

North West Leicestershire District Council

Arrangements for dealing with standards allegations under the Localism Act 2011

1 Context

These “Arrangements” set out how a person may make a complaint that an elected or co-opted member of this authority or of a Town or Parish Council has failed to comply with the Member’s Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with that Code.

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 authority or Town or Parish Council, or of a Committee or Sub-Committee of the authority, has failed to comply with the Code of Conduct can be investigated and decisions made on such allegations.

These arrangements also provide for the authority to appoint at least one Independent Person, whose views must be sought before a decision on an allegation is made and which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a 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 One to these arrangements and available for inspection on the authority’s website and on request from Reception at the Civic Offices.

[This Code applies to all Councils within the District, including Town and Parish Councils.]

3 Making a complaint

If you wish to make a complaint, please write or email to –

“The Monitoring Officer
North West Leicestershire District Council
Council Offices
Coalville
Leicestershire
LE67 3FJ”

Or –

Elizabeth.warhurst@nwleicestershire.gov.uk

The Monitoring Officer is a senior officer of the authority 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 that all the information required is available with the complaint, the complainant will be asked to provide their name and a contact address or email address together with any relevant documents in support of their complaint.

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it.

Where an anonymous complaint is received or the complainant wishes to remain anonymous it will be at the Monitoring Officer's discretion as to whether the complaint proceeds. Consideration will be given to the public interest and whether the complaint can be justified or determined without the complainant's participation.

4 What happens to my complaint?

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits further examination. This decision will normally be taken within 14 days of receiving the complaint.

Once the Monitoring Officer and the Independent Person have taken a decision, they will inform the complainant of that decision and the reasons for that decision.

Where a complaint is determined to be merit further examination, the subject member will be notified of the complaint at the earliest opportunity and requested to attend a meeting with the Monitoring Officer and the Independent Person to review the complaint and present their side of the case.

Where they require additional information in order to come to a decision, the Monitoring Officer may refer back to the complainant for such information, and may request information from the member against whom the complaint is directed. *[Where the 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 further examination.]*

In appropriate cases, the Monitoring Officer and the Independent Person may seek to resolve the complaint informally, without the need for further review. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the member or the authority make a reasonable offer of local resolution, but the complainant or subject member are not willing to accept that offer, the Monitoring Officer may take account of this in deciding whether the complaint merits further examination.

If the complaint identifies criminal conduct or a breach of other regulation by any person, the Monitoring Officer will refer the complainant to the Police or other appropriate regulatory body. This authority's participation will cease on the complainant's referral to such bodies.

5 What if Informal Resolution is not appropriate/successful?

In cases where Informal Resolution is not appropriate or successful the Monitoring Officer and the Independent Person may conduct a fact-finding exercise to establish the groundwork for the complaint. The fact-finding exercise is to satisfy the initial tests of

- a) it is a complaint against one or more named Members of the Council
- b) the named member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time
- c) the complaint, if proven would be a breach of the Code under which the Member was operating at the time of the alleged misconduct.

If on conducting the fact-finding exercise, there are no facts determined or the complaint is deemed to be frivolous/vexatious, the Monitoring Officer will notify the complainant and the subject member that there is “no case to answer” and the matter will cease. There is no right of review of this decision unless new evidence is presented in support of the complaint. It will be at the discretion of the Monitoring Officer and the Independent Person to determine whether such new evidence substantiates further examination.

Where facts are established the Monitoring Officer in conjunction with the Independent Person will prepare a report for the Assessment Sub-Committee who will determine the further steps to be taken in relation to the complaint. The report will detail all steps taken by the Monitoring Officer and the Independent Person prior to the Sub Committee.

The Assessment Sub-Committee is subject to the normal Committee rules in relation to public meetings and it will take a decision at the start of the meeting to determine whether it is appropriate to hold the meeting in closed session.

The complainant and the Subject Member will not be present at the meeting but their views will have been sought prior to the meeting to enable their opinions to be presented.

If, on assessment of the facts, the Sub-Committee determines that no further action is required or there is no case to answer, this will be reported back to the complainant and the subject member who may be given leave by the Committee to appeal the decision. Such appeal will only be granted where there is new evidence in relation to the complaint.

There may be instances where the Sub-Committee consider the action of the subject member to be so serious as to warrant criminal investigation. In such circumstances, the Sub-Committee will instruct the Monitoring Officer to refer the matter to the appropriate body for investigation.

Should the Committee determine that the matter warrants a detailed investigation, the Monitoring Officer will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to the complainant to understand the nature of the complaint and will provide an opportunity for the complainant to explain their understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

In exceptional cases, where it is appropriate to keep identities confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete names and addresses from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

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 them both an opportunity to identify any matter in that draft report with which they disagree or consider requires more consideration.

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

6 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

On completing their investigation the Investigating Officer will present their report to the Determinations Sub-Committee who will take into account the facts and evidence produced.

The Determinations Sub-Committee is subject to the normal Committee rules in relation to public meetings and it will take a decision at the start of the meeting to determine whether it is appropriate to hold the meeting in closed session.

The complainant and the Subject Member will not be present at the meeting but their views will have been sought prior to the meeting to enable their opinions to be presented.

If satisfied that the Investigating Officer's report is sufficient, the Determinations Sub Committee will accept the findings of the report and request the Monitoring Officer to write to the complainant and to the member concerned notifying them that they are satisfied that no further action is required, and provide a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider his/her report.

There may be instances where the Determinations Sub Committee wishes to ask questions of the complainant and the subject member in order to fully understand the circumstances of the complaint. Where this is requested by the Sub Committee, the meeting will be adjourned to enable the attendance of all parties. In such a situation, the Sub Committee will be conducted in a manner similar to court proceedings where each party may present their arguments.

At the end of the Committee the Chair will ask the subject member whether they are happy for the outcome of the matter to be published through public notice/press statement. It will be at the discretion of the subject member whether such action is taken.

7 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

Where the investigating officer has determined that there is a breach of the code of conduct they will present their report to the Determinations Sub Committee.

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, and the Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted.

At the Sub Committee, 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 Sub Committee. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Sub Committee, with the benefit of any advice from the Monitoring Officer and an Independent Person, may conclude, in disagreement with the investigation officer that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Sub Committee concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the meeting of this finding and the Sub Committee will then consider what action, if any, should be taken as a result of the member's failure to comply with the Code of Conduct. In doing this, the Sub Committee will give the member an opportunity to make representations to the Panel and will consult the Independent Person (and if appropriate the Parish Council), but will then decide what action, if any, to take in respect of the matter.

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

The Council has delegated to the Audit and Governance 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 Committee may –

- Issue a formal letter to the member found to have breached the code
- Impose Formal censure
- Make recommendations to Full Council to remove the member from committee(s) and other appointments subject to political balance requirements (where there are political groups, the decision could only be to recommend them to change their nominated appointees)
- A press release and other appropriate publicity.
- Recommend Training
- Recommendation to Group Leader to remove the member from committee(s) and other appointments

The Committee has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

[In relation to Parish Members, the Monitoring Officer can only make recommendations for sanctions against those Members. The responsibility for enforcing those sanctions will fall to the Parish Council as a whole with the assistance and guidance from the Monitoring Officer.]

9 What happens at the end of the hearing?

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

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Committee, and send a copy to the complainant, to the member *[and to the Parish Council]*.

10 Who are the Committees?

The Assessment and Determinations Sub Committees are Sub-Committee of the Council's Audit and Governance Committee. The Audit and Governance Committee has decided that it will comprise of seven members of the Council, plus one co-opted Parish Member and the Independent Person. Subject to those requirements, it is appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Council.

The Independent Person is invited to attend all meetings of the Committee and the Sub Committees and their views are sought and taken into consideration before any decision is taken 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. There may be more than one Independent Person involved throughout the complaint depending on whether they have been conflicted out of sitting on the Committee/Sub Committee due to being approached by the Complainant or Subject Member for assistance throughout the process.

11 Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

A person cannot be "independent" if he/she –

- 11.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
- 11.2 *[Is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the authority's area], or*
- 11.3 Is 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 Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Monitoring Officer in consultation with the Independent Person 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

The Sub Committees have authority to allow, or not, a right of review following the Assessment Sub Committee's determination of the complaint, and following the determination of the complaint by the Determination Sub Committee. The process follows one similar to the court process, where Members be given leave to appeal a decision taken on their matter. That in order to avoid frivolous appeals, a stance of "unless new evidence is submitted/provided there will be no review".

A right of review would be given against a decision of No Further Action by the Assessment Sub Committee and any decision and against any sanction determined or imposed by the Determinations Sub Committee.

Such request for a review to be received within 28 days of the decision by the relevant Sub Committee.

Appendix One	The authority's Code of Conduct
Appendix Two	Flowchart of procedure
Appendix Three	Informal Resolution Procedure