



Procedure for Local Assessment of Member Code of Conduct Complaints

Definitions

Code of Conduct	The relevant Code or Codes of Conduct adopted by the Member's council or councils
Independent Person	The person appointed by the County Council under section 28(7) of the Localism Act 2011 whose views may, and sometimes must, be sought
Investigating Officer	The person appointed by the Monitoring Officer to undertake an Investigation
Investigation	An investigation undertaken by the Investigating Officer
Local Resolution	An informal resolution of a complaint including the matters set out at paragraph 5 of this Procedure
Member	The Councillor of the County Council or Town/Parish Council who is the subject of a complaint under this Procedure
Monitoring Officer	The County Council's statutory officer who oversees the assessments and investigations of complaints against Members under the Code of Conduct

1. Introduction

The Localism Act 2011 requires that the Council adopt arrangements for dealing with complaints of breach of the Code of Conduct by both County Council Members and Parish Council Members.

This document sets out the procedure that will apply when complaints are made about Members.

Where a complaint is justified, the Council's Monitoring Officer will seek to resolve it swiftly to the satisfaction of the complainant using Local Resolution whenever possible. Complaints will only be referred for investigation as a last resort in view of the disproportionate amount of time involved and the limited sanctions available to the Standards Committee.

Any person may make a written complaint to the Council's Monitoring Officer alleging that a Councillor has acted in breach of the Code of Conduct for Members.

This procedure should be read in conjunction with the Council's Local Determination Procedure, which applies to the process where an investigation has been completed.

2. Initial Notification of Complaint

- 2.1 Unless paragraph 2.2 applies, the Member who is the subject of the complaint shall, as soon as practicable after the complaint is received, be informed in writing by the Monitoring Officer of the complaint. The Member shall be sent a summary or a full copy of the complaint, and invited to comment upon it.
- 2.2 The Monitoring Officer shall identify which paragraphs of the Code of Conduct have allegedly been breached and (unless the complainant has requested and been granted confidentiality) the name of the complainant.
- 2.3 The Monitoring Officer may withhold the complainant's identity from the Member if s/he considers that disclosure would be against the public interest or might prejudice any future investigation, or where non-disclosure has been specifically requested by the complainant for what the Monitoring Officer considers are good reasons.
- 2.4 Where the Monitoring Officer does not agree to keep the complainant's identity confidential, the complainant shall be given the opportunity to seek to withdraw the complaint (or to ask for it to be considered anonymously under paragraph 2.6 below).
- 2.5 The Monitoring Officer, in consultation with the Independent Person, may apply the Habitual or Vexatious Complaints Policy at Appendix 2 to a complaint where appropriate.
- 2.6 Complaints made anonymously will warrant consideration only if sufficient information is provided to enable them to be considered. They will usually need to be accompanied by evidence indicating an exceptionally serious or significant matter.
- 2.7 The Monitoring Officer may reject complaints without notifying the Member where s/he considers that it is clear from the details of the complaint that the Member was

not acting in his or her capacity as a Member at the time of the alleged failure to comply with the Code of Conduct.

- 2.8 Where a complaint made to the Monitoring Officer relates to the conduct of a Town or Parish Councillor towards the Clerk, it is recommended in all cases unless exceptional circumstances can be shown that the complaint should be made by the Chair or the Council as a whole.

3. Initial Assessment

- 3.1 The Monitoring Officer, in consultation with the Independent Person where appropriate, will, as soon as reasonable, and normally within 20 working days of receipt of the complaint, consider and decide if any action should be taken on it. The Assessment Criteria contained in Appendix 3 will be applied. Assessment may in some circumstances be delayed if a police or other (for example, internal Audit) investigation is first warranted.

- 3.2 The Monitoring Officer will decide either:

- (a) That no action should be taken in respect of it;
- (b) To seek local resolution;
- (c) To refer the complaint for investigation; or
- (d) To refer the complaint to the Standards Committee.

- 3.3 Where the complaint is against a person who is no longer a Member of the Council, but is a member of another relevant authority, the Monitoring Officer may instead refer the complaint to the Monitoring Officer of that other relevant authority if s/he thinks it more appropriate to do so.

- 3.4 If witnesses to the circumstances giving rise to the complaint are named by the complainant or by the Member, they may be contacted at this stage for comment. The complainant's and the Member's identity may be disclosed to any such witnesses.

- 3.5 After making the decision, the Monitoring Officer will produce a written decision which will include the main points considered, the conclusion and the reasons for that conclusion.

- 3.6 The decision will be sent as soon as possible to the complainant and to the Member who is the subject of the complaint.

- 3.7 That decision will be available for inspection by the public at the offices of the Council for 6 years beginning with the date of the decision. However, the decision will not be made available for inspection until the Member who was the subject of the complaint has received a copy of the decision.

- 3.8 A copy of the decision will also be sent to the clerk of the relevant parish/town council where applicable.

4. No action to be taken in respect of the complaint

4.1 Where the Monitoring Officer decides that no further action is warranted in relation to the complaint, the complaint will be closed and there is no appeal process.

5. Local Resolution

5.1 The Monitoring Officer will establish whether a complaint is suitable to be resolved informally before or alternatively to taking a decision on whether the complaint merits formal investigation. This may involve:

- (a) Exploring whether the Member is prepared to apologise for the act or omission complained of;
- (b) Arranging for the Member who is the subject of the complaint to attend a training course;
- (c) Arranging for that Member and the complainant to engage in a process of conciliation;
- (d) Such other steps (not including an investigation), as appear appropriate to the Monitoring Officer.

6. Referral by Monitoring Officer for investigation

6.1 Where the Monitoring Officer refers the complaint for investigation, the procedure set out in paragraphs 6.4 to 6.10 below will apply.

6.2 The Monitoring Officer may reconsider the complaint at any time if:

- (a) As a result of new evidence or information presented by the Investigating Officer, s/he is of the opinion:
 - (i) The matter is materially more or less serious than may have seemed apparent when the s/he referred it for investigation and
 - (ii) The Monitoring Officer would have made a different decision had s/he been aware of that new evidence or information; OR
- (b) The person who is the subject of the complaint has died; or is seriously ill; or has resigned from the Council, and the Monitoring Officer considers that in the circumstances it is no longer appropriate to continue with an investigation.

6.3 If a matter is referred back to the Monitoring Officer, s/he will reconsider and make one of the decisions set out in paragraph 3.2 above. In forming an opinion for the purposes of paragraph 6.2(a) above, the Monitoring Officer may take account of:

- (a) The failure of any person to co-operate with an investigation; OR
- (b) An allegation that the Member concerned has engaged in a further breach of the Council's Code of Conduct or that of another relevant authority; OR
- (c) An allegation that another member has engaged in a related breach of the Council's Code of Conduct or that of another relevant authority.

6.4 Where the Monitoring Officer decides a complaint merits investigation s/he will appoint an Investigating Officer who may be a Council officer, an officer from another Council, or an external investigator.

- 6.5 The Investigating Officer will follow any guidance issued by the Monitoring Officer on the investigation of complaints. The Investigating Officer should aim to complete the investigation within 3 months of being appointed.
- 6.6 At the end of the investigation, the Investigating Officer may produce a draft report and send copies to the complainant and to the Member for comments on matters of fact. The Investigating Officer will take any such comments received during a period to be specified by the Investigating Officer into account before issuing the final report to the Monitoring Officer.
- 6.7 Where the Investigating Officer's report finds that the Member has not failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person, will review the Investigating Officer's report and if satisfied, will confirm the finding of no failure to comply with the Code of Conduct.
- 6.8 Where paragraph 6.7 applies, the Monitoring Officer will write to the complainant and the Member (and to parish clerk, if relevant) with a copy of the decision and the Investigating Officer's report.
- 6.9 If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the Investigating Officer may be asked to reconsider the report and the conclusions.
- 6.10 Where the Investigating Officer's report finds that the Member has failed to comply with the Code of Conduct, the Monitoring Officer will review the Investigating Officer's report and will then, having consulted the Independent Person, either send the matter for hearing before the Hearing Panel or seek Local Resolution in appropriate cases. Where such Local Resolution is not appropriate or possible the Investigating Officer's findings shall be reported to a Hearing Panel of the Standards Committee for local determination in accordance with the Local Determination Procedure.

7. Withdrawing Complaints

- 7.1 If a complainant requests to withdraw his/her complaint before the Monitoring Officer has made a decision on it, then the Monitoring Officer will decide whether to grant that request.
- 7.2 In making that decision s/he will take into account the following considerations:
- Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
 - Is the complaint such that action can be taken on it, for example, an investigation without the complainant's participation?
 - Is there an identifiable underlying reason for the request to withdraw the complaint? For example, is there information to suggest that the complainant may have been pressured by the member who is the subject of the complaint, or an associate of theirs, to withdraw the complaint?

8. Conflicts of Interest

- 8.1 Where it appears the Monitoring Officer that there is a conflict of interest which prevents the internal investigation of a Code of Conduct complaint, the Monitoring Officer will consider whether external support is required to carry out an investigation.

Appendix 1

Making a complaint

Your details

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, we will tell the following people that you have made this complaint:

- the member(s) you are complaining about
- any other person whom we consider it necessary to inform to properly investigate your complaint.

We will tell them your name and give them a summary or a copy of your complaint. We will give them full details of your complaint where necessary or appropriate to be able to deal with it. If you have serious concerns about your name and a summary, or details, of your complaint being released, please complete section 6 of this form.

Any decision letter on a complaint will identify the complainant (i.e. you) and will be available for inspection by any member of the public for a period of six years following the decision.

Making your complaint

Your complaint will initially be considered, usually within 20 working days, by the Council's Monitoring Officer, in consultation with the Independent Person if appropriate. The Monitoring Officer will decide whether any action should be taken on your complaint. You will be advised of that decision. If the decision is to take action, the Monitoring Officer can appoint an Investigating Officer to investigate the complaint.

If your complaint is investigated and a breach of the Code of Conduct is found, the result will be reported to a Hearing Panel of the Council's Standards Committee which will then decide if there has been a breach of the Members' Code of Conduct and, if so, what action to take.

If you are complaining about more than one member you should clearly explain what each individual person has done which you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the assessment sub-committee when it decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible; about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.

- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should explain whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information. You should consider the relevant Code of Conduct and identify which aspects of it you consider have been breached.

Confidentiality

In the interests of fairness and natural justice, we believe members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary or a copy of the complaint.

We will not withhold your identity, or a summary or the details of your complaint, unless you have exceptional reasons why we should do so.

If you think you have such reasons and want us to consider withholding your identity and/or any details of your complaint, either altogether or for some period of time, you must fully explain what information you want withheld and your reasons for your request to withhold it.

If you do request confidentiality and this is not granted, we will usually allow you the option of withdrawing your complaint. However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we may still proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Additional Help

Complaints must be submitted in writing, via the on-line complaint form or a form can be provided by post or e-mail on request from the Monitoring Officer. However, in line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing the form, please let us know as soon as possible. You should initially contact the Council's Monitoring Officer (whose contact details are given below) who will try to arrange appropriate assistance for you.

Helen Lynch
The Monitoring Officer Durham County Council County Hall
Durham
DH1 5UL
Or
by email helen.lynch@durham.gov.uk

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Data Protection Act

Durham County Council complies with all relevant statutory obligations. Personal information processed by the Council will be handled in accordance with the Council's privacy statement, which can be accessed at www.durham.gov.uk/dataprivacy

Committee Services privacy notice provides more specific information on the data collected and how it is handled, a copy of which can be accessed www.durham.gov.uk/dataprivacy 'legal and democracy' section.

If you have any concerns about how your data is handled, please contact either the Data Protection Officer at DPO@durham.gov.uk or the Information Commissioner's Office casework@ico.org.uk.

Appendix 2

Habitual or Vexatious Complaints Policy

1. Introduction

- 1.1 This policy identifies situations where complainants, either individually or as part of a group, or a group of complainants, might be considered to be “habitual or vexatious” and ways of responding to these situations.
- 1.2 This policy is intended to assist in identifying and managing persons who seek to be disruptive to the Monitoring Officer through pursuing an unreasonable course of conduct.
- 1.3 In this policy:
 - Habitual means: done repeatedly or as a habit.
 - Vexatious means: an complaint brought for the purpose of annoying another person and with no reasonable prospect of success.
- 1.4 Habitual or vexatious complaints can be a problem for officers and Members. The difficulty in handling such complaints is that they are time consuming and wasteful of resources in terms of officer and member time and displace scarce human resources that could otherwise be spent on council priorities. Whilst the Monitoring Officer will endeavour to process all complaints under the local assessment procedure there are times when there is nothing further which can reasonably be done to assist or to rectify a real or perceived problem.

2. Habitual or Vexatious Complainants

- 2.1 For the purpose of this policy, the following definition of habitual or vexatious complainants will be used:

The repeated and/or obsessive pursuit of:

- (i) Unreasonable complaints and/or unrealistic outcomes;

and/or

- (ii) Reasonable complaints in an unreasonable manner.

- 2.2 Prior to considering its implementation, the Monitoring Officer will send a summary of this policy to the complainant to give them prior notification of its possible implementation.
- 2.3 Where complaints continue and have been identified as habitual or vexatious in accordance with the criteria set out in Schedule A, the Monitoring Officer will consult with the Independent Person to seek agreement to treat the complaint as habitual or vexatious and for an appropriate course of action to be taken. Schedule B details the options available for dealing with habitual or vexatious complaints.

- 2.4 The Monitoring Officer will notify complainants in writing of the reasons why their complaint has been treated as habitual or vexatious and the action that will be taken. The Monitoring Officer will also notify the relevant Ward Member (if any) that a constituent has been designated as a habitual and vexatious complainant.
- 2.5 Once a complainant has been determined to be habitual or vexatious, their status will be kept under review after one year and monitored by the Monitoring Officer with reports being taken to Standards Committee as required. If a complainant subsequently demonstrates a more reasonable approach then their status will be reviewed.

Schedule A - Criteria for determining habitual or vexatious complainants

Complainants (and/or anyone acting on their behalf) may be deemed to be habitual or vexatious where previous or current contact with them shows that they meet one of the following criteria. Where complainants:

1. Persist in pursuing a complaint where the local assessment process has been fully and properly implemented and exhausted.
2. Persistently change the substance of a complaint or frequently raise new issues or seek to prolong contact by frequently raising further concerns or questions whilst the complaint is being addressed. (Care must be taken however not to disregard new issues which are significantly different from the original complaint as they need to be addressed as a separate complaint.)
3. Are repeatedly unwilling to accept documented evidence given as being factual or deny receipt of an adequate response in spite of correspondence specifically answering their questions or do not accept that facts can sometimes be difficult to verify after a long period of time has elapsed.
4. Repeatedly do not clearly identify the precise issues which they wish to complain about despite reasonable efforts of officers to help them specify their concerns and/or where the concerns identified do not fall within the remit of the local assessment process.
5. Regularly focus on a trivial matter to an extent which is out of proportion to its significance and continue to focus on this point. It is recognised that determining what a trivial matter is can be subjective and careful judgement will be used in applying this criterion.
6. Has threatened or used physical violence towards employees at any time. This will itself cause personal contact with the complainant and/or their representative to be discontinued and the complaint will, therefore, only be continued to be written communication. The Council must determine that any complainant who threatens or uses actual physical violence towards employees will be regarded as a vexatious complainant. The complainant will be informed of this in writing together with notification of how future contact with the Council is to be made.
7. Have in the course of addressing a complaint to the Monitoring Officer had an excessive number of contacts with the Council, placing unreasonable demands on officers. A contact may be made in person by telephone, letter, email or fax. Judgment will be used to determine excessive contact taking into account a specific circumstance of each individual case.
8. Have harassed or been verbally abusive on more than one occasion towards officers dealing with complaints. Officers recognise that complainants may sometimes act out of character in times of stress, anxiety or distress and will make reasonable allowances for this. Some complainants may have a mental health disability and there is a need to be sensitive in circumstances of that kind.

9. Are known or reasonably considered to have recorded meetings or face to face/telephone conversations without the prior knowledge or consent of the parties involved.
10. Make unreasonable demands on the Council and its employees and fail to accept these may be unreasonable, for example insist on an action being taken by Standards Committee which falls outside of its remit.
11. Make unreasonable complaints which impose a significant burden on the human resources of the Council and where the complaint:
 - (a) Clearly does not have any serious purpose or value; or
 - (b) Is designed to cause disruption or annoyance; or
 - (c) Has the effect of harassing the Council; or
 - (d) Can otherwise fairly be characterised as obsessive or manifestly unreasonable
12. Make repetitive complaints and allegations that ignore the replies the Council has supplied in previous correspondence

Schedule B - Options for dealing with habitual or vexatious complainants

The options below can be used singularly or in combination depending on the circumstances of the case and whether the complaint is ongoing or completed.

1. A letter to the complainant setting out responsibilities for the parties involved if the Monitoring Officer is going to assess the complaint. If terms are contravened, consideration will then be given to implementing other action as indicated below.
2. Decline any contact with the complainant, either in person, by telephone, by fax, by letter, by email or any combination of these provided that one form of contact is maintained. This may also mean that only one named officer will be nominated to maintain contact and the complainant is notified of this person.
3. Notify the complainant in writing, that the Council has responded fully to the points raised and has tried to resolve the complaint but there is nothing more to add and continuing contact on the matter will serve no useful purpose. The complainant will also be notified that the correspondence is at an end, advising the complainant that they are being treated as a habitual or vexatious complainant and as such the Council does not intend to engage in further correspondence dealing with the complaint.

Appendix 3

Assessment Criteria

The following criteria will be taken into account in deciding what action, if any, to take:

1. Has the complainant submitted enough information to satisfy the Monitoring Officer that the complaint should be referred for investigation?

If not, the information provided is insufficient. The only outcome can be that no further action is taken on the complaint and a decision notice to that effect will be issued accordingly.

2. Is the complaint about someone who is no longer a Member of the Council, but is a Member of another authority? If so, does the Monitoring Officer wish to refer the complaint to the Monitoring Officer of that other authority?

If yes, the complaint will be referred to the Monitoring Officer of that other authority to consider if he/she thinks it more appropriate to do so.

3. Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct in the last 3 years? Similarly, has the complaint been the subject of an investigation by other regulatory authorities in the last 3 years?

If yes, there may be nothing more to be gained by further action being taken.

4. Is the complaint about something which happened so long ago that there would be little benefit in taking action now?

If yes, further action will not normally be warranted.

5. Does the complaint appear too trivial to justify the cost or inconvenience of investigation?

If yes, investigation will not be warranted.

6. Does the complaint appear to be malicious, politically motivated or tit-for-tat?

If yes, further action will not normally be warranted.

7. Is the complaint anonymous?

If yes, no action will normally be taken, unless there are compelling reasons to suggest otherwise. For example, if it includes documentary evidence or photographic evidence indicating an exceptionally serious or significant matter.

8. Has the Member already apologised or offered a remedy?

If yes, and the remedy appears adequate, then further action would not be warranted.