

Procedure on receipt of a complaint

1. Preliminary tests

1.1

The complaint will be assessed by the Monitoring Officer in consultation with the Independent Person against the legal jurisdiction test in paragraph 1.2 below.

1.2

Legal jurisdiction criteria test:

- (a) Did the alleged conduct occur before the adoption of the Code of Conduct?
- (b) Was the person complained of an elected or co-opted member of the District or Parish Council at the time of the alleged conduct?
- (c) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?
- (d) The complaint is about dissatisfaction with the District or Parish Council's decisions, policies and priorities, etc.

1.3

If the complaint fails one or more of the jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly within 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

1.4 Local Assessment Criteria:

If the complaint satisfies the jurisdiction test, the Monitoring Officer will refer the complaint to the Standards (Assessment) Sub Committee who will make one the recommendations referred to in paragraph 9.1 of these Arrangements to the Monitoring Officer having due regard to the following local assessment criteria. any of which, if satisfied, will create a presumption that it may not be in the public interest to investigate the complaint (save that where the Sub Committee is satisfied that (a) or (b) below applies, it will recommend to the Monitoring Officer that No Further Action be taken in respect of the complaint):

- (a) The person complained of was not acting in an official capacity at the time of the alleged conduct;
- (b) The alleged conduct occurred when the person complained of was acting as a member of another authority;
- (c) The complaint is a 'repeat complaint', unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;

- (d) The complaint is anonymous, unless supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (e) No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant;
- (f) The complaint is malicious, trivial, politically motivated or 'tit-for-tat';
- (g) The complainant is unreasonably persistent, malicious and/or vexatious;
- (h) The alleged misconduct happened more than three months ago (unless it could not reasonably have been uncovered or discovered earlier and the Complainant has complained promptly after uncovering or discovering the misconduct);
- (i) The complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time;
- (j) The circumstances have changed so much that there would be little benefit arising from an investigation or other action;
- (k) The complaint has been the subject of an investigation or informal action and there is nothing more to be gained by further action being taken;
- (l) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter;
- (m) The complaint is about a deceased person
- (n) The complaint is about a person who is no longer a District or Parish Councillor or a Co-opted Member.

1.5 The Monitoring Officer will then make the final decision taking into account the recommendations of the Standards (Assessment) Sub-Committee. The Monitoring officer will prepare a decision notice giving reasons and the Complainant and Subject Member will be notified accordingly within five working days of receipt of the recommendations of the Standards (Assessment) Sub Committee.

2. Notification of complaint to subject member

2.1

Subject to the decision of the Monitoring Officer in relation to representations received from the Complainant on confidentiality (see paragraph 5 below), the Monitoring Officer will notify the Subject Member and, where applicable, the Parish Clerk of the complaint and the identity of the Complainant.

2.2

The Monitoring Officer may invite the Subject Member and, where applicable, the Parish Clerk to submit initial views on the complaint within 10 working days, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4). Views received from the Subject Member and/or Parish Clerk after the 10 working day time limit may be taken into account at the discretion of the Monitoring Officer, providing the views are received before the complaint has been referred to the Standards (Assessment) Sub Committee for consideration.

3. Asking for additional information

3.1

The Monitoring Officer may ask the Complainant, the Subject Member and where applicable, the Parish Clerk for additional information before deciding how to deal with the complaint.

4. What process to apply - informal resolution or investigation and/or no action?

4.1

The Monitoring Officer will at all times have regard to the recommendations of the Standards (Assessment) Sub Committee but subject thereto will make a decision on the merits of the complaint taking into account the local assessment criteria.

4.2

Complaints that engage the local assessment criteria are more likely to be rejected - i.e. the decision will be to take No Further Action

4.3

Where the Subject Member has made a reasonable offer of informal resolution it is more likely that the decision will be to instigate the informal disputes resolution procedure although the seriousness of the complaint and the acceptability of such offer to the Complainant will also be taken into account in making the decision. More information on when it may be appropriate to instigate the informal disputes resolution procedure is given at Paragraph 6 below.

4.4

A complaint is more likely to be referred for investigation when:

- (a) it is serious enough, if proven, to justify the range of sanctions available to the Standards Committee (see paragraph 4 of Annex 4 to these Arrangements;
- (b) the Subject Member's behaviour is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the District or Parish Council (as the case may be) and there is no other avenue left to deal with it short of investigation. In considering this, the Monitoring Officer may take into account the time that has passed since the alleged conduct occurred.

4.5

Where the complaint is referred for investigation, the Monitoring Officer will appoint an Investigating Officer who will conduct the investigation in accordance with the procedure at Annex 3 to these Arrangements.

4.6

If the complaint identifies potential criminal conduct or potential breach of other regulations by the Subject Member or any other person, the Complainant will be advised by the Monitoring Officer to report the complaint to the police or other prosecuting or regulatory authority. In such cases, the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and refer the complaint to the Standards (Assessment) Sub Committee.

4.7

The Monitoring Officer in consultation with the Chairman of the relevant Standards (Assessment) Sub Committee will take no further action in respect of a complaint when one or more of the following apply:

- (a) on-going criminal proceedings or a police investigation into the Subject Member's conduct or where the complaint is suspended in accordance with paragraph 4.6 above;
- (b) investigation cannot be proceeded with, without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceedings;
- (c) the investigation might prejudice another investigation or court proceedings;
- (d) on-going investigation by another prosecuting or regulatory authority;
- (e) genuine long term (3 months or more) unavailability of a key party;
- (f) serious illness of a key party.

4.8

Within 20 working days of receipt of the complaint, the Monitoring Officer will secure consideration of the complaint by the Standards (Assessment) Sub Committee. The Standards (Assessment) Sub Committee will notify the Monitoring Officer in writing of its reasoned recommendations within 3 working date of the date of consideration of the complaint by the Sub Committee and the Monitoring Officer will make a decision on the complaint and notify the Complainant, Subject Member and where applicable, the Parish Clerk of such decision within 2 working days of receipt of the reasoned recommendations of the Standards (Assessment) Sub Committee. The decision will be in the form of a decision notice which summarises the complaint, records the decision made and gives reasons for such decision. The decision notice will be published on the District Council's website for a minimum of 56 days

4.9

Although there is no right of appeal against the Monitoring Officer's decision in the event that the Complainant submits additional relevant information, the Monitoring Officer will consider and decide if the matter warrants further consideration under these Arrangements, in which case it shall be treated as a fresh complaint.

5. Confidentiality

5.1

If the Complainant has asked for their identity and/or the existence of the complaint to be withheld for the Subject Member this request will be considered by the Monitoring Officer in accordance with paragraph 5.5 below.

5.2

As a matter of fairness and natural justice, the Subject Member will usually be told who the Complainant is and will also receive details of the complaint. However, in exceptional circumstances, it may be appropriate to keep the Complainant's identity confidential or not disclose details of the complaint to the Subject Member until the Standards (Assessment) Sub Committee has considered the complaint and made its recommendations to the Monitoring Officer. Consequently, Complainants should note that the existence and nature of a complaint and the identity of the Complainant will not in any circumstances be withheld from the Subject Member any later than the date of the initial assessment decision.

5.3

Subject to paragraph 5.2 above the Monitoring Officer may withhold the Complainant's identity and/or details of the complaint if they are satisfied that there are reasonable grounds for believing that the Complainant or any other person (e.g. a witness):

- (a) is either vulnerable or at risk of threat, harm or reprisal;
- (b) may suffer intimidation or be victimised or harassed;
- (c) works closely with the Subject Member and are afraid of the consequences, e.g. fear of losing their job;
- (d) suffers from a serious health condition and there are medical risks associated with their identity being disclosed (medical evidence will need to be provided to substantiate this);
- (e) may receive less favourable treatment because of the seniority of the person they are complaining about in terms of any existing District or

Parish Council service provision or any tender/contract they may have with or are about to submit to the District or Parish Council.

OR where early disclosure of the complaint:

- (a) may lead to evidence being compromised or destroyed; or
- (b) may impede or prejudice the investigation; or
- (c) would not be in the public interest.

5.4

Relevant public interest factors favouring disclosure (not an exhaustive list) include:

- (a) to facilitate transparency and ethical governance accountability: recognising that decision-making may be improved by constructive contributions from others;
- (b) to raise public awareness: disclosing the complaint or part of it may inform the community about matters of general concern;
- (c) justice to an individual: the balance of the public interest may favour disclosure of the complaint to the Subject Member when it may not be in the public interest to disclose it to the world at large;
- (d) bringing out in the open serious concerns about the behaviour/conduct of an individual.

5.5

The Monitoring Officer, in consultation with the Standards (Assessment) Sub Committee, will balance whether the public interest in accepting the complaint outweighs the Complainant's wish to have their identity (or that of another person) withheld from the Subject Member. If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons, within 15 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.

6. Informal resolution

6.1

These Arrangements enable the Monitoring Officer to resolve complaints informally, In so doing, the Monitoring Officer will consult with the Complainant and the Subject Member to agree what they consider to be a fair resolution, which will help to ensure higher standards of conduct for the future.

6.2

Informal resolution may be the simplest and most cost effective way of resolving the complaint and may be appropriate where:

- (a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or related District or Parish] Council procedures (as the case may be);
or
- (b) There appears to be a breakdown in the relationship between the Complainant and the Subject Member; or
- (c) The conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to lead to further misconduct or allegations of misconduct; or
- (d) The conduct complained of appears common to a number of members of the District or Parish Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other District/Parish Council procedures, etc; or
- (e) The conduct complained of appears to the Monitoring Officer not to require a formal sanction; or
- (f) The complaint appears to reveal a lack of guidance, protocols and procedures within the District or Parish Council; or
- (g) The Complainant and the Subject Member are amenable to engaging in an informal resolution; or
- (h) The complaint consists of allegations and retaliatory allegations between councillors; or
- (i) The complaint consists of allegations about how formal meetings are conducted;
or
- (j) The conduct complained of may be due to misleading, unclear or misunderstood advice from officers.

6.3

Informal resolution may consist of one or more of the following actions, which do not have to be limited to the Subject Member, but may extend to other councillors including the whole District/Parish Council where it may be useful to address systemic behaviour:

- (a) training;
- (b) conciliation/mediation;
- (c) mentoring;
- (d) apology;
- (e) instituting changes to the District or Parish Council's procedures;
- (f) conflict management;
- (g) development of the District or Parish Council's protocols;
- (h) other remedial action by the District or Parish Council;
- (i) other steps (other than investigation) if it appears appropriate to the Monitoring Officer in consultation with the Independent Person.

6.4

If the Subject Member is agreeable to and complies with the informal resolution process, the Monitoring Officer will report the matter to the Standards Committee and, if applicable, the Parish Council] for information, but will take no further action.

6.5

Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Subject Member refuses or fails to carry out any agreed action, the Monitoring Officer will report the matter to the Standards Committee.