



Procedure for Member Code of Conduct Complaints

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Definitions

Authority

The Subject Member's Council at the time of an allegation.

Code of Conduct

The relevant Code or Codes of Conduct adopted by the Subject Member's council or councils.

Complainant(s)

The person(s) making the complaint that a Subject Member has breached the Code of Conduct.

Head of Legal and Democratic Services

The designated Proper Officer for the determination of "exempt information" as defined in Schedule 12A to the Local Government Act 1972.

Independent Person

The person appointed by the County Council under section 28(7) of the Localism Act 2011 whose views may, and sometime must, be sought.

Informal Resolution

An informal resolution of a complaint including the matters set out at paragraph 5 of this Procedure.

Investigating Officer

The person appointed by the Monitoring Officer to undertake the investigation of an allegation.

Investigation

An investigation undertaken by the Investigating Officer.

Legal Advisor to the Hearing Panel

The Monitoring Officer, or in their absence the Deputy Monitoring Officer or their representative.

Monitoring Officer

The person appointed in accordance with section 5 of the Local Government and Housing Act 1989 who oversees investigations into complaints made against Subject Members under the Code of Conduct.

Subject Member

The person whom the complaint has been made against.

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 Informal 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.

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2. How to make a complaint

2.1 Complaints must be submitted via the online [Code of Conduct complaint form](#). However, if you require assistance to make your complaint or you would prefer the form to be provided by post or email, please email democraticservices@durham.gov.uk or telephone 03000 269712.

2.2 When making your complaint you should include the following information:

- (a) Your name, address, and other contact details
- (b) The name(s) of the Subject member(s) who the complaint is against and the name of the Council that they represent.
- (c) Details of the complaint including, where possible, date(s) of the alleged misconduct (if you cannot provide exact dates, it is important to give a general timeframe), witnesses and their details and any other supporting information.

2.3 Your address and contact details will not usually be released unless necessary to deal with the complaint. However, we will tell the following people that you have made a complaint:

- the Subject Member(s) whom the complaint is about
- any other person whom we consider it necessary to inform to properly investigate your complaint.

2.4 We will tell the Subject Member(s), your name and give them a summary or a copy of your complaint. We will give them full details of the complaint where necessary or appropriate to be able to deal with it. 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 have serious concerns about your name and the details of your complaint being released, please state these on the complaint form. Please be aware that any decision notice 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.

2.5 Where the Monitoring Officer or a person deputising on their behalf does not agree to keep your identity confidential, you will be given the opportunity to seek to withdraw your complaint (or to ask for it to be considered anonymously). 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.

2.6 The Monitoring Officer or a person deputising on their behalf may also make the decision to withhold your identity from the Subject Member if s/he considers that disclosure might prejudice any future investigation.

2.7 If you wish to withdraw your complaint before the Monitoring Officer or a person deputising on their behalf has made a decision on it, then the Monitoring Officer will decide whether to grant that request.

2.8 In making that decision s/he will take into account the following considerations:

- 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 Subject member who is the subject of the complaint, or an associate of theirs, to withdraw the complaint?

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3. Assessment of complaint

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

3.2 For a complaint to be considered it must fall within the jurisdiction of the Monitoring Officer. The Monitoring Officer or a person deputising on their behalf can only consider complaints where a Subject Member was acting as a councillor or giving the impression that they were acting as a Councillor, or a representative of the Council and that the member was in office at the time of the alleged conduct.

3.3 The Monitoring Officer or a person deputising on their behalf will also take into account the following considerations before deciding if a complaint warrants further consideration under the procedure:

- Where the Member Code of Conduct is not engaged or, the conduct is unlikely to amount to a breach of the Code of Conduct.
- Where a complaint is more than 3 months old and there is no good reason for the delay.
- Where multiple complaints have been submitted of a similar nature.
- Where the complaint has already been subject of an investigation or other action either at the Council or another regulatory authority in the last 3 years.
- Where the complaint appears to be malicious, politically motivated or tit-for-tat.
- Where the Subject Member has already apologised or offered a remedy.

3.4 Once an initial assessment has taken place, the Monitoring Officer or a person deputising on their behalf will decide either:

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

3.5 Where multiple complaints are submitted concerning the same Member(s) and/or are similar in nature the Monitoring Officer or a person deputising on their behalf may decide to consider the complaints under one decision notice.

3.6 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 or a person deputising on their behalf may instead refer the complaint to the Monitoring Officer of that other relevant authority if s/he thinks it more appropriate to do so.

3.7 Where the Monitoring Officer or a person deputising on their behalf requires further information they may contact the complainant, the Subject Member, any witnesses to

the complaint or the Clerk (where applicable). The complainant's and the Subject Member's identity may be disclosed to any such witnesses.

3.8 The Subject Member(s) will be notified that a complaint has been made against them and they will be given 10 working days from the date of the notification to submit any comments they may have. If the Subject Member(s) requires an extension of time to provide their response, they must submit their reasons in writing to the Monitoring Officer or a person deputising on their behalf who will decide if it is appropriate to grant the extension.

3.9 The Monitoring Officer will produce a written decision which will include the main points considered, the conclusion and the reasons for that conclusion. The decision will be sent as soon as possible to the complainant and to the Subject Member who is the subject of the complaint.

3.10 The 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. A copy of the decision will also be sent to the clerk of the relevant Parish/Town council where applicable.

4. Informal Resolution

4.1 The Monitoring Officer or a person deputising on their behalf 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 is called informal resolution. Informal resolution may involve:

- (a) Exploring whether the Subject Member(s) are prepared to apologise for the act or omission complained of;
- (b) Arranging for the Subject Member(s) who is the subject of the complaint to attend a training course;
- (c) Arranging for the Subject Member(s) 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.

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5. Investigations

5.1 The Monitoring Officer will consider the following questions before referring the complaint to an investigation:

- Has the complainant submitted enough information?
 - How long ago the alleged complaint occurred?
 - Has the complaint already been the subject of an investigation or other action either at the Council or another regulatory authority in the last 3 years?
 - Does the complaint appear to be malicious, politically motivated or tit-for-tat?
- Has the Subject Member already apologised or offered a remedy?
- Does the complaint justify the cost of an investigation?

5.2 Where the Monitoring Officer decides that a complaint should be referred for investigation, and after consulting the Independent Person, they will appoint an Investigating Officer. This may be another officer of the council, an officer of another Council or an external investigator.

5.3 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.

5.4 The Investigating Officer will normally write to the Subject Member and the complainant, and they may also ask to speak or meet with them. This will be to gain a greater understanding of the nature of the complaint and find out who they need to interview as part of their investigation.

5.5 At the end of the investigation, the Investigating Officer may produce a draft report and send copies to the complainant and to the Subject 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.

5.6 Where the Investigating Officer 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.

5.7 Where paragraph 5.6 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.

5.8 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.

5.9 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 Informal Resolution in appropriate cases. Where such Informal 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.

5.10 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.

5.11 If a matter is referred back to the Monitoring Officer, s/he will reconsider and make one of the decisions set out in paragraph 5.10 above. In forming an opinion for the purposes of paragraph 5.10(a) above, the Monitoring Officer may take account of:

- i) The failure of any person to co-operate with an investigation; OR
- ii) An allegation that the Subject Member concerned has engaged in a further breach of the Council's Code of Conduct or that of another relevant authority; OR
- iii) 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. Hearings

6.1 Where an investigation finds evidence of a failure to comply with the Code of Conduct and informal resolution is not appropriate or possible, the investigation findings will be reported to a Hearing Panel of the Standards Committee for local determination. The purpose of the hearing is to decide whether or not the Subject Member has failed to follow the Code of Conduct and, if so, to decide whether or not any sanction should be applied and what form any sanction should take.

6.2 The Hearing Panel will usually be convened within three months beginning on the date on which the Monitoring Officer receives the Investigator's Monitoring Officer report.

6.3 The hearing shall not be held until at least fourteen days after the date on which the report was sent to the Subject Member unless they agree to the hearing being held earlier.

6.4 The Hearing Panel will usually aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total.

6.5 The Hearing Panel will comprise three Members of the Standards Committee. A quorum of the Hearing Panel will be three Members. If the complainant or subject member is a member of the Standards Committee, they will not sit on the Hearing Panel.

6.6 The Hearing Panel will act in an inquisitorial, rather than an adversarial manner, seeking the truth in relation to the conduct of the Subject Member on the balance of the information available to it. The Hearing Panel can commission further investigation or information where it needs to do so in order to come to a decision.

6.7 It is expected that the Hearing Panel will reach a decision by consensus. In the absence of a consensus, each Member of the Hearing Panel will have one vote and all matters/issues will be decided by a simple majority of votes cast.

6.8 Meetings of the Hearing Panel will be open to the public and press unless confidential information or exempt information (within the meaning of Schedule 12A to the Local Government Act 1972) is likely to be disclosed.

6.9 The Hearing Panel can make one of the following findings:

- that the Subject Member has not failed to follow the Code of Conduct; or
- that the Subject Member has failed to follow the Code of Conduct, but no action needs to be taken; or
- that the Subject Member has failed to follow the Code of Conduct and should be sanctioned.

6.10 If the Hearing Panel finds that the Subject Member has failed to follow the Code of Conduct and that they should be sanctioned, it may take any one or a combination of the following actions:

- censure the Subject Member (this is the only form of sanction available when dealing with a person who is no longer a Councillor);
- restriction to the access and use of resources of the Authority for a maximum period of six months, provided that any such restrictions imposed upon the Subject Member:
 - are reasonable and proportionate to the nature of the breach; and
 - do not unduly restrict the person's ability to perform the functions of a Member.
- a requirement to give a written apology;
- the removal of the Subject member from a committee;
- a requirement to undergo training.

6.11 The Hearing Panel will announce its decision at the end of the hearing. As soon as practicable after the hearing, the Hearing Panel will give its full written decision to the Complainant, the Subject Member and (if applicable) the Clerk to the Town or Parish Council..

6.12 A summary of the decision and reasons for that decision will be published on the Council's website which will include a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person and the reasoning of the decision maker and any sanction applied.

7. Habitual or Vexatious Complaints

7.1 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.

7.2 In this policy habitual means done repeatedly or as a habit. Vexatious means a complaint brought for the purpose of annoying another person and with no reasonable prospect of success.

7.3 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.

7.4 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.

7.5 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.

7.6 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.

7.7 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 complaints

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:

- i. Persist in pursuing a complaint where the local assessment process has been fully and properly implemented and exhausted.
- ii. 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.)
- iii. 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.
- iv. 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.
- v. 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.
- vi. 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.
- vii. 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.
- viii. 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.

- ix. 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.
- x. 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.
- xi. 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
- xii. 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 complaints

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.

- i. 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.
- ii. 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.
- iii. 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.