

Code of Conduct Procedure

Arrangements for dealing with standards allegations

1 Context

- 1.1 These Arrangements set out how a complaint may be made that a member of this Council has failed to comply with the Code of Conduct and sets out how the Council will deal with allegations of a failure to comply with the Code of Conduct. Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that one of its members (elected or co-opted) has failed to comply with the Code of Conduct can be investigated and decisions made on such allegations.
- 1.2 The arrangements must provide for the Council to appoint a Monitoring Officer and at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage, or by a member against whom an allegation has been made.

2 The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for members, which is included at Appendix 17 of the Council’s Constitution, available on the Council’s website.

3 Making a complaint

- 3.1 The Council regards complaints concerning the Code of Conduct very seriously and before invoking the formal procedure a complainant might wish to consider an informal meeting with the Monitoring Officer to discuss other options available. The Council encourages a process of informal resolution and the Monitoring Officer is always willing to assist with this whenever possible but cannot be asked to determine the validity of a complaint in such a process, this can only be decided after following the procedures set out below. Complaints that a member of this Council has failed to comply with the relevant authority’s Code of Conduct, should be made in writing to the Monitoring Officer at helen.edwards2@norfolk.gov.uk or at County Hall, Martineau Lane, Norwich, NR1 2DH.
- 3.2 Any complaint should be submitted using the Council’s complaint form, which can be downloaded from the Council’s website, next to the Code of Conduct. This will ensure all relevant information is provided. Written complaints that are not on the Council’s form will be accepted if the relevant information is provided. The complainant’s name and a contact address should be provided, so that receipt of the complaint can be acknowledged, and information on the progress of the complaint provided. If a complainant wishes to keep their name or address confidential this should be indicated in the space provided on the complaint form, in which case the Council will not disclose the name and address to the member against whom the complaint is made, without the complainant’s prior consent.

The Council does not normally investigate anonymous complaints (where no name has been provided), unless there is a clear public interest in doing so.

- 3.3 The Monitoring Officer will acknowledge receipt of the complaint within five working days of receiving it and will keep the complainant informed of the progress of the complaint thereafter.
- 3.4 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 arrangements in respect of complaints of member misconduct.
- 3.5 The Monitoring Officer has the right to delegate these functions to a nominated deputy, or to an independent investigator, in the event of any conflict of interest or as the Monitoring Officer considers necessary.

4 How will the complaint be dealt with?

- 4.1 The Monitoring Officer will review every complaint received and shall undertake an initial assessment of the complaint to determine whether the complaint is admissible, and may then consult with the Independent Person before taking a decision as to whether:
 - 4.1.1 it may be suitable for alternative resolution without investigation or,
 - 4.1.2 it warrants investigation, or
 - 4.1.3 it does not warrant any further action.
- 4.2 For the complaint to be admissible it must be in a legible format, relate to an existing member or co-opted member of the Council and be a complaint, which if proven, would be a breach of the applicable Code of Conduct. The Monitoring Officer will notify the complainant in writing of the outcome of the initial review giving reasons for the determination.
- 4.3 In determining whether an admissible complaint should be recommended for investigation or alternative resolution the Monitoring Officer will have regard to a range of factors including the following:
 - 4.3.1 Whether there is enough information upon which to base a decision;
 - 4.3.2 Whether the complaint has already been the subject of an investigation or other action relating to the Code of Conduct or the subject of an investigation by other regulatory authorities;
 - 4.3.3 The seriousness of the alleged action by a Member;
 - 4.3.4 Does the complaint appear to be simply malicious or vexatious;
 - 4.3.5 Did the action complained of occur recently or not? A complaint that has not been received within 3 months of the alleged misconduct is not likely to be recommended for investigation or alternative resolution unless there are exceptional circumstances e.g. allegation of bullying or harassment;
 - 4.3.6 Does it appear that there can be no breach of the Code of Conduct because for example, the matter relates to the member's private life (without any relevance to their council duties), something the member

has done in a private capacity or is about dissatisfaction with a decision of the authority?

- 4.3.7 Taking account of the member's response to the complaint when notified of it, for example whether the member has apologised or admitted the error
 - 4.3.8 Whether the matter is considered suitable for alternative resolution and either the subject member or the complainant is not prepared to undertake alternative action.
- 4.4 It should be noted that the complaint process will be confidential. The investigation and draft report will be shared only with the subject member, and the complainant, on a confidential basis. Papers issued to any sub-committee will be published as exempt papers. The formal decision notice of the committee, at the end of the process, will be a public notice.
- 4.5 An initial decision on how the complaint will be dealt with will normally be taken within 14 days of receipt and the complainant will be informed, in writing, of the decision and next steps, if any. If the initial decision is likely to take longer than 14 days, the complainant will be advised of this, and given an explanation. Unless exceptional circumstances exist that indicate otherwise, the Monitoring Officer will also inform the member against whom the complaint is directed of the receipt and nature of any admissible complaint and invite their comments. Exceptional circumstances include (but are not limited to) situations where the monitoring officer considers that it is not in the subject members' best interests to be advised at this stage, for example if the subject member is ill, or has had a recent bereavement, or where the monitoring officer considers that it would prejudice a fair investigation to advise the subject member. Any such decision will be confirmed with the Independent Person. In all other circumstances, the subject member will also be kept informed throughout the investigation of the expected timescale and process.
- 4.6 It is expected that both the subject member and the complainant will co-operate with the investigation process, and with requests for a meeting or provision of information, within a reasonable period of time. If, in the opinion of the Investigating Officer, either party is not co-operating fully, the complaint may be concluded based on the evidence available to the Investigating Officer at the time. In this case a draft report will be prepared and sent to the parties for comment, but the process will not be delayed by non-co-operation.
- 4.7 Where the Monitoring Officer requires additional information in order to come to a recommendation, they may request it from the complainant, and may also request additional information from the member concerned. If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power, or may have an obligation, to call in the Police or other regulatory agencies as an alternative to, or in addition to, referring the matter for investigation.

- 4.8 When a matter is referred for alternative resolution or investigation, it does not mean that the Monitoring Officer has made a decision on the allegation, it simply means that the Monitoring Officer believes the alleged conduct, if proven, may amount to a failure to comply with the Code of Conduct and that some action should be taken in response to the complaint.

5 What happens if the complaint is referred for alternative resolution?

- 5.1 The Monitoring Officer may conclude that the matter can reasonably be resolved without the need for an investigation and hearing. In such a case, the Monitoring Officer may consult with the Council's Independent Person and the complainant and seek to agree what the complainant considers to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that the conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will inform the Chair of the Standards Committee but will take no further action. If the member concerned is not prepared to participate in an alternative resolution process or undertake any proposed remedial action, the Monitoring Officer will determine whether the complaint should then be investigated and referred to the Standards Committee.

6 If the complaint is referred for investigation how is the investigation conducted?

- 6.1 If the Monitoring Officer decides that a complaint merits formal investigation, the Monitoring Officer may either carry out the investigation, or may 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 or Monitoring Officer will decide whether it is necessary to meet with, or speak, to the complainant to understand the nature of the complaint and so that the complainant can explain their understanding of events and suggest what documents need to be seen, and who needs to be interviewed. Documents will be limited to what, in the opinion of the Monitoring Officer or Investigating Officer, is reasonably necessary to investigate the complaint.
- 6.2 The Investigating Officer or Monitoring Officer would normally write to the subject member and provide them with a copy of the complaint and ask the member to provide their explanation of events, and to identify what documents they suggest need to be seen and who needs to be interviewed.
- 6.3 In exceptional cases, where it is appropriate to keep the complainant's identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Investigating Officer or Monitoring Officer can delete the complainant's name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

- 6.4 At the end of the investigation, the Investigating Officer or Monitoring 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 both an opportunity to identify any matter in that draft report with which they disagree or consider requires more consideration. The draft report will include statements taken during the investigation, and relevant documents.
- 6.5 Having received and taken account of any comments made on the draft report, the Investigating Officer will send the final report to the Monitoring Officer, or the Monitoring Officer will produce the final report. A copy of the final report will also be sent to the Independent Person.
- 6.6 The length of time taken for an investigation will depend on the complexity of the complaint, and the availability of witnesses. The investigation will normally be completed within one month of being referred for investigation. If the complaint is complex, or involves multiple complainants, this will extend the time needed for the investigation, and the Monitoring Officer may advise the complainant of a longer timescale being required, at the start of the investigation. The complainant and the member concerned will be advised as soon as possible if it becomes apparent that the investigation cannot be completed in the stated timescale, and a revised timescale will be given.

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

- 7.1 Either the Investigating Officer's (if one has been appointed) or the monitoring Officer's report will be forwarded to the Independent person for a view to be sought on the report. If, after having considered the views of the Independent Person, the Monitoring Officer is satisfied that the report is sufficient to conclude that there is no evidence of a failure to comply with the Code of Conduct, the Monitoring Officer will write to the complainant and to the member concerned, stating that they are satisfied with the report, and give both a copy of the final report. The Monitoring Officer will report that there is no evidence of a failure to comply with the Code of Conduct to the Standards Committee for information and will take no further action. If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation report is sufficient, he or she may ask the Investigating Officer to reconsider the report.

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

- 8.1 The Monitoring Officer will seek the views of the Independent Person.
- 8.2 A hearings sub-committee of Standards Committee (as set out in para 11 below) will then be convened, and the Monitoring Officer will report the findings of the investigation to the hearings sub-committee of the Standards Committee which will conduct a hearing before deciding whether the member has failed to comply

with the Code of Conduct and, if so, whether to take any action in respect of the member.

- 8.3 The Monitoring Officer will conduct a “pre-hearing process”, requiring the member to give their 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 sub-committee may issue directions as to the manner in which the hearing will be conducted.
- 8.4 At the hearing, the Investigating Officer or Monitoring Officer will present the report, call such witnesses as considered necessary and make representations to substantiate the conclusion that the member has failed to comply with the Code of Conduct.
- 8.5 For this purpose, the Investigating Officer or Monitoring Officer may ask the complainant to attend and give evidence to the hearings sub-committee. The member will then have an opportunity to give evidence, to call witnesses and to make representations to the hearings sub-committee as to why they consider that they did not fail to comply with the Code of Conduct.
- 8.6 The hearings sub-committee, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint.
- 8.7 If the hearings sub-committee concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the hearings sub-committee will then consider what action, if any, the hearings sub-committee should take as a result of the member’s failure to comply with the Code of Conduct.
- 8.8 In doing this, the hearings sub-committee will give the member an opportunity to make representations to the sub-committee and will take into account any views of the Independent Person, and will then decide what action, if any, to take in respect of the matter.

9 What action can the hearings sub-committee take where a member has failed to comply with the Code of Conduct?

- 9.1 The sub-committee has the authority to take action in respect of individual members of the Council as may be necessary to promote and maintain high standards of conduct. The hearings subcommittee will take advice from the Monitoring Officer and seek the views of the Independent Person, in respect of the sanctions (if any) that might be appropriate in a particular case, and it is expected that the more severe sanctions will be reserved for more serious breaches of the Code of Conduct. The sanctions available are that the hearings sub-committee may:
 - 9.1.1 Censure or reprimand the member;
 - 9.1.2 Publish its findings in respect of the member’s conduct;
 - 9.1.3 Report its findings to Council for information

- 9.1.4 Recommend to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that they be removed from any or all committees or subcommittees of the Council, including joint committees or sub-committees for a stipulated period;
 - 9.1.5 Removing from all outside appointments to which the member has been appointed or nominated by the Council for a stipulated period;
 - 9.1.6 Instruct the Monitoring Officer to arrange appropriate training for the member;
 - 9.1.7 Withdraw for a stipulated period, facilities provided to the member by the Council, such as a computer, website and/or email and Internet access, to the extent that such a withdrawal is reasonable and proportionate to the nature of the breach and does not unduly restrict the person's ability to perform the functions of a member;
 - 9.1.8 Exclude the member from the Council's offices or other premises for a stipulated period, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings; or
 - 9.1.9 Limit access to officers for a stipulated period or require communication between the member and officers or other persons or bodies to be confined to certain forms or ceased for a stipulated period.
- 9.2 The hearings sub-committee has no power to suspend or disqualify the member or to withdraw members' allowances.

10 What happens at the end of the hearing?

- 10.1 At the end of the hearing, the Chair will state the decision of the hearings subcommittee as to whether the member failed to comply with the Code of Conduct and as to any actions which the hearings sub-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 hearings subcommittee, and send a copy to the complainant, to the member, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

11 What is the hearings sub-committees?

- 11.1 The hearings sub-committee is a sub-committee of the Council's Standards Committee. The subcommittee will comprise 3 members of the Standards Committee and be made up of members drawn from at least two different political parties and where possible will be gender balanced. If an appropriately constituted hearings sub-committee cannot be drawn from the members of the Standards Committee, it will be drawn from a panel of named substitutes who have received appropriate training alongside the Standards Committee members. The Independent Person is invited to attend all meetings of the sub-committee and their views are sought and taken into consideration before the sub-committee takes any decision on the matters before them. Insofar as is possible, members will be selected who have no connection with the subject matter of the complaint.

12 Who is the Independent Person?

12.1 The Independent Person is a person who has applied for the post following advertisement of a vacancy and is appointed by a positive vote from a majority of all the members of Council. A person cannot be “independent” if they:

12.1.1 Is, or has been within the past five years, a member, co-opted member or officer of the authority, with the exception that former Independent Members of Standards Committees can be appointed as Independent Persons;

12.1.2 Is or has been within the past five years, a member, co-opted member or officer of a parish council within the authority’s area, or

12.1.3 Is a relative, or close friend, of a person within paragraph 12.1.1 or 12.1.2 above. For this purpose, “relative” means:

12.1.3.1 Spouse or civil partner;

12.1.3.2 Living with the other person as husband and wife or as if they were civil partners;

12.1.3.3 Grandparent of the other person;

12.1.3.4 A lineal descendant of a grandparent of the other person;

12.1.3.5 A parent, sibling or child of a person within paragraphs 12.1.3.1 or 12.1.3.2;

12.1.3.6 A spouse or civil partner of a person within paragraphs 12.1.3.3, 12.1.3.4 or 12.1.3.5; or

12.1.3.7 Living with a person within paragraphs 12.1.3.3, 12.1.3.4 or 12.1.3.5 as husband and wife or as if they were civil partners.

13 Right of Appeal

13.1 There is no right of appeal for the complainant or for the member against a decision of a hearings sub-committee. If the complainant considers that the Council has failed to deal with the complaint properly, they may make a complaint to the Local Government Ombudsman.

STANDARDS COMMITTEE: RULES OF PROCEDURE FOR HEARINGS

Interpretation

1. 'Member' means the member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the member's nominated representative.
2. 'Investigator' means the Monitoring Officer or other investigating officer and their nominated representative.
3. 'Committee' also refers to 'a standards sub-committee' or “hearings sub committee” that may be considering the allegation against a member.
4. 'Legal Adviser' means the officer responsible for providing legal advice to the

Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the authority or someone appointed for this purpose from outside the authority.

Representation

5. The member may be represented or accompanied during the meeting by a Solicitor, Counsel or, with the permission of the Committee (which will not be unreasonably withheld), another person.

Legal Advice

6. The Committee may take legal advice from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the member and the investigator if they are present.

Setting the Scene

7. After all the members and everyone involved have been formally introduced, the Chair should explain how the Committee is going to run the hearing.

Preliminary Procedural Issues

8. The Committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

Making Findings of Fact

9. After dealing with any preliminary issues, the Committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the investigator's report.
10. If there is no disagreement about the facts, the Committee can move on to the next stage of the hearing (paragraph 18).
11. If there is a disagreement, the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Committees permission, the investigator may call any necessary supporting witnesses to give evidence. The Committee should give the member an opportunity to challenge any evidence put forward by any witness called by the investigator.
12. The member should than have the opportunity to make representations to support their version of the facts and, with the Committee's permission, to call any necessary witnesses to give evidence.
13. At any time, the Committee may question any of the people involved or any of

the witnesses and should allow the investigator to challenge any evidence put forward by witnesses called by the member.

14. If the member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.
15. If the member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, good reasons must be given for not mentioning it before the hearing. If the investigator is not present, the Committee will consider whether or not it would be in the public interest to continue in the Investigator's absence. After considering the member's explanation for not raising the issue at an earlier stage, the Committee may then: -
 - 15.1 Continue with the hearing, relying on the information in the investigator's report;
 - 15.2 Allow the member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary: or
 - 15.3 Postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if not already present.
16. The Committee will usually move to another room to consider the representations and evidence in private.
17. On their return, the Chair will announce the Committee's findings of fact.

Did the Member fail to follow the Code?

18. The Committee then needs to consider whether or not, based on the facts it has found, the member has failed to follow the Code of Conduct.
19. The member should be invited to give relevant reasons why the Committee should not decide that the member has failed to follow the Code.
20. The Committee should then consider any verbal or written representations from the investigator.
21. The Committee may, at any time, question anyone involved on any point they raise in their representations.
22. The member should be invited to make any final relevant points.
23. The Committee will then move to another room to consider the representations.
24. On their return, the Chair will announce the Committee's decision as to whether or not the member has failed to follow the Code of Conduct.

If the Member has not failed to Follow the Code of Conduct

25. If the Committee decides that the member has not failed to follow the Code of Conduct, the Committee can move on to consider whether it should make any recommendations to the authority.

If the Member has failed to Follow the Code

26. If the Committee decides that the member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigator and the member as to:

26.1 Whether or not the Committee should set a penalty: and

26.2 What form any penalty should take.

27. The Committee may question the investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
28. The Committee will then move to another room to consider whether or not to impose a penalty on the member and, if so, what the penalty should be.
29. On their return, the Chair will announce the Committee's decision.

Recommendations to the Authority

30. After considering any verbal or written representations from the investigator, the Committee will consider whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

The Written Decision

31. The Committee will announce its decision on the day and, where possible, provide a short-written decision on that day. It will also need to issue a full written decision shortly after the end of the hearing. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.

Power to regulate own proceedings

32. The Chair of the Committee has the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter being dealt with at a meeting of the hearings sub-committee.