

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

1. Introduction

This procedure applies when a complaint is received that a Herefordshire Council member, town/parish member or co-opted member, has or may have failed to comply with the adopted code of conduct for members at the time of the alleged breach.

2. Making a complaint

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”.

A complaint **must** be made in writing, preferably using the standard complaint form available on the council’s website via the below link or by post on request:

https://www.herefordshire.gov.uk/info/200148/your_council/61/get_involved/7

The complaint must be submitted in writing by post or email to:

The Monitoring Officer, Herefordshire Council, Plough Lane, PO Box 4, Hereford HR4 0XH

Code-of-conduct@herefordshire.gov.uk

Your complaint will normally be acknowledged on receipt of the complaint within five working days.

The Council may provide a summary of the complaint to the subject matter councillor at this stage and invite them to comment within 10 days.

The Council’s Monitoring Officer (the Director of Law & Governance) is responsible for managing the member complaints process on behalf of the Council.

3. Consultation with the Independent Person

The Council has to appoint Independent Persons under S28 Localism Act 2011, to work with the Monitoring Officer to support them with Code of Conduct complaints and standards issues. Independent Persons are people who are neither councillors nor officers of the Council.

(a) The Monitoring Officer will seek and take into account the views of two Independent Persons before they decide that an allegation should be investigated; and

(b) In circumstances other than a decision to investigate, the Monitoring Officer may seek and take into account the views of the Independent Person.

4. Preliminary Tests – two stages

(a) Legal Jurisdiction Criteria

The Monitoring Officer will assess the complaint, using the following criteria, to understand whether the Council can deal with the complaint:

- It is against one or more named members or co-opted members of the council or a town/parish council outside the council's area
- The subject member was in office at the time of the alleged misconduct/or at the time of the complaint
- The complaint relates to matters where the councillor was acting as a councillor or representative of the Council and it is not a private matter
- The complaint, if proven, would be a breach of the Code under which the councillor was operating at the time of the alleged misconduct

Members are entitled to privacy in their personal lives and the provisions of the Code of Conduct only apply to members when they are acting as a member or co-opted member or as a representative of their Authority.

When reaching a decision as to whether the Code of Conduct applies to a member at a particular time, the Monitoring Officer will have regard to the particular circumstances and the nature of the conduct at that time.

If the complaint fails one or more of the legal jurisdiction tests, it will be rejected. i.e. 'Dismissed at Preliminary Stage (Legal Jurisdiction Criteria Test not met)'.

If the complaint satisfies the legal jurisdiction test, it will be assessed against the local assessment criteria test below.

5. Local Assessment Criteria

The Monitoring Officer will review the complaint against the below criteria:

- *Does the complaint contain sufficient evidence to demonstrate a potential breach of the Code?*

If the complaint contains insufficient evidence to demonstrate a potential breach of the Code, then the Monitoring Officer will advise the complainant that there is insufficient evidence to make a decision and unless or until further information is received, the authority will take no further action on the complaint. The complainant will be given a further 10 days to submit any additional evidence they want to present.

If the complaint contains sufficient evidence, the Monitoring Officer will consider the below local assessment criteria:

- Are there alternative, more appropriate, remedies that should be explored first?
- Is the complaint malicious, politically motivated, or 'tit for tat'?
- Whether an investigation would not be in the public interest or the matter, even if proven, would not be serious enough to warrant any sanction
- Has a substantially similar complaint been considered and no material evidence has been submitted?
- Has a substantially similar complaint been submitted and accepted?
- Does the complaint relate to conduct in the distant past?
- Has the behaviour already been dealt with?
- Does the complaint relate to dissatisfaction with a local authority decision rather than conduct?
- Is the complaint about someone who is seriously ill

If one or more of the local assessment criteria applies to the complaint, the complaint will be rejected i.e. 'Dismissed at Preliminary Stage (Local Assessment Criteria Test not met)'.

A decision on the initial assessment will be made within 15 working days of receiving the complaint. If the Independent Persons are asked for their views, this will be done at least a day before the deadline, and the views of the Independent Persons will be kept in writing.

6. Initial Assessment – Decision

The Council may reach one of the three following decisions on a complaint:

- No further action should be taken
- The matter should be dealt with through a process of informal resolution in the first instance
- The matter should be referred for formal investigation

(a) No further action

Where the Council reaches this decision it will make it clear that, where an allegation may have disclosed a potential breach of the Code, it has nevertheless made no finding of fact as it does not believe it is in the public interest to pursue the matter further.

If the complaint is rejected the complainant will be advised of the decision. The subject member will also be advised of the decision, if they have been made aware of the complaint.

(b) Informal resolution

Informal resolution is a more proportionate way of dealing with relatively minor allegations, one-off incidents or underlying disagreements. Matters which are suitable for informal resolution may include:

- The same breach of the Code by many members, indicating a lack of understanding of procedures
- A general breakdown of relationships, including between members and officers, of a minor nature
- Misunderstanding of procedures of protocols
- Misleading, unclear or misunderstood advice from officers;
- Lack of experience of training
- Interpersonal conflict
- Allegations and retaliatory allegations from the same members
- Allegations about how formal meetings are conducted
- Allegations which may be more symptomatic of governance problems within the authority

Complaints will not be referred for informal resolution when an investigation is in the public interest.

If the Monitoring Officer considers, after consultation with the Independent Persons, that the complaint could be dealt with through informal resolution then the subject member and the complainant will be informed of this intention and given 10 working days to comment before the Monitoring Officer reaches a final decision. The purpose of this is to establish how successful the resolution might be and it does not give either party the right of veto.

Informal resolution may include training, apology or mediation. Informal resolution does not necessarily mean that a subject member has been found to have breached the Code of Conduct, as the matter has not been investigated.

Both parties will be informed by the Monitoring Officer of the action to be taken and the time scales in which it will be undertaken. They will also be advised on what will happen if the action is not undertaken. If within the timescales the relevant action is taken then the Monitoring Officer will notify both parties that the matter is then closed.

The Monitoring Officer will seek confirmation that the suggested resolution has been complied with. Where a subject member has categorically refused to comply with the proposed resolution, has failed to co-operate or has taken inadequate action then the Monitoring Officer will consider whether a formal investigation is needed, having regard to the public interest test and the agreed criteria within this procedure. The Monitoring Officer will consult the Independent Persons before making a decision whether to commence a formal investigation.

(c) Formal investigation

Where, in the opinion of the Monitoring Officer, following consultation with the Independent Persons, a formal investigation is required, the Monitoring Officer will appoint an investigating officer to investigate the complaint, gather further evidence and prepare a report.

The Monitoring Officer or the Investigator will advise the relevant parties so that they know who is dealing with the case, the scope of the investigation and what will happen next. The subject member will also be informed that they have the right to seek the views of the Independent Persons and be represented at any interviews with the Investigator.

In the event of a town or parish council investigation, a notice will be sent to the Parish Clerk (unless there is a conflict of interest, in which case it will be sent to the Chair or Vice Chair). The Monitoring Officer may set out what action they consider the town or parish council should take with regards the complaint and the requirements relating to confidentiality, given that standing orders may require the clerk to report the complaint to the town or parish council.

The scope of the delegation of the investigation will be kept in writing, and there will be agreed timelines for delivery of the report, usually within six months. Any extension of time will be agreed by the Monitoring Officer following consultation with the Independent Persons.

The Investigator may make inquiries of any person they think necessary, however there is no obligation for such persons to respond. /this will not delay the investigation, but it will be made clear in the Investigator's report.

During the investigation, there may be evidence of further breaches which extend beyond the scope of the investigation. These cannot be investigated and should be the subject of a separate complaint to the Council if necessary.

The Investigator can refer the investigation back to the Monitoring Officer at any point in the event that circumstances change during the investigation, and it will be for the Monitoring Officer to conclude whether the investigation should continue, after consulting with the Independent Persons.

If the matter has been deferred or ended the subject member and the complainant will be notified of the decision, and timescales if it has been deferred, unless the matter has been referred to the Police.

7. Deferral

An investigation will be deferred when any of the following conditions are met:

- Ongoing criminal proceedings or a police/regulatory investigation
- The investigation cannot proceed without investigating similar conduct
- The investigation might prejudice another investigation or court proceedings
- Because of serious illness or genuine unavailability of a key party

Any deferred investigation will be kept under regular review and all parties will be notified once it is recommenced.

8. Confidentiality

All information gathered will be kept confidential and all those being interviewed will be asked to maintain confidentiality. Any draft report will be marked as confidential and all requests for information will be dealt with having regard to the relevant legislation.

9. Draft report

The Investigator will produce a draft report which will be shared with the Monitoring Officer and the Independent Persons. It will contain the agreed and disputed facts, the Investigator's view on whether there has been a breach of the Code and their reasons for their conclusion. Once the Monitoring Officer is satisfied, it will be sent to the relevant parties with a deadline for comment. The Investigator is under no obligation to accept any comments from the parties, but where they do not, then they will make a note explaining why.

10. Completion of the investigation

On completion of an investigation, the Monitoring Officer may decide:

- To take no further action irrespective of whether there is a breach or not
- There have been breaches but to seek to resolve the matter informally, or
- To refer the matter to a hearing

The matter will be regarded as complete if the Monitoring Officer receives the final report and accepts that no further investigation is necessary.

11. Hearing Panel

The final report will be sent to the subject member, complainant and Independent Persons and town/parish council if relevant.

Where appropriate, the Monitoring Officer will arrange for a Hearing Panel to meet and consider the allegation and report of the Investigating Officer and to determine the outcome of the complaint. The Hearing Panel will have regard to its Procedure for Conducting a Hearing.

The authority to make a determination of breach rests solely with the Hearing Panel once the Monitoring Officer decides to refer the matter to a hearing.

12. Sanctions

Where a member has been found by the Hearing Panel to have breached the Code of Conduct, the Hearing Panel may apply any one or more of the sanctions below:

- (a) Report its findings to Council or relevant Town/Parish Council
- (b) Recommend to the Council or Parish/Town Council that the member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand);
- (c) Recommend to the subject member's Group Leader, or Parish/Town Council, or in the case of an ungrouped Member to the Council, that they be removed from Cabinet, committees or sub-committees of the Council;
- (d) Recommend to the Leader of the Council that the member be removed from positions of responsibility
- (e) Instruct the Monitoring Officer, or recommending to the Parish/Town Council, to arrange training for the member;
- (f) Recommend to the Council or Parish/Town Council that the member be removed from one or more outside appointments to which they have been appointed or nominated by the Council or Parish/Town Council;
- (g) Recommend to the Council or Parish/Town Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and internet access, for a specified period
- (h) Recommend to the Council or Parish/Town Council the exclusion of the member from the Council or Parish/Town Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council or Parish/Town Council committee and sub-committee meetings
- (i) If relevant, recommend to Council/political group that the subject member be removed from their role as Leader of the Council or group Leader or other position of responsibility.

13. Determination – Hearing Panel

The complainant and the subject member will be informed of the Hearing Panel's determination. The decision notice will be published on the Council's website and reported to the Audit & Governance Committee.

14. Transparency Arrangements

All decision notices where there is a finding of a breach of the Code of Conduct, either following a decision by the Monitoring Officer after formal investigation, or by a Standards Panel, will be published on the Council's website.

Such notices will be published for 6 years.

The Monitoring Officer (in consultation with the Chair of Standards Panel) may also publish, for such period as considered appropriate, other decision notices that do not amount to a breach.