



## PROCEDURE FOR LOCAL ASSESSMENT OF COMPLAINTS

May 2016

## 1. Introduction

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

The Council's Monitoring Officer will seek to resolve complaints swiftly to the satisfaction of the complainant using local resolution whenever possible. Complaints will only be referred for local investigation as a last resort in view of the disproportionate amount of time involved and the limited sanctions available to the Standards Committee under the new legislation.

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.

Any such complaint should be sent using the Complaint Form at **Appendix 1 to the Monitoring Officer, Durham County Council County Hall Durham DH1 5UL**

The following procedure will normally be followed on receipt of such a complaint.

This procedure should be read in conjunction with the **Council's Local Determination Procedure.**

## 2. Initial Notification of Complaint

- 2.1 Unless paragraph 2.2 applies the member who is the subject of the complaint will as soon as practicable after the complaint is received be informed in writing by the Monitoring Officer of the nature of complaint, which paragraphs of the Code of Conduct have been allegedly breached and (unless the complainant has requested and been granted anonymity) the name of the complainant.
- 2.2 The Monitoring Officer may withhold this information from the member subject of the complaint 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 may be good reasons.
- 2.3 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.

## 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.**
- 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
  - (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 After making the decision, the Monitoring Officer will produce a written summary of the decision which will include the main points considered, the conclusion and the reasons for that conclusion.

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

That summary will be available for inspection at the offices of the Council for 6 years beginning with the date of the decision. However, the summary will not be made available for inspection, until the member who was the subject of the complaint has received a written summary of the decision.

3.5 A written summary 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 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 paragraph 6.3 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 investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent person, may seek local resolution to the satisfaction of the complainant in appropriate cases. Where such local resolution is not appropriate or possible the investigation findings will be reported to a Hearings Panel of the Standards Committee for local determination.

6.5 A Hearing Panel shall, in the absence of good reason to the contrary, be convened within three months of the completion of the Investigating Officer's report to hear and determine any allegation that a Councillor has failed or may have failed to comply with the Code of Conduct for Members. The procedure for Hearing Panels contained in the Local Determinations Procedure shall be complied with.

The Hearing Panel shall comprise three Members of the Standards Committee selected by the Monitoring Officer. A quorum of the Hearing Panel will be three Members.

6.6 The Hearing Panel shall make one of the following findings, namely:-

- (a) That the Member who was the subject of the Hearing had not failed to comply with the Code of Conduct of any authority concerned; or
- (b) That the Member who was the subject of the Hearing had failed to comply with the Code of Conduct of an authority concerned, but that no action needs to be taken in respect of the matters which were considered at the Hearing; or
- (c) That the Member who was the subject of the Hearing had failed to comply with the Code of Conduct of an authority concerned and that action should be taken.

## 7. **Decision to take no action in respect of allegation**

7.1 If the Hearing Panel decides that no action should be taken in respect of the complaint, it must take reasonable steps to give written notice of the decision and the reasons for it to:

- (a) The complainant;
- (b) The person who was the subject of the complaint; **AND**

(c) The clerk of the relevant parish/town Council where applicable

It shall endeavour to send this notice within 5 working days of the Hearing Panel's decision.

## 8. **Withdrawing Complaints**

8.1 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.

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?

## Durham County Council

### COMPLAINT FORM – Alleged Breach of Members’ Code of Conduct

#### Your details

1. Please provide us with your name and contact details

<b>Title:</b>	
<b>First name:</b>	
<b>Last name:</b>	
<b>Address:</b>	
<b>Daytime telephone:</b>	
<b>Evening telephone:</b>	
<b>Mobile telephone:</b>	
<b>Email address:</b>	

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 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.

2. Please tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted member of an authority
- Member of Parliament
- Local authority monitoring officer
- Other council officer or authority employee

3. Equality monitoring questions

We have attached an Equality Monitoring Form to the back of this complaint form which you are invited to complete as well.

**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.

4. Please provide us with the name of the member(s) you believe have breached the Code of Conduct and the name of the authority of which they are a member

Title	First name	Last name	Council or authority name

5. Please explain in this section (or on separate sheets) what the member has done which you believe breaches the Code of Conduct. 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.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

**Only complete this next section if you are requesting that your identity or details of your complaint is kept confidential**

6. 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 of the complaint and then further details of it if there is a decision to investigate it or take other action on 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 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 cross out the statement in the box below giving your consent to such



disclosure. You must also attach to this form a separate sheet which fully explains what information you want withheld and your reasons for your request to withhold it.

I understand and agree that my name and details of this complaint will be disclosed to the persons mentioned in paragraph 1 above.

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**

- 7. Complaints must be submitted in writing. This includes fax and email submissions. 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 this 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.

.....  
**Signed**

.....  
**Dated**

**This form once completed should be sent, along with any supporting documents, to:**

**Colette Longbottom  
The Monitoring Officer  
Durham County Council  
County Hall  
Durham  
DH1 5UL**

## Equality Monitoring Form

Durham County Council operates an Equality Policy. To help us make sure that everybody is treated fairly and equally we need to know who is making complaints. This information will help us to develop and change our policies and practices to ensure that no one is discriminated against.

To help us to do this we request that you complete the questions below. You do not have to do so but this information would be helpful to us. All of the information you give will be treated with the strictest of confidence and will be used for monitoring purposes only.

### Are you:

Male   
Female

### What is your age group?

15 and under     16-24     25-39     40-59     60-64   
65-74     75+

### Do you have any long standing illness or disability?

(Long standing means anything that has troubled you over a period of time or that is likely to affect you over a period of time)

Yes   
No

If yes, does this illness or disability limit your activities in any way?

Yes   
No

Please state the impairment type(s) which applies to you:

Mobility   
Visual impairment   
Hearing Impairment/Deaf   
Mental Health diagnosis   
Other   
Prefer not to say

### What is your ethnic group?

#### A. White

British   
Irish   
Other  Please state .....

#### B. Mixed

White and Black Caribbean

- White and Asian
- White and Black African
- Any other mixed background  Please state .....

**C. Asian or Asian British**

- Indian
- Bangladeshi
- Pakistani
- Any other Asian background  Please state .....

**D. Black or Black British**

- Caribbean
- African
- Any other Black background  Please state .....

**E. Chinese**

**F. Any other ethnic group**

 Please state .....

**What is your sexual orientation?**

- Bisexual
- Gay Man
- Gay women/lesbian
- Heterosexual/straight
- Other
- Prefer not to say

**What is your religion? (Tick one box only)**

- None
- Christian
- Buddhist
- Hindu
- Jewish
- Muslim
- Sikh
- Any other religion  Please state. ....
- Prefer not to say

## Habitual or Vexatious Complaints Policy

### 1. Introduction

1.1.1 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.

1.1.2 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.

1.2 In this policy:

Habitual means: done repeatedly or as a habit.

Vexatious means: an action brought for the purpose of annoying the opponent 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 endeavours 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 Ward Member that a constituent has been designated as a habitual and vexatious complainant to Standards Committee.

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 criteria.
- 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 to have recorded meetings or face to face/telephone conversations without prior knowledge and consent by 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:
  - Clearly does not have any serious purpose or value; or
  - Is designed to cause disruption or annoyance; or
  - Has the effect of harassing the Council; or
  - Can otherwise fairly be characterised as obsessive or manifestly unreasonable
  
- 12) Make repetitive complaints and allegations which ignore the replies which 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.



**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 simply 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.