
	6.7	The Chairman will confirm that a full written decision shall be issued as soon as reasonably practicable following the hearing and that the Sub-Committee's findings will be published.

SUB-COMMITTEE (HEARING PANEL)

Appointed by:

The Council, for the purposes of section 28(6) and (7) of the Localism Act 2011 who have delegated this power to the Standards Committee)

Chairman and Vice-Chairman appointed by:

The Chairman shall be elected by the Sub-Committee at each meeting.

Quorum:

Independent Person:

Appointment approved by the Council in accordance with the provisions of Section 28(6) and (7) of the Localism Act 2011

Number of Elected Members:

3 Members appointed from Members of the Standards Committee.

1 Co-Opted Parish/Town Councillor

Political Proportionality:

Rules of political proportionality apply.

Substitutes:

None.

Frequency:

As and when required.

Venue:

To be determined by the Monitoring Officer

At least 3 voting Members.

The Independent Person:

The Independent Person to attend the meetings of the Standards Committee/Sub-Committee dealing with hearings into allegations of misconduct as and when required.

Terms of Reference

To conduct a Hearing into an allegation that a Member or Co-Opted Member has breached the Authority's Code of Conduct.

Following a Hearing, make one of the following findings:

- (a) That the Member has not failed to comply with the Code of Conduct and no further action needs to be taken in respect of the matters considered at the Hearing.
- (b) That the Member has failed to comply with the Code of Conduct but that no further action needs to be taken in respect of the matters considered at the Hearing.
- (c) That the Member has failed to comply with the Code of Conduct and that an action and/or an informal resolution should be imposed. (In respect of a Parish Councillor this will be by way of a recommendation to the Parish/Town Council concerned.)

The Sub-Committee may impose any action or combination of actions available to it, or impose any informal resolution or combination of informal resolutions as are available to the Council by law or policy.

After making a finding the Sub-Committee shall, as soon as reasonably practicable, provide written notice of its findings and the reasons for its decision to the Member and complainant.